

# LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1: Democracy and Involvement

##### Background

12. In December 2007, the report of the Councillors Commission *Representing the future*<sup>1</sup> was published. The report was an independent review of the incentives and barriers to serving on councils. In July 2008, the Government provided a response to the report in *The Government Response to the Councillors Commission*<sup>2</sup> which was published alongside the White Paper *Communities in control: real people, real power*<sup>3</sup> which set out the Government's proposals for empowering local communities. Chapters 1, 2, 3 and 5 of Part 1 follow on from those papers.
13. The creation of a National Tenant Voice was one of Martin Cave's recommendations in his review of social housing regulation (*Every Tenant Matters* (June 2007))<sup>4</sup>. Martin Cave recognised that whilst social landlords have well-established organisations in place to represent them at national level (not least in discussions with Government and the TSA), tenants lack such representation.

#### Chapter 1: General Duty of Local Authorities

##### Summary

14. This Chapter imposes duties on local authorities to promote understanding among local people of the opportunities that exist for members of the public to get involved in, and influence, the decisions made by local authorities and other local public bodies.
15. The duties apply to both England and Wales.

##### Commentary on Sections

#### Section 1 - Democratic arrangements of principal local authorities

16. *Subsection (1)* places a duty on principal local authorities to promote understanding of their functions and their democratic arrangements. "Democratic arrangements" are defined under *subsection (3)*. The subsection also requires those authorities to promote

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<sup>1</sup> <http://www.communities.gov.uk/councillorscommission/publications/representingthefuture/>

<sup>2</sup> <http://www.communities.gov.uk/publications/communities/councillorscommissionresponse>

<sup>3</sup> <http://www.communities.gov.uk/publications/communities/communitiesincontrol>

<sup>4</sup> <http://www.communities.gov.uk/publications/housing/everytenantmatters>

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understanding of how members of the public can take part in those arrangements and what taking part is likely to involve.

17. *Subsection (2)* expands on *subsection (1)(c)* to require principal local authorities to promote understanding of the role of councillors, how to become one, and the support that is available to councillors to assist them in their role.
18. *Subsection (3)* defines the principal local authorities on whom the duty is placed. This covers all county and district councils in England (including unitary authorities), London borough councils and the Common Council of the City of London, and county and county borough councils in Wales.
19. *Subsection (3)* also defines “democratic arrangements” to mean the arrangements for people to participate in or influence the making of decisions including where those decisions are made by the local authority in partnership or conjunction with any other person. This would include opportunities for people to participate in or influence decision-making such as by:
  - standing and serving as a councillor;
  - voting to elect representatives;
  - making representations to councillors and other directly elected representatives including by submitting petitions;
  - taking part in consultations, formal forums, panels and public meetings, including attending the public parts of council meetings;
  - taking on a civic role such as school governor or independent custody visitor.

## ***Section 2 - Democratic arrangements of connected authorities***

20. *Subsection (1)* places a duty on principal local authorities to promote understanding among local people of public bodies (referred to as ‘connected authorities’) which relate to the authority’s area. It requires principal local authorities to promote understanding of what these bodies do and their democratic arrangements, as defined in *section 1(3)*. It also requires them to promote understanding of how members of the public can take part in those arrangements and what taking part is likely to involve.
21. *Subsections (2) and (3)* specify what the connected authorities are in England. These are public bodies or persons that have a strong local presence, making decisions that are directly relevant to local people in the principal local authority’s area and include:
  - health bodies;
  - police bodies;
  - fire and rescue authorities;
  - waste bodies;
  - schools and Further Education colleges;
  - National Park and Broads authorities;
  - transport authorities;
  - economic prosperity boards and combined authorities;
  - probation services;
  - parish councils and meetings;
  - for a county council in a two-tier area, a district council;

