Anthony Collins

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LOCAL GOVERNMENT NEWSLETTER SPRING 2025

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INTRODUCTION

Welcome to our spring newsletter.

Welcome to our latest newsletter. There is so much happening in local government at the moment and our experts focus on some of the key issues in this newsletter.

My colleagues Claire Ward and Matt Marsh look at transitional arrangements for local government reorganisation.

Raj Flora-Seehra explains commonhold and the Government's plans to abolish the leasehold system.

Phil Scully explains the High Street Rental Auctions regime, introduced in late 2024, which is designed to empower local authorities to being long vacant high street premises into productive use.

Richard Brooks has some tips on procuring when it comes to heat networks, leisure centres, electric vehicle points and community transport.

Gayle Monk and Chanel Quigley focus on the obligations in the Procurement Act 2023 to remove/reduce barriers for small and medium sized enterprises in procurement.

Alex Lawrence and Gayle Monk consider the Government's Simpler Recycling initiative and in particular, the requirements on councils in terms of household food waste collections.

Max Howarth looks at the Government's proposals for a scheme of delegation that determines at a national level which planning applications go to planning committee and which are determined by officers.

Suzanne Gregson looks at how local authorities who are social landlords can prepare for Awaab's law.

My colleague Sarah Harnett and I have been looking at the trade union reforms in the Employment Rights Bill and we highlight some of the key changes.

We hope you enjoy this edition of the newsletter and that it is useful. Let us know if there are any issues you want more information on or you want to talk through.

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TRANSITIONAL ARRANGEMENTS FOR LOCAL GOVERNMENT REORGANISATION: SHADOW COUNCILS AND PREPARING COUNCILS

21 local authorities were required to submit interim proposals to the MHCLG by 21 March 2025 for the reorganisation of local government to a single tier, unitary authority are now awaiting the Secretary of State's response, to inform their preparation of final proposals by 28 November 2025 (26 September for those in the Devolution Priority Programme and 9 May for Surrey). In due course, each proposal (with or without modifications) will be implemented by way of Statutory Instrument in the form of an "implementation order" – a Structural Changes Order (SCO), specific to each proposal.

The SCO will abolish the existing local government areas, wind up and dissolve the existing county and district councils and establish one or more new local government areas and one or more new unitary authority. The SCO will also provide for "transitional arrangements" which will take affect during the "transitional period" – the period between the first date on which any action specified in the SCO is required to be taken and the date on which the unitary authority will be established the "reorganisation date" more often known as 'vesting day'.

The form of the transitional arrangements will themselves depend on how the reorganisation is being effected and will require either a "shadow council" and "shadow executive", or a "preparing council" and "implementation executive". In the first instance, the SCO will provide for the establishment of a joint committee and an implementation team, and the creation of an implementation plan, responsibility for which will be assumed by the shadow council or preparing council in due course. All of these additional bodies during the transitional period will have specified functions and will need to be administered and serviced by one of the predecessor councils.

The Joint Committee
The SCO will require, by a specified date, the predecessor councils to establish a joint committee comprising member(s) from each predecessor council to discharge the "transitional functions" as specified in the SCO prior

to either the first meeting of the shadow council and thereupon the dissolution of the joint committee, or the establishment of an implementation executive (see further below – The Preparing Council and Implementation Executive Model), and thereupon the dissolution of the joint committee in accordance with the SCO.

The joint committee must also create an "implementation team", and prepare, maintain and revise as necessary an "implementation plan" until such functions are assumed by the shadow executive/implementation executive. A joint committee will usually be established ahead of it being formerly required by the SCO.

The Implementation Team
The implementation team is a single team of officers comprising officers from each predecessor council. The implementation team will assist the joint committee in the discharge of its functions, and after the joint committee's dissolution, the shadow executive/implementation executive if required.

The Implementation Plan
The implementation plan must include such plans and timetables as the joint committee considers necessary to secure the effective, efficient and timely discharge of the transitional functions, and will also provide for the transfer

of the predecessor councils' property, rights and liabilities to the new unitary authority (or otherwise) pursuant to agreements made between the relevant parties.

What then follows depends on whether the reorganisation is for a predecessor council to take over as a unitary council as happened in Somerset or whether a brand-new local authority is created as happened in Cumbria.

The Shadow Council and Shadow Executive Model

Where the new unitary authority is an amalgamation of a number of predecessor councils the SCO will provide for transitional functions to be discharged during the transitional period by one or more shadow council(s) and their shadow executive(s), however, a shadow council will not otherwise be a local authority, and will have neither the functions nor the full powers of the predecessor local authorities during the transitional period.

The SCO will include, amongst many other things, provision for elections to the new unitary authority which will be in shadow form (a shadow council) until vesting day. At its first meeting, the shadow council must create a leader and cabinet executive (the shadow executive), and on an interim basis, designate a monitoring officer, chief finance officer and head of paid service for the shadow council, and by a date specified in the order, also appoint persons to fill these roles in the new council from vesting day. Additionally, the shadow council must adopt a members' code of conduct and formulate a scheme of members allowances, and from the date of its first meeting, it will assume responsibility for the implementation plan from the joint committee (usually with the assistance of the implementation team) which the SCO will have required the predecessor councils to establish in the first instance.

