



# Localism Act 2011

## 2011 CHAPTER 20

### PART 1

#### LOCAL GOVERNMENT

#### CHAPTER 4

##### TRANSFER AND DELEGATION OF FUNCTIONS TO CERTAIN AUTHORITIES

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

- (1) The Secretary of State may by order make provision—
  - (a) transferring a local public function from the public authority whose function it is to a permitted authority;
  - (b) about the discharge of local public functions that are transferred to permitted authorities under this section (including provision enabling the discharge of those functions to be delegated).
- (2) An order under this section may modify any enactment (whenever passed or made) for the purpose of making the provision mentioned in subsection (1).
- (3) The power to modify an enactment in subsection (2) is a power—
  - (a) to apply that enactment with or without modifications,
  - (b) to extend, disapply or amend that enactment, or
  - (c) to repeal or revoke that enactment with or without savings.
- (4) An order under this section may disapply, or modify the application of, Chapter 4 of Part 1A of the Local Government Act 2000 (changing local authority governance arrangements) in relation to a county council or district council to which the order transfers a local public function.
- (5) The Secretary of State may not make an order under this section unless the Secretary of State considers that it is likely that making the order would—

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- (a) promote economic development or wealth creation, or
  - (b) increase local accountability in relation to each local public function transferred by the order.
- (6) For the purposes of subsection (5)(b), in relation to a local public function, local accountability is increased if the exercise of the function becomes more accountable to persons living or working in the area of the permitted authority to which it is transferred.
- (7) The Secretary of State may not make an order under this section unless the Secretary of State considers that the local public function transferred by the order can appropriately be exercised by the permitted authority to which it is transferred.
- (8) The Secretary of State may not make an order under this section transferring a local public function to a permitted authority unless the authority has consented to the transfer.
- (9) Before making an order under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

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

- (1) A Minister of the Crown may, to such extent and subject to such conditions as that Minister thinks fit, delegate to a permitted authority any of the Minister's eligible functions.
- (2) A function is eligible for the purposes of subsection (1) if—
- (a) 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
  - (b) the Minister of the Crown considers that it can appropriately be exercised by the permitted authority.
- (3) No delegation under subsection (1), and no variation of a delegation under that subsection, may be made without the agreement of the permitted authority.
- (4) Before delegating a function under subsection (1), the Minister of the Crown must consult such persons as the Minister considers appropriate.
- (5) A delegation under subsection (1) may be revoked at any time by any Minister of the Crown.

## **17 Transfer schemes**

- (1) The Secretary of State may make a scheme for the transfer of property, rights or liabilities from the person who, or body which, would have a local public function but for an order under section 15 to the permitted authority to which the function is transferred.
- (2) A Minister of the Crown may make a scheme for the transfer from the Crown to a permitted authority of such property, rights or liabilities as the Minister of the Crown considers appropriate in consequence of a delegation, or the variation of a delegation, under section 16 of a function of any Minister of the Crown to the permitted authority.
- (3) A Minister of the Crown may make a scheme for the transfer from a permitted authority to the Crown of such property, rights or liabilities as the Minister of

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the Crown considers appropriate in consequence of a variation or revocation of a delegation under section 16 of a function of any Minister of the Crown to the permitted authority.

- (4) The things that may be transferred under a transfer scheme include—
- (a) property, rights or liabilities that could not otherwise be transferred;
  - (b) property acquired, or rights or liabilities arising, after the making of the order.
- (5) A transfer scheme may make consequential, supplementary, incidental and transitional provision and may in particular make provision—
- (a) for a certificate issued by a Minister of the Crown to be conclusive evidence that property has been transferred;
  - (b) creating rights, or imposing liabilities, in relation to property or rights transferred;
  - (c) about the continuing effect of things done by or in relation to the transferor in respect of anything transferred;
  - (d) about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (e) for references to the transferor in an instrument or other document relating to anything transferred to be treated as references to the transferee;
  - (f) for the shared ownership or use of property;
  - (g) that has the same or similar effect as the TUPE regulations (so far as those regulations do not apply in relation to the transfer).
- (6) A transfer scheme may provide—
- (a) for modification by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (7) For the purposes of this section—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (8) In this section—
- “civil service” means the civil service of the State;
  - “transferee”, in relation to a transfer scheme, means the person to whom property, rights or liabilities are transferred by the scheme;
  - “transferor”, in relation to a transfer scheme, means the person from whom property, rights or liabilities are transferred by the scheme;
  - “transfer scheme” means a scheme for the transfer of property, rights or liabilities under subsection (1), (2) or (3);
  - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
  - references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - references to the transfer of property include the grant of a lease.