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- for a district council in a two-tier area, a county council;
  - for London boroughs and the Common Council of the City of London, the Greater London Authority and Transport for London.
22. The inclusion of the chief officer of police as a “connected authority” means that the principal local authority is expected to promote understanding about the work of the police force itself, and not just the work of the police authority. This includes “neighbourhood policing” in which every area has a neighbourhood policing team and “the policing pledge” which sets out both locally and nationally the standards the public can expect from the police.
23. *Subsections (4) and (5)* specify what the connected authorities are in Wales. *Subsection (4)* largely replicates, in relation to Wales, the provisions of *subsection (2)*, save that the connected authorities do not include Further Education colleges nor those bodies which operate only in England but include equivalent Welsh bodies where appropriate.
24. *Subsection (6)* enables the “appropriate national authority” (the Secretary of State for England and the Welsh Ministers for Wales) by order to:
- add any person or body who has functions of a public nature to the list of connected authorities;
  - remove a connected authority from the list of connected authorities;
  - add or remove functions of the Secretary of State on the list of connected authorities.

### ***Section 3 - Monitoring boards, courts boards and youth offending teams***

25. This section places a duty on principal local authorities to promote understanding among local people of courts boards, independent monitoring boards for prisons and immigration removal centres and Youth Offending Teams (“YOTs”).
- Courts boards give advice and make recommendations to achieve effective and efficient administration of the courts. This advisory role extends across the civil, family and criminal jurisdictions.
  - Independent monitoring boards are appointed for every prison and immigration removal centre. They monitor conditions in the local prison or removal centre and ensure that proper standards of care and decency are maintained.
  - YOTs are established for every local authority in England and Wales and are responsible for co-ordinating the work of the youth justice services. YOTs identify the needs of each young offender and then identify suitable programmes to address those needs with the intention of preventing further offending.
26. Principal local authorities are required to provide information about what these bodies do, how members of the public can take part in their work and what this is likely to involve.

### ***Section 4 - Lay justices***

27. This section places a duty on principal local authorities to promote understanding among local people of lay justices. Lay justices are unsalaried magistrates, as opposed to “District Judges (Magistrates’ Courts)” (previously known as stipendiary magistrates) who are full-time salaried members of the judiciary. Principal local authorities are required to provide information about what lay justices do, how a member of the public can become a lay justice and what the role involves.

### ***Section 5 - Provision of information***

28. *Subsections (1) and (2) provide that the duties in sections 2 to 4 do not apply to principal local authorities if information has not been provided by the connected authorities, monitoring boards, courts boards, youth offending teams and (in the case of lay justices) the Lord Chancellor, respectively, after it has been requested of them.*
29. *Subsections (3) and (4) provide the appropriate national authority with the power to make an order which would require one or more connected authorities or the bodies listed under section 3(2) to provide information to the principal local authorities. It is intended that this power will only be used if the intention of the duty is significantly frustrated by the failure of one or more authorities to provide the necessary information to the principal local authorities.*
30. *Subsection (5) provides that subsections (1) to (3) do not apply to a district council in a two-tier area, because alternative arrangements for those principal local authorities are covered in subsection (6).*
31. *Subsection (6) establishes how the duties in sections 2 to 4 operate in two-tier areas. Districts in two-tier areas are required to promote understanding of the matters in sections 1 to 4. However, county councils are responsible for requesting the information, at least once a year, from persons listed under sections 2, 3 and 4 on behalf of the district councils. The county council must then pass on information it receives to the district councils. Where a county has been informed of material changes to information previously disseminated to its district councils, it is required to inform them accordingly. District councils in two-tier areas will not have failed to meet their duties under sections 2, 3 and 4 if the necessary information has not been passed to them by the county council.*

### ***Section 6 – Guidance***

32. *This section provides that the appropriate national authority may produce guidance for principal local authorities on how to fulfil their duties under Chapter 1. Before guidance is given, it must be consulted upon with the relevant principal local authorities. This guidance may be given generally, or tailored to the needs of different councils if appropriate, and must be published. Principal local authorities must have regard to any statutory guidance which applies to them.*

### ***Section 7 - Isles of Scilly***

33. *This section provides the Secretary of State with the power to apply the duties in this Chapter, with or without modifications, to the Scilly Isles.*

### ***Section 8 - Orders under this Chapter***

34. *This section specifies that any order made under this Chapter is to be made by statutory instrument and is to be subject to negative resolution procedure.*

## ***Chapter 2: Petitions to Local Authorities***

### **Summary and Background**

35. *Section 10 places duties on principal local authorities in England and Wales in relation to electronic petitions signed by those who live, work or study in the local area. Section 11 requires principal authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions. The intention of this Chapter is to make local decision-making in relation to petitions made to principal local authorities more transparent, by requiring them to respond to petitions which meet certain criteria, and making the response to petitions publicly available.*

### ***Section 10 – Electronic petitions***

36. **Section 10** requires principal local authorities to provide a facility for people to make petitions electronically. Principal local authorities are defined in *subsection (3)*.