The Preparing Council and Implementation Executive Model

The alternative to a shadow council and shadow executive arrangement is the preparing council and implementation executive model, which may be used where a single, exisiting county council or district council will become the new unitary authority on the reorganisation date. The SCO will provide for the transitional functions to be discharged during the transitional period by the preparing council's implementation executive. The implementation executive is a sub-committee of the preparing council's executive comprising of members of the preparing council and predecessor councils in accordance with the provisions of the SCO. The implementation executive will be responsible for preparing, maintaining under review and revising as necessary the implementation plan and creating the implementation team. The implementation executive will be dissolved following elections to the new unitary authority and the appointment of its executive, which may be assisted by an implementation board until vesting day.

The Structural Changes Order

The SCO will implement the Local Government Reorganisation (LGR) decision of the Secretary of State (and may include provision for any of the myriad matters (including "electoral matters") set out in the Local Government and Public Involvement in Health Act (2007). We have advised on a number of LGR matters and have assisted with the preparation of draft SCOs for the Secretary of State's consideration/approval. A draft SCO is an opportunity for local authorities to present a 'wish list' as to how LGR in their area will operate during and after the transitional period in accordance with the approved proposal, and finalised implementing SCO, and any subsequent SCOs the Secretary of State may, and usually will, make.

Further Steps

With the challenging timeframe for LGR, an SCO will be required soon after an LGR proposal has been approved, and to the extent that they can be, by this time local authorities will want to be well advanced in the development of the various operational arrangements which will form the content of the SCO and as such implement LGR at ground level. If they are not already doing so, now is the time local authorities need to be thinking about what transitional arrangements their LGR proposal will require and whether a shadow council or preparing council will be required, the composition of a shadow or implementation executive, the implementation team, and in the first instance the initial joint committee; their functions and operating arrangements, as well as the appointment of the statutory officers on an interim basis and beyond. These bodies and individuals are key and successful LGR's will largely depend on their being in place and ready to hit the ground running when formally required to by the SCO and the preparatory work they will have done in advance of it.

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COMMONHOLD: THE BEGINNING OF THE END FOR THE LEASEHOLD SYSTEM

Earlier this year, the Government announced its plans to abolish the leasehold system as we know it, to enable freehold ownership of flats/homes, shared commercial buildings and mixed-use buildings. This is undoubtedly one of the biggest shake-ups in property law, certainly during my career!

Commonhold is not a new concept, with it first being introduced by the Commonhold and Leasehold Reform Act (2002 Act) in May 2002, with an objective of improving leaseholder's rights- by giving owners more autonomy and control over their property assets.

Angela Rayner, the Deputy Prime Minister recently said: *"There was work done on leasehold reform by the previous government, but there were big gaps within that bill which were quite complex… there is importance to making sure that we're able to influence that legislation and bring commonhold as the default position."*

So, what is commonhold?

A commonhold consists of separate commonhold units and common parts. The owners of the units are called unit-holders. The common parts are shared facilities. In a shared building, the common parts may include facilities such as the roof, stairs and landings. On an estate, they might include common access roads or car parking. The common parts are owned and managed by a Commonhold Association (CA), and each unit-holder is entitled to be a member of the CA.

Unit-holders therefore have two distinct interests in their commonhold. The first is a direct interest in their unit and the second is membership in the CA (which owns the common parts) and this ownership structure can be used for both residential and commercial buildings.

Why was commonhold introduced by the 2002 Act?

- To enable the freehold ownership of flats and shared commercial/mixed-use buildings. **Commonhold** enables flats/shared buildings to be owned on a freehold basis so that owners' interests can last forever and it gives the decision-making power to the owners. As opposed to a lease term that will expire in the future, and where there decision-making powers are limited and dealt with by the landlord/management company.
- It addresses some of the key problems associated with leasehold property, in particular escalating ground rents and uncertainty regarding maintenance responsibilities and costs.
- Unlike freehold ownership, commonhold provides a straightforward legal mechanism for making the

burden of positive covenants (such as an obligation to pay towards maintenance and services) bind successive owners.

- It is a way of enabling the freehold ownership of flats and buildings and avoiding the shortcomings of leasehold ownership.
- Commonholders will have absolute control over managing and making decisions about the costs of their building and/or estate.

Issues with the 2002 Act/current commonhold regime

The process of creating a commonhold (including the conversion of existing leaseholds) is not straight forward. There have been suggestions that the procedure for creating and registering commonhold need to simplified and can it be made easier for leaseholders to convert. Conversion currently requires the unanimous consent of the freeholder, all other leaseholders in the building and their lenders- the Government are looking to simplify this process.

The commonhold model needs to be more sophisticated and flexible to meet the needs of communities and developers, by creating "sub-commonholds" to deal with different parts of commonhold schemes (such as in mixed use developments) and allowing costs to be shared between unit-holders to reflect actual use of amenities and services.

There is uncertainty of what the corporate structure of CAs will be, will they be a company limited by guarantee or another appropriate structure.