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

- (1) If the Secretary of State receives a relevant proposal from a permitted authority, the Secretary of State must—
  - (a) consider the proposal, and
  - (b) notify the permitted authority of what action, if any, the Secretary of State will take in relation to the proposal.
- (2) The Secretary of State may by regulations specify criteria to which the Secretary of State must have regard in considering a relevant proposal.
- (3) For the purposes of this section, a “relevant proposal” is a proposal—
  - (a) for the exercise of the Secretary of State’s powers in sections 15 and 17 in relation to the permitted authority, and
  - (b) that is accompanied by such information and evidence as the Secretary of State may specify by regulations.
- (4) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

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

- (1) Before making an order under section 15, the Secretary of State must lay a draft of the instrument containing the order (the “draft order”) before each House of Parliament.
- (2) The Secretary of State must have regard to—
  - (a) any representations,
  - (b) any resolution of either House of Parliament, and
  - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft order,made during the 60-day period with regard to the draft order.
- (3) If, after the expiry of the 60-day period, the Secretary of State wishes to make an order in the terms of the draft order, the Secretary of State must lay before Parliament a statement—
  - (a) stating whether any representations were made under subsection (2)(a), and
  - (b) if any representations were so made, giving details of them.
- (4) The Secretary of State may after the laying of such a statement make an order in the terms of the draft order if it is approved by a resolution of each House of Parliament.
- (5) However, a committee of either House charged with reporting on the draft order may, at any time after the laying of the statement under subsection (3) and before the draft order is approved by that House under subsection (4), recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (6) Where a recommendation is made by a committee of either House under subsection (5) in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under subsection (4) unless the recommendation is, in the same Session, rejected by a resolution of that House.
- (7) If, after the expiry of the 60-day period, the Secretary of State wishes to make an order consisting of a version of the draft order with material changes, the Secretary of State must lay before Parliament—

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- (a) a revised draft order, and
  - (b) a statement giving details of—
    - (i) any representations made under subsection (2)(a), and
    - (ii) the revisions proposed.
- (8) The Secretary of State may after laying a revised draft order and statement under subsection (7) make an order in the terms of the revised draft order if it is approved by a resolution of each House of Parliament.
- (9) However, a committee of either House charged with reporting on the revised draft order may, at any time after the revised draft order is laid under subsection (7) and before it is approved by that House under subsection (8), recommend under this subsection that no further proceedings be taken in relation to the revised draft order.
- (10) Where a recommendation is made by a committee of either House under subsection (9) in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in that House under subsection (8) unless the recommendation is, in the same Session, rejected by resolution of that House.
- (11) For the purposes of subsections (4) and (8) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (12) If a draft of an instrument containing an order under section 15 would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.
- (13) In this section, the “60-day period” means the period of 60 days beginning with the day on which the draft order was laid before Parliament.
- (14) In calculating the period mentioned in subsection (13), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

## 20 Interpretation of Chapter

In this Chapter—

“enactment” includes an enactment contained in a local Act or comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“local public function”, in relation to a permitted authority, means a public function in so far as it relates to—

- (a) the permitted authority’s area, or
- (b) persons living, working or carrying on activities in that area;

“permitted authority” means—

- (a) a county council in England,
- (b) a district council,
- (c) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009, or
- (d) a combined authority established under section 103 of that Act;

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“public authority” includes a Minister of the Crown or a government department;

“public function” means a function of a public authority that does not consist of a power to make regulations or other instruments of a legislative character.