### ***Section 11 – Petition scheme***

37. **Section 11** requires principal local authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions. *Subsection (7)* makes it clear that existing powers and duties relating to petitions continue unaffected by the provisions in this Chapter.

### ***Section 12 – Petitions to which a scheme must apply***

38. **Section 12** makes provision about the petitions to which a petition scheme must apply. These are petitions which:
- request the authority to take action or cease taking action;
  - are signed by at least the number of people specified in the petition scheme;
  - are not made under any other enactment. Petitions made successfully under other statutory provisions – for example, a petition requiring a local authority to hold a referendum on executive arrangements, pursuant to regulations made under section 34 of the Local Government Act 2000 do not come within the petition scheme; and
  - if made in electronic form, are made using the principal local authority’s e-petitions facility.

What amounts to “signature” for the purposes of an e-petition is a matter to be specified by authorities in their schemes. It may be, for example, that an authority will specify that entering an email address will constitute “signature” for this purpose.

### ***Section 13 – Requirement to acknowledge petitions***

39. **Section 13** requires petition schemes to ensure that petitions are acknowledged in writing within a time specified in the scheme. The acknowledgement must say what the authority intends to do in response to the petition. For example, if an authority proposes to do whatever it is called on to do by the petition, it may be that a single letter confirming this will be sufficient.

### ***Section 14 – Requirement to take steps***

40. **Section 14** requires principal local authorities to take one or more steps in response to petitions which meet the criteria set out in *subsections (1) and (2)* and are therefore “active” petitions. Authorities in England and Wales must take one or more substantive steps in response to a petition which relates to the authority’s functions. In England, principal authorities other than non-unitary district councils must also take steps in response to petitions relating to an improvement in the local economic, social or environmental well-being to which any of the partner authorities could contribute.
41. There is no duty to take any substantive step in relation to petitions which are vexatious, abusive or otherwise inappropriate to be dealt with. The appropriate national authority has power to make an order to provide that certain principal local authority functions are excluded, so that petitions on these subjects would not be “active”.
42. *Subsection (6)* sets out some examples of what the substantive steps might be and requires principal authorities to ensure that their petitions schemes include as a minimum all the listed examples as possibilities. *Subsection (7)* ensures that the petition organiser is told what steps will be taken, and that this information must be

publicly available online unless it is inappropriate because, for example, it would breach someone's right to privacy.

### ***Section 15 – Requirement to debate***

43. **Section 15** gives an automatic right for the matter raised in a petition to be debated by the full council if more than a specified number of people have signed it. The trigger number must be specified in the petition scheme. The appropriate national authority has the power to issue guidance as to the threshold figure which is appropriate, to specify by order a threshold figure applicable to all principal authorities, or to direct a principal authority to amend its petitions scheme, including the threshold specified in it.

### ***Section 16 – Requirement to call officer to account***

44. **Section 16** provides that certain senior officers of a principal local authority can be called to account at a public meeting. It is up to principal authorities to determine which of their officers are liable to be called to give evidence at a public meeting of the authority's overview and scrutiny committee, but their petition schemes must ensure that as a minimum the head of paid service, often known as the chief executive of the authority and the most senior officers responsible for the delivery of services can be required to attend such a meeting when requested to do so by a petition with a number of signatures above the threshold in the authority's scheme. The reasons for the request must relate to the officer's job functions.
45. Authorities operating executive arrangements are required by section 21 of the Local Government Act 2000 to have overview and scrutiny committees. The functions in this section are performed by the overview and scrutiny committee in the case of such authorities. Authorities which do not operate executive arrangements are currently required by regulations made under section 32 of the Local Government Act 2000 to have committees which carry out essentially the same functions as overview and scrutiny committees – and this section has the effect of conferring the public meeting function on such committees.