We also need to balance developer rights and consumer protection rights. How can we ensure developers have sufficient power to complete the development whilst affording protection to unit-holders (and lenders).

Commonhold White Paper

The Government issued a Whitepaper on the 3rd March 2025, which sets out the Government's intention to overhaul the current leasehold system by:

1. Prohibiting the granting any long leases of flats and new buildings, with commonhold being the default tenure (with the exception of shared ownership and home purchase plans).
2. Setting out rights, responsibilities and rules of CA's in a Commonhold Community Statement (CCS). The CCS will also contain provisions relating to dispute resolution and the processes for handling issues within a commonhold.
3. Ensuring unit holders will be members of a Commonhold Association in respect of shared/common parts.
4. Allowing commercial property and mixed-use development to operate under commonhold tenure.
5. Making the conversion of existing leasehold schemes to commonhold easier.

The advantages of commonhold

Whilst there are a number of benefits of commonhold tenure for owners/consumers, lenders and developers will also seek to benefit. Lenders will have greater security in respect of their equity, without risk of forfeiture. Developer's will have greater flexibility in managing mixed-use developments, by creating sub-commonholds that will ensure fair costs for services across schemes.

What could commonhold mean for Local Government ("LG") clients?

The freeholder/management company role may become redundant as the unit-holders will manage building and common parts. This will impact LG client's Housing Revenue Accounts for clients with large landholdings.

Ground Rents will be eliminated; therefore LG client's that currently rely on ground rents from leaseholders may see a reduction in income if commonhold becomes widespread.

There will no doubt be issued in the transition between leasehold to commonhold. Freeholders who currently own leasehold properties will face challenges in transitioning, depending on how the system is rolled out. This could include legal, financial, and logistical hurdles for clients.

What to watch out for:

The Government has pledged to issue a draft Leasehold and Commonhold Reform Bill in the second half of 2025, which will outline the Government's proposals in detail. It's clear that the Government's ambition to reinvigorate Commonhold is high on the agenda. It will be interesting to see if the 2002 Act (a rushed through piece of legislation) will be scrapped altogether and replaced by a more consolidated piece of legislation that better achieve its aims to reinvigorate commonhold. Let's wait and see...

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HIGH STREET RENTAL AUCTIONS – A NEW ERA FOR VACANT PROPERTIES

The High Street Rental Auctions (HSRA) regime, introduced in late 2024, is designed to empower Local Authorities to bring long-vacant high street premises back into productive use – particularly where landlords have been unwilling or unable to secure tenants. This initiative seeks to revitalise town centres and improve local economic, social, and environmental outcomes.

The legal framework underpinning HSRA is set out in *The Local Authorities (Rental Auctions) (England) and Town and Country Planning (General Permitted Development) (Amendment) Regulations 2024,* which came into force on 2 December 2024 and applies exclusively to England. On the same day, the UK Government released non-statutory guidance to support stakeholders through the HSRA process from initiation to completion.

Purpose and Operation

Under the HSRA scheme, Local Authorities are granted the power to auction leases for premises in designated high street use categories that have remained persistently vacant. Properties subject to HSRA will be brought up to a minimum standard and let at fair market rent. The scheme is intended as a last resort when engagement with landlords has not led to a viable tenancy.

Key Points from the Government Guidance

- **Timeline:** The end-to-end HSRA process is expected to take approximately 22 to 24 weeks.
- **Engagement First:** Local Authorities are encouraged to engage constructively with landlords to explore alternatives before initiating a rental auction.
- **Suitability of Premises:** Not all vacant properties are suitable. For example, premises affected by significant costly issues, or large former department stores undergoing long-term redevelopment or those with significant structural issues may be negatively impacted.
- **Overcoming Lending Restrictions:** HSRA tenancies are deemed to have lender consent, potentially enabling lettings where financial restrictions might otherwise apply.
- **Due Diligence and Resource Planning:** Authorities must assess whether the premises meet the legal criteria and whether a HSRA is the most appropriate solution. It should be noted that they may also apply for a 'new burdens payment' funding to help cover the costs of implementing a rental auction per property.

Preliminary Steps for Local Authorities

If proceeding with HSRA, the following preparatory actions are required:

- **Designation:** Identify and designate a qualifying street or area.
- **Statutory Conditions:** Ensure the property meets:
    - The *vacancy condition* (unoccupied continuously for 12 months or at least 366 non-continuous days in 24 months).
    - The *local benefit condition* (letting must benefit the local economy, society, or environment).
- **Survey and Access:** Assess suitability and required works. Landlords must grant access for surveys. If refused, Local Authorities may enter without consent under statutory safeguards.

Offences:

- Obstruction of survey entry without reasonable excuse is a criminal offence, punishable by a fine of up to £1,000 (Level 3).
- Disclosure of confidential information obtained during the survey may lead to imprisonment (up to 2 years), a fine, or both.

Notice Period and Landlord Engagement

- **Initial Notice:** Served on landlords of eligible properties.
- **Grace Period:** Landlords have 8 weeks to secure their own tenancy arrangements.
- **Final Notice:** If Landlords fail to secure such arrangements, the Local Authority may issue a final notice stating its intention to proceed with HSRA.
- **Objections and Appeals:** Landlords may respond with a counter-notice and lodge an appeal.

Auction Period

- Local Authorities then have a 12-week window to conduct the auction and complete the tenancy agreement.

Post-Auction Process

- The successful bidder enters into two agreements with the landlord:
    - A **tenancy contract** (agreement for lease), specifying works to be completed prior to the tenancy commencing.
    - A **tenancy agreement** (lease), effective once the required works are complete.
- The Local Authority has the legal power to execute these agreements on behalf of the landlord and must provide them with signed copies.

Landlord Obligations:

- Failure to respond to information requests or providing false information may result in fines of up to £2,500 (Level 4).
- Local Authorities may proceed in the absence of information, potentially resulting in lower rental offers due to uncertainty.

Support Materials:

- The Government guidance includes standardised templates and letters for use throughout the HSRA process.

Latest Developments

According to the latest update from the Ministry of Housing Communities & Local Government, 11 councils have to date committed to trialing the scheme:

- Bassetlaw District Council
- Darlington Borough Council
- Mansfield District Council
- Barnsley Metropolitan Borough Council
- Broxtowe Borough Council
- Camden London Borough Council
- Hillingdon London Borough Council
- Lichfield District Council
- North Northamptonshire Council
- North Somerset Council
- Westminster City Council

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ARE YOU MAKING CONCESSIONS? PROCURING COMMUNITY INFRASTRUCTURE WISELY…

What do heat networks, leisure centres, electric vehicle infrastructure and public transport have in common?

All of these can be concession contracts which differ from usual contracts because:

- The operator usually collects some income from service users – for example from people who buy heat or pay bus fares combined with receiving some money from the Authority; and
- some operating risk or revenue risk must be taken by the operator – for example the risk of costs of maintaining a swimming pool or the risk of a variable number of passengers catching the bus.

Improving infrastructure through concession arrangements will lead to better outcomes for communities – helping remove some inherent disadvantages – for example poor transport links leading to isolation or underemployment (transport concessions), having no drive to charge your car (LEVI projects) or living in a community with poor health outcomes (leisure concessions).

Here are the major points to consider when letting a concession:

1. Procurement Panic

To avoid panic, leave time to engage with the market and with potential service users before you hold a formal procurement process. Often, the market will come to a bidder day or briefing event and give useful feedback about the best method for procurement. Many concessions are reasonably complex and would be above threshold (£5.3million including VAT), meaning Authorities could use the competitive flexible process under the Procurement Act 2023 – which allows scope to design an appropriate award process. For example, for a heat network project, you might have a demonstration phase, where potential operators demonstrate their proposed customer interfaces together with written price and quality submissions.

2. Risk Reflection

The concession contract terms must detail who is taking which risk. Often, Authorities will own the underlying infrastructure, and there will not be a significant return or profit to the operator, so the allocation of risks needs to bear this in mind. For example, making the operator take the risk of fixing major defects with a heat network owned by the Authority (where the operator has not installed the system), would not be reasonable or proportionate. On the other hand, it would be sensible for the heat network operator to take the risk on smaller consumables or maintenance costs, so that it is incentivised to be efficient and effective in running the network. Getting the risk allocation right is key to a successful procurement and a long term, sustainable partnership with the selected operator.

3. Payment Precision

The payment mechanism needs to reflect the contract terms, and ensure that you incentivise the operator to both increase customers, maximise income and achieve social objectives. For example, in charge point operator concessions for electric vehicles, making sure that the Authority manages the competing concession objectives through the payment mechanism is key. Usually, an Authority will want:

- regulated charges for residents without off-street parking, for example setting a margin cap so that operators can only charge a certain amount more than the base cost of electricity;
- to pay the Council a concession fee which assists the Council with an income stream, usually to recognise that either highway or parking assets are being used; and
- incentives for the operator to drive revenue through ultra-fast charging.

4. Swerving Subsidy

Many concessions involve elements of subsidy or capital contribution from an Authority. For example, on a LEVI scheme, the Council uses grant funding for electric vehicle infrastructure which is made available to the operator to help fund charge point installations. There are many ways of dealing with subsidy to ensure compliance with the Subsidy Control Act 2023, chiefly through appointing an operator through a formal competition, which eliminates (or substantially mitigates the risk of) the subsidy. However, if you are considering sub-granting funding, or have held an informal process to appoint an operator because the concession value is below threshold, Authorities will need to take separate subsidy control advice to ensure resources are used and passed on lawfully. Any process should also seek value for money.

5. Peak performance

Although the Procurement Act 2023 does not require key performance indicators (KPIs) in a concession contract, it is still a good idea because most concessions are longer term and public facing – so good contract performance is critical. If you specify KPIs, you also need to set out:

- the minimum levels of acceptable performance, and what happens if these are not met - usually a short chance to rectify the situation and then termination if the failure continues; and
- the target level for performance, and what happens if these are not met – usually a combination of improvement plans and service credits - i.e., a reduction in the return to the operator.