### ***Section 17 – Review of steps***

46. **Section 17** gives the petition organiser (see section 22) the power to ask an overview and scrutiny committee (or its equivalent in authorities not operating executive arrangements) to review the principal local authority's response to their petition, if the organiser is not satisfied with the steps taken by the authority under section 14. The overview and scrutiny committee may arrange for the full council to carry out this function – that is to say the response of the authority to the petition could be discussed at a meeting of the full council. The principal local authority must inform the petition organiser of the outcome of this review.

### ***Section 18 – Supplementary scheme provision***

47. **Section 18** sets out other issues which principal local authorities' schemes may include.

### ***Section 19 – Powers of appropriate national authority***

48. **Section 19** sets out the powers of the appropriate national authority (the Secretary of State in relation to principal authorities in England and the Welsh Ministers in relation to principal authorities in Wales) to issue guidance in relation to the discharge of the petition function by principal authorities. This power includes a power to create a model petitions scheme which authorities will be able to adopt. The appropriate national authority has power to direct an individual principal authority to amend its petition scheme, for example, if an authority set an inappropriately high threshold for the number of signatures required to mean a petition is "active" within the meaning of section 14, the appropriate national authority could require an authority to set a lower

threshold. There is also a power to make orders applicable to all principal authorities to require them to make particular provision in their petition schemes.

### ***Section 20 – Handling of petitions by other bodies***

49. **Section 20** enables the appropriate national authority to apply the petitions obligations of this chapter to different categories of local authority specified in section 20(2). The power permits the petitions obligations to be applied with modifications to take account of differences in the way such local authorities operate.

### ***Section 22 – Interpretation***

50. **Section 22** contains interpretation provisions. In relation to e-petitions it provides that such petitions are “made” to the authority – and thus potentially trigger the obligations specified in sections 14, 15 and 16 – on a date specified by the e-petition organiser, rather than on the date the organiser asks the authority to host the e-petition, or the date when it is first opened for signature. If an e-petition organiser does not specify a date, it is for the principal local authority to specify in its petition scheme when the e-petition is deemed to be “made”.

## ***Chapter 3: Duties of Public Authorities***

### ***Section 23 - Duty of public authorities to secure involvement***

51. *Subsection (1)* places a duty on those authorities listed in *subsection (2)* to involve representatives of interested persons in the exercise of their functions, where they consider that it is appropriate to do so. It sets out that those authorities will need to consider each of three ways of securing such involvement, namely informing the representatives, consulting them and involving them in other ways.
52. *Subsection (2)* lists the affected authorities and *subsection (3)* explains that, with the exception of the Secretary of State, the relevant functions of the authorities listed are all functions they exercise in respect of or in relation to England. In respect of the Secretary of State, *subsection (3)(b)* provides that the relevant functions are limited to those specified (arrangements with respect to obtaining employment or employees and for the provision of probation services), in so far as they are exercisable in relation to England. *Subsection (8)* makes the Secretary of State’s functions under *subsection (3)(b)(ii)* “probation provision” for the purposes of Part 1 of the Offender Management Act 2007 (see in particular section 3 of that Act (power to make arrangements for the provision of probation services by another person as provider of probation services)).
53. *Subsection (4)* provides that the duty to involve representatives of interested persons does not grant an authority any additional powers. Where there is a conflict between this duty and another duty, the latter takes precedence.
54. *Subsections (5) and (6)* enable the Secretary of State to provide exemptions from the duty by secondary legislation subject to the negative resolution procedure.

### ***Section 24 - Duty of public authorities to secure involvement: guidance***

55. *Section 24(1)* provides that the Secretary of State may issue guidance on the discharge of the duties under section 23. *Subsection (2)* sets out that the guidance may be general or for a particular authority, may be different for different authorities and must be published. *Subsection (3)* requires the Secretary of State to consult authorities to which the guidance relates before it is issued. *Subsection (4)* states that an authority must have regard to any such guidance that relates to it.