And finally…

Letting a concession contract needs a number of moving parts to all come together – including the procurement process, dealing with subsidy control implications, having a clear payment mechanism which integrates with the contract terms, together with good way of incentivising good performance. If we can assist with your concession, please do get in touch.

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SMALL BUSINESS, BIG IMPACT

Section 12 of the Procurement Act 2023 ("PA23") sets out the core objectives of all covered procurements. Amongst other priorities, section 12 requires that contracting authorities (a) have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and (b) consider whether such barriers can be removed or reduced.

There is a similar obligation in section 86 for regulated below thresholds contracts, recognising that lower value contracts may especially be of interest to SMEs. While there is nothing new about the barriers to SMEs participating in procurement, nor the ambition to do something about those barriers, section 12 creates an expectation on contracting authorities that, to some at least to whom this has not previously been a strategic priority, will feel new.

Annex A to the Cabinet Office's guidance on covered procurements contains some useful feedback from SMEs on what they consider the barriers to accessing public procurement actually are:

- Lack of market engagement
- Not aware of opportunities
- Complex procurement process
- Unconscious bias
- Too specific or too vague requirements
- Unachievable financial thresholds
- Short tender timescales
- Resource heavy
- Lacks innovation
- Unnecessary risk allocation
- Complex terms and conditions
- Lack of constructive feedback

There will, of course, be other barriers that are more particular to the contracting authority, its area, or to the individual SME. But local authorities could do worse than start by seeking to address this list in its procurement and commissioning processes. There are some practical steps all contracting authorities could take to immediately start levelling the playing field.

Market Engagement

Consider how and when you engage with your markets – early market engagement will almost always pay off, and can help to raise awareness of future opportunities, encourage innovation, and find realistic common ground between a contracting authority's aspirations and the market's ability to deliver. This helps to ensure that resulting procurement exercises are ambitious but realistic, and targeted at the appropriate markets.

Good market engagement will involve a two-way conversation, and goes beyond "meet the buyer" events. It is as much about listening to the market as it is about telling the market what the local authority is seeking.

Simplify Procedures

Review and revise your "standard" approaches to procurement – simplify procedures where appropriate to do so, with a particular focus on areas of spend which might be appropriate for SMEs to bid for. Multi-stage procurements are a significant investment for a small business and, while entirely appropriate for larger or higher risk contracts, aren't always necessary.

Consider as well the circumstances in which any standard approaches to selection and evaluation (for example to economic and financial standing – including insurances) might inadvertently and unnecessarily exclude small businesses. It might be possible to permanently change your standard approach so that barriers are not erected in the first place.

Plan Ahead

The PA23 requires contracting authorities who consider that they will, in the coming financial year, pay more than £100 million under relevant contracts (broadly, all supplies, services and works contracts that aren't exempted contracts) to publish a Pipeline Notice on the central digital platform. The first step will be to identify whether the local authority does expend over £100 million on public contracts in any given year – we anticipate this will apply to some but by no means all local authorities – although there is no barrier to publishing Pipeline Notices voluntarily.

The Pipeline Notice shares details of any public contract with an estimated value of more than £2m over an 18-month period. Regulation 15 of the Procurement Regulations 2024 expands on this with minimum information requirements for those Pipeline Notices – which (in brief) requires contracting authorities to explain what procurements are anticipated during that 18-month period, their subject matter, and the estimated dates of proposed notices concerning their procurement.

This fosters an expectation of transparency and forward-planning which could usefully extend beyond contracts above £2m in value. Consider what additional transparency you can provide about anticipated spends and procurement processes, and share that information at the earliest opportunity.

Highlight suitable opportunities

The PA23 requires contracting authorities to highlight in their Tender Notices whether they consider the contract (or individual lots forming part of the procurement) may be particularly suitable for award to SMEs or value-driven non-governmental organisations that principally invest their surpluses to further social, environmental or cultural objectives.

More generally, consider the use of not just Tender Notices (at the start of a procurement) but also Planned Procurement Notices, Preliminary Market Engagement Notices, and Below-Threshold Tender Notices to highlight when opportunities might be suitable for SMEs – and think about how else you provide information for the marketplace to signpost SMEs toward the central digital platform.

Set suitable award criteria

The requirements for setting award criteria for competitive tendering exercises are described in section 23 of the PA23 and must:

- relate to the subject-matter of the contract;
- be sufficiently clear, measurable and specific;
- not break the rules on technical specifications in section 56; and
- be a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.

Be conscious of the impact that inappropriate award criteria can have, particularly on SMEs, and the barriers that these create. Be alive in particular to award criteria and scoring methodologies that are disproportionate to the nature, complexity and cost of the contract.

For light touch contracts, the reference to the subject matter of the contract can also include reference to:

- the views of an individual for whose benefit the services are to be supplied (a "service recipient"), or of a person providing care to a service recipient, in relation to:
  - who should supply the services; and
  - how and when they should be supplied;
- the different needs of different service recipients; and
- the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.

It is worth paying attention to the differences between these regimes, particularly recognising that SMEs may be especially capable of delivering contracts for "light touch" services.