## **Chapter 4: Housing**

### **Section 25 - Establishment and assistance of bodies representing tenants etc**

56. **Section 25** makes provision for the Secretary of State to establish and give financial or other support to a body that will represent the interests, at national level, of housing tenants in England.
57. *Subsection (1)* provides powers to the Secretary of State to create such a body, to provide funding to others to create such a body, or to fund an existing body (or a body newly created using other powers) capable of providing national representation of tenants.
58. *Subsections (2) to (4)* define the bodies in relation to which the Secretary of State may exercise powers in *subsection (1)*. They outline the functions such a body must have: representing, or facilitating the representation of, the views and interests of tenants; conducting and commissioning research into issues affecting tenants, and promoting other bodies to represent tenants.

### **Section 26 – Consultation of bodies representing tenants etc**

59. **Section 26** amends the Housing and Regeneration Act 2008.
60. *Subsection (2)* inserts a new section 278A into the Act. The new section provides a power to the Secretary of State to nominate a body representing the interests of social housing tenants for the purposes of consultation in connection with certain functions carried out by the social housing regulator (established by Part 2 of the 2008 Act) and the Secretary of State and set out elsewhere in the Act (and which subsection (1) of the inserted section lists).
61. *Subsection (2)* of the inserted section requires the Secretary of State to notify the regulator of any such nomination and the withdrawal of any such nomination.
62. *Subsections (3) to (6)* amend those parts of the Act listed in subsection (1) of the inserted section by adding the nominated body to the list of those whom the regulator or Secretary of State must consult before exercising those functions. This means, specifically, the requirement on the regulator to consult on:
  - the criteria for the registration of providers of social housing;
  - the disposal of dwellings by registered providers of social housing;
  - standards etc for registered providers of social housing;
  - guidance to registered providers of social housing.

## **Chapter 5: Local Freedoms and Honorary Titles**

### **Introduction and background**

63. This Chapter makes amendments to provisions in the Local Government Act 1972 concerning freemen (local freedoms), and honorary aldermen and honorary freemen (honorary titles).
64. The status of “freeman”, derives from the historic traditions of certain towns and cities in England and Wales. Admission as a freeman is dependent on local rules often based on inheritance or apprenticeship, although a very few freedoms may be acquired through marriage. In some towns and cities the freemen, and certain persons related to or associated with them, have property or other rights.
65. Each guild of freemen has its own rules of admission, which may be contained in byelaws, Charters, local Acts or secondary legislation or enshrined in ancient custom and practice. While some guilds have found sufficient flexibility in their rules to enable



them to admit women or to make other amendments to their admissions practices, others have not been able to because the sources from which their rules derive have no simple process for amendment. These guilds now face difficulties in maintaining their numbers and in revising their rules to reflect changing times.

### **Section 27 – Local freedoms**

66. **Section 27** makes provision for a daughter of a freeman of a city or town to be admitted as a freeman where a son would have the right to be so admitted. It also makes provision for sons and daughters of freemen to be admitted as freemen irrespective of when and where they were born.