Break down your contracts

Section 18 of the PA23 makes it clear that before publishing a Tender Notice at the start of a procurement, contracting authorities must consider whether the subject of the contract could reasonably be supplied under more than one contract, and especially whether breaking down the procurement into lots is appropriate. This can be a simple but impactful way of breaking down barriers to SMEs, by enabling SMEs to tender for separate lots which are smaller, more specialist, or geographically limited. It can create a mixed economy of suppliers for the contracting authority which both increases spend to SMEs and distributes risk more proportionately.

Consider ringfencing competition

Reflective of equivalent provisions in the previous Public Contracts Regulations 2015, the PA23 provides the opportunity to "reserve" contracts to supported employment providers – organisations that operate wholly or partly for the purpose of providing employment to disabled or disadvantaged individuals. While not all supported employment providers will be SMEs, many are, and the rules set out in section 32 of the PA23 provide an opportunity to prioritise spend on organisations with this specific social purpose. This can chime with a contracting authority's wider strategic ambitions to increase employment and support disabled or disadvantaged individuals within their communities.

Talk more

Many procurements fail to provide opportunities for SMEs to engage not because there is an unwillingness to do so, but rather because the right decisions are not made early enough in the commissioning cycle, and by the time the Tender Notice is published and the procurement commenced, there is little chance that the barriers experienced by SMEs can be broken down. More than anything else, therefore, contracting authorities and SMEs alike are encouraged to engage in conversation – at the earliest possible opportunity.

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SIMPLER RECYCLING - FOOD WASTE COLLECTIONS AND MORE

By now waste collection authorities in England will undoubtedly be aware that by 31st March 2026 they will be required to arrange for the collection of household food waste, alongside the already required collections of recyclates (glass, metal, plastic, and paper and card) and residual waste.

This forms part of Simpler Recycling, which seeks to enable consistent and more streamlined collections from households, businesses, and relevant non-domestic properties like schools and hospitals.

Simpler Recycling sits beside other policy initiatives, including extended producer responsibility for packaging ("**EPR**"), and a deposit return scheme for drinks containers ("**DRS**"). The consistency of recycling methodologies across the country is seen as a key element towards maximising recycling and reducing waste. This is an important series of changes seeking to enable the UK to achieve a 65% municipal recycling rate by 2035.

The changes to household food waste collections form part of a timeline for Simpler Recycling:

- By 31st March 2025, businesses and non-domestic premises in England with 10 or more full time equivalent employees were required to arrange for collection of food waste alongside glass, metal, plastic, and paper and card. While the majority of businesses can be expected to make arrangements for the collection of these waste streams by means of private contractors, waste collection authorities have a duty to provide this service if required and should have systems in place to respond to requests should they arise.
- Micro-firms (with fewer than 10 full time equivalent employees) have until 31st March 2027 to make the same arrangements;
- Household food waste collections are to be added to the current requirements for glass, metal, plastic and paper and card by 31st March 2026.
- Kerbside plastic film collections for households, businesses and relevant non-domestic premises will be required by 31st March 2027.

Food waste collections have a significant role to play in increasing recycling rates, and many of the above changes are to be welcomed. Only about half of English waste collection authorities currently have a food waste collection service, leaving many therefore to address this particular change before next year.

This raises a number of questions and challenges:

- **Budgeting**: how to cover the costs of the food waste collections for households when introduced. While Defra confirmed a pot of £295m to be shared across local authorities to cover the cost of providing the service, inevitably this will not necessarily cover the true costs of providing the service. Waste collection authorities will need to consider therefore how to fund the service – for some this might include, for example, electing to start charging for garden waste collections (where the authority has not previously done so) to enable reallocation of previous budget to food waste;
- **Procurement:** authorities may need to procure new collection vehicles (lease, hire or purchase), new bins for households, and new service providers. What is needed will be different for each authority, depending on what services are currently being offered, what contracts are already in place, and whether the authority would seek to rely on an exemption to allow the co-collection of food and garden waste. Where new plant and fleet is required this may need early ordering to accommodate lead times;
- **Interface with Existing Contracts:** authorities that have procured waste collection services contracts in recent years may have incorporated food waste collection as an anticipated change, and so rather than procuring a new service provider may be looking at variations to those existing contracts;
- **Interface with Other Services:** the knock-on effect on waste disposal arrangements (whether within the authority in the case of unitary authorities, or across authorities in two-tier areas) needs to be addressed and, as above, thought will need to be given to any changes required to existing contracts and legal and contractual impacts of those changes;
- **Facilities and Land:** if new vehicles are being used for the collections, can existing depots and operations sites accommodate these? Are new facilities needed?

There is much to do, therefore, to be ready for the 31st March 2026 deadline. Councils not already working through the decisions they need to make and the action they need to take should start as a matter of priority.

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PLANNING AND INFRASTRUCTURE BILL

Making decisions on planning applications is a function that is split between officers and elected members sitting on planning committees. A council's scheme of delegation will set out what criteria are used to decide if an application will be decided at committee or by officers. These criteria are locally set by each council.

The most common criteria requiring an application to go before a planning committee for a decision are related to the size of the proposed development, compliance with local plan policies, or an application receiving a set number of objections.

At present, the Planning Advisory Service conservatively estimates that over 90% of applications are determined by officers, with the remainder being decided at planning committees.

The Working Paper

The government has published a Planning Reform Working Paper: Planning Committees that proposes adopting a national scheme of delegation that determines at a national level what applications go before the planning committee versus what is decided by officers.

The intention is that this will provide a 'standardised consistent approach to delegation of decisions in all local planning authorities'. This comes as part of wider planning reforms aimed at speeding up the planning process and increasing house-building numbers. The specific target of this reform is to make it easier for applications that accord with an adopted local plan to obtain planning permission. The rationale is that these applications have effectively already had democratic approval through the local plan adoption process so it is unnecessary for this to happen again.

The working paper provides examples of committees who have refused permission for allocated sites against officer advice leading to a costly and time-consuming planning appeal process which eventually allowed permission.

Presently, there is no statutory power to set a national scheme of delegations, so this would be an entirely new legal process.

Proposed models

The working paper suggests three different options for how the national scheme of delegation could function, briefly, these are as follows:

1. Any application that conforms with the development plan would be decided by officers and the local authority would decide what happens to all other applications.
2. Any application is to be decided by officers unless it departs from the development plan and is recommended for approval or is submitted by the local planning authority – there is a risk that this would result in a large increase in the number of applications going to committee as many schemes that make minor departures from local policy would still be acceptable.
3. Delegation to officers is the default unless an application meets an exception in a prescriptive list – this list could include things like major development on a non-allocated site or green belt development that engages the exceptional circumstances test (the paper gives further examples).

Alternatively, the working paper suggests that a model that is a hybrid of the above approaches could be adopted.

Thoughts

Deciding planning applications is a local function that people engage in enthusiastically and there is value in making decisions in a way that is public-facing and democratic. Whilst it is likely that the option adopted will preserve this element for contentious schemes it is important that local people remain engaged in the planning process.

Generally planning committees operate in a way that is sensible and reasonable and there does not appear to be a pressing need for a national scheme. However, we do see benefits in speeding up the determination process for allocated sites as ultimately these should not be contentious.

These changes could potentially lead to a major shift in how applications are decided and would affect everyone in the planning ecosystem.

There is currently no deadline for responding and we would recommend that anyone with strong opinions makes them known to the Ministry of Housing, Communities & Local Government.

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HOW CAN SOCIAL LANDLORDS PREPARE FOR AWAAB'S LAW?

With the phased introduction of Awaab's Law now confirmed, social landlords face both opportunities and challenges as they prepare for the new requirements. While the intention behind the legislation is clear - to improve the health and safety standards of residents' homes - a lack of legislative detail is creating uncertainty across the sector.

What are the key changes coming under Awaab's Law, and how can social landlords get ready for the implementation?

What changes can social landlords expect?

On 6 February 2025, the Government announced the implementation timetable for Awaab's Law. The law will place new, time-limited responsibilities on social landlords - including both Registered Providers and Local Authorities - when health and safety hazards are identified in tenants' homes.

From October 2025:

Social landlords will be required to:

- Repair all emergency hazards within 24 hours. (Final definitions of 'emergency hazards' are still awaited, but are likely to extend beyond current operational standards.)
- Address significant damp, mould and condensation hazards posing a risk to health and safety.

By 2026:

The scope will widen to include other high-risk hazards under the Housing Health and Safety Rating System (HHSRS), which is likely to cover issues such as excess cold, excess heat, risk of falls, fire safety and electrical hazards.

By 2027:

Awaab's Law will extend to any remaining hazards, with the exception of overcrowding.

Why is uncertainty causing concern?

While the phased approach offers landlords some breathing room, significant concerns remain due to missing details on:

- The final list of hazards in each phase.
- The management of conflicting timelines between Awaab's Law and the existing Pre-action Protocol for Housing Conditions Claims. (For example, current Protocol timelines are measured in working days and allow for significant more time to do investigations, while the Awaab's Law consultation referred to calendar days — a discrepancy that could complicate compliance and claims handling.)

There's also a risk that tenants could pursue separate claims under both the Protocol and Awaab's Law simultaneously, doubling the administrative and legal burden on landlords already managing rising volumes of disrepair claims.

What practical issues do landlords need to address?

Several operational and resource challenges will need urgent attention:

- **Contractor availability:** Demand for repair services - especially for damp, mould and condensation – will increase, while specialist contractors remain scarce.
- **Property access:** Gaining timely access for inspections and repairs continues to be a significant issue. While landlords could apply for access injunctions to prove attempted access, court delays and backlogs could create further issues.
- **Temporary accommodation pressures:** Emergency repairs and health and safety risks may require residents to be decanted. Increased use of temporary accommodation such as hotels could quickly escalate costs, including additional expenses for food, transport and pet care.
- **Internal expertise and resources:** Hazards such as noise, lighting or hygiene-related risks may sit outside existing repairs teams' expertise, requiring housing officers or anti-social behaviours officers to develop new reporting and hazard assessment skills.

How can social landlords prepare now?