### **Section 28 – Power to amend law relating to local freedoms**

67. **Section 28**, which amends section 248 of the Local Government Act 1972 and inserts a new Schedule 28A into that Act, allows the laws relating to the admission of freemen to be more easily amended.
68. New Schedule 28A makes provision for the laws relating to freedom of a city or town to be amended by, or pursuant to, a resolution of the freemen. Paragraph 2 contains powers to enable laws to be amended by, or pursuant to, a resolution of the freemen for certain, specified purposes. These are: firstly, to provide for the right for women to be admitted to the freedom of a city or town except where the effect of the amendment would be to deprive a man of the right to be admitted; secondly, to enable a woman admitted to freedom of a city or town to use the title freewoman; and, thirdly, to put a civil partner (or surviving civil partner) of a freeman in the same position as a spouse (for instance, if the relevant law confers on the surviving spouse of a freeman the right to an annual payment, the new provision allows that right to be extended to surviving civil partners).
69. **Paragraph 2** goes on to provide that the freemen may amend any enactment (other than an Act of Parliament) or the law established by custom for any of the purposes set out above, simply by passing a “qualifying resolution”. A qualifying resolution is a resolution passed in accordance with the procedure set out in paragraphs 7 to 10 of the Schedule. However, if the law which the freemen wish to amend for any of the purposes set out above is contained in an Act of Parliament then the Secretary of State or the Welsh Ministers, as the case may be, will need to make the amendments by Order once the freemen have proposed the amendment in a qualifying resolution. If the Act of Parliament concerned is a public general Act the Order will need to be made using the negative resolution procedure. No Parliamentary procedure is required if the Act of Parliament concerned is a local Act.
70. **Paragraph 3** provides a power for any amendment (not just an amendment for one of the purposes set out in paragraph 2) to be made to the law relating to rights of admission where the law is contained in a royal charter. The amendment must first be proposed in a qualifying resolution and the amendment must be made by Order in Council.
71. **Paragraph 4** provides a power for the freemen to amend, simply by passing a qualifying resolution, the law relating to rights of admission of freemen so far as that law is established by custom. However, where the amendment to customary law being made is for one of the purposes set out in paragraph 2, the amendment should be made under paragraph 2(3) and not paragraph 4.
72. **Paragraphs 5 and 6** provide that the powers set out in paragraphs 2, 3 and 4 for the freemen to amend the law relating to rights of admission include a power to make consequential amendments using the relevant procedure. So, for example, where the principal amendment – the “admissions amendment” — is to a charter by Order in Council any consequential amendments will be made by Order in Council, even if the law amended is established by custom. This is subject, however, to paragraph 5(3) which provides that any consequential amendment which is made to an Act of Parliament must be made by an Order made by the Secretary of State or the Welsh

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Ministers, as the case may be, once a qualifying resolution proposing the amendment has been passed by the freemen.

73. Paragraph 7 sets out the procedure to be followed by a freeman or freemen who propose an amendment to the law relating to rights of admission of freemen in their area. Under this paragraph a resolution to make an amendment is passed if it meets the conditions and procedural requirements set out in paragraphs 8 and 9.

### **Section 29 – Honorary titles**

74. Section 29 amends section 249 of the Local Government Act 1972 in respect of both honorary freemen and honorary aldermen.
75. The title of “honorary freeman” is different from the status of freeman. As the name suggests, the status is purely honorary in nature, and confers no rights on the person so recognised.
76. Section 249 as originally enacted allows certain local authorities to confer the title ‘honorary freeman’ on persons of distinction and persons who have rendered eminent services to the local area. The local authorities who could exercise this power are the council of a London borough or a district having the status of a city, borough or royal borough or any parish or community having by grant under the royal prerogative the status of city and any parish or community entitled by such grant to be called and styled a royal town. The power is also exercisable by principal councils in Wales.
77. The amendments made to section 249 by section 29 extend the power to confer the title “honorary freeman” under section 249 to all principal councils, parish and community councils, and charter trustees in England. The amendments also allow councils to confer the title “honorary freewoman” where appropriate.
78. Section 249 also contains a power for principal councils to confer the title ‘honorary alderman’ on former members of the council who have rendered eminent services to that council. Section 29 amends section 249 to enable principal councils who are exercising that power to confer the title “honorary alderwoman” where appropriate.

## **Chapter 6: Politically Restricted Posts**

### **Section 30 – Politically restricted posts**

79. Certain local authority employees in positions of seniority or influence (for instance the chief executive of the authority) are restricted from undertaking certain political activities, such as standing for election or speaking publicly in support of a particular political party. As well as specific posts being politically restricted, employees with a salary of £36,730 or above are deemed to hold a politically restricted post. These political restrictions were introduced to address concerns about political impartiality and conflicts of interest. These so-called “Widdicombe rules” sought to ensure that authority members are confident that the advice they receive from their senior staff is impartial.
80. Subsection (2) removes the requirement imposed by section 2 of the Local Government and Housing Act 1989 for local authorities to prepare and maintain a list of posts that exceed a specified salary, and which as a consequence mean that the post-holder is subject to political restrictions. Subsections (3) and (4) make amendments consequential to this.