The sector has already made significant strides since the tragic death of Awaab Ishak, but as we move closer to October 2025, being proactive is essential. Although some uncertainty remains, here are some proactive steps social landlords can take ahead of October:

- **Review and update internal policies** - including complaints handling, responsive repairs, gaining access and decanting procedures.
- **Build on positive improvements made** - ensuring repair works are completed to a high standard and tenants feel listened to through effective, two-way communication.
- **Check and enhance complaints processes** - ensuring alignment with both the new Complaint Handling Code (statutory since April 2024) and anticipated requirements under Awaab's Law.
- **Review and adjust damages/compensation processes** – making sure settlements reflect court and Ombudsman expectations.
- **Invest in training** - upskill teams on identifying and reporting HHSRS hazards and managing claims under the new timelines.
- **Strengthen contractor networks** - explore new partnerships and frameworks to expand repair capacity.

For more information

If you'd like to discuss how your organisation can prepare for Awaab's Law or review your existing policies, please get in touch.

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BRIEFING ON THE EMPLOYMENT RIGHTS BILL - FOCUS ON KEY CHANGES TO TRADE UNIONS

The Employment Rights Bill (ERB) is a landmark piece of proposed legislation currently going through Parliament that aims to modernise and strengthen the employment landscape.

As local authorities, it is crucial to understand the implications of the ERB and this article focuses on some of the key changes when it comes to trade unions. Unions obviously play a major part in industrial relations in a local authority context and it is important that effective working relationships are in place. Key proposed changes include:

Conditions for trade union recognition

Currently: The current process for statutory recognition by trade unions requires demonstrating that 10% of the proposed bargaining unit are union members before a ballot is held. Statutory recognition must then be supported by a majority vote, with at least 40% of the workers in the bargaining unit voting in favour.

Change: The threshold of union membership that a union will have to demonstrate within a bargaining unit will reduce to between 2% and 10%. The requirement for majority support within the bargaining unit will be removed, and a majority vote will be sufficient for statutory recognition, eliminating the 40% threshold.

Facilities provided to trade union officials and learning representatives

Currently: There is a right to paid time off but not for facilities.

Change: The right to paid time off will continue and where an employer permits such time off, must also provide the employee with 'accommodation and other facilities' when it is reasonably requested.

Right of trade unions to access workplaces

Currently: Unless agreed as part of collective agreement or ordered by the Central Arbitration Committee (CAC) there is no 'right of access' for trade unions into a workplace for recruitment or organisational purposes.

Change: There will be a right to request an access agreement with an employer for one or more officials of the union and the agreement must then be communicated to the CAC. If agreement cannot be reached then the CAC may make a determination.

Time off for equality representatives

Currently: Whilst unions may have equality representatives, they have no rights to time off nor to have facilities provided in which to carry out their duties.

Change: An employer will be required to permit an equality representative of a recognised trade union time off for carrying out their duties. The purpose of the time off will include arranging learning or training, carrying out activities for the purpose of promoting the value of equality and providing information and support.

Facility time

Currently: The Government can introduce regulations whereby 'relevant public sector employers' with at least one relevant trade union official must publish certain information relating to how much time those officials take off work for their trade union activities. In addition, three years after such regulations are in force, the Government could further introduce regulations which would limit that time off.

Change: These powers will be repealed.

Blacklists – Additional powers

Currently: It is unlawful for employers and employment agencies and others to compile, or supply or use a blacklist — a list of persons who have been members of trade unions or who have taken part in trade union activities - for the purpose of discriminating against them, for example in recruitment decisions.

Change: This will be extended to include lists which may have not been prepared for the purpose of discrimination but are subsequently used to discriminate.

Industrial action – Provision of information to employer

Currently: The notice a trade union must give an employer of industrial action (post ballot) is 14 days.

Change: This will be reduced to 7 days.

Repeal of minimum service levels

Currently: The Government has the power to set minimum service levels during strikes in essential services and certain sectors.

Change: These powers will be repealed.

Protection against detriment for taking industrial action

Currently: There is no protection against sanctions (short of dismissal) taken against an employee who engages in lawful strike action.

Change: This will be extended to give an employee protection against any detriment they may suffer at the hands of their employer where the specific purpose of that treatment was to deter the employee from engaging in industrial action or to penalise them for continuing to do so.

Protection against dismissal for taking industrial action

Currently: Employees who are taking part in lawful industrial action are protected from dismissal for a protected period. This period is currently 12 weeks.

Change: This 12-week limit will be removed and so the employee will be protected for the length of the strike action.

Implications for Local Authorities

Local authorities will need to be proactive in understanding and implementing the changes introduced by the ERB. The increased role and protections for trade unions will require local authorities to:

- Engage with Trade Unions: Foster a collaborative relationship with trade unions to ensure compliance with the new legal requirements.
- Review Employment Policies: Update employment policies to reflect the strengthened union rights and protections.
- Training and Awareness: Conduct training sessions for managers and HR personnel to educate them about the new provisions and their responsibilities.
- Monitor Compliance: Implement regular monitoring and evaluation processes to ensure that employers within their jurisdiction adhere to the new regulations.

For more information and updates on the ERB visit our ERB Hub.

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