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Briefing 3: Devolution, localism and housing policy

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The Big Society, Localism and Housing Policy: an ESRC Seminar Series

Briefing 3: Devolution, localism and housing policy

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Briefing 3: Devolution, localism and social housing policy

Introduction

Drawing on presentations given across the seminar series as a whole this briefing paper explores examples of the way devolved government in the United Kingdom impacts on social housing policy. The paper suggests that further policy divergence may occur in future years, as the balance between state, civil society and market in the four jurisdictions became noticeably different following the 2007-08 financial crisis, the 2010 general election and the 2014 referendum on Scottish independence. These differences show no sign of abating in the run up to the 2015 general election.

Devolution and localism

The development of UK devolution

Elected assemblies and an associated set of devolved powers were introduced to Scotland, Wales and Northern Ireland in 1998, following referenda in each case, and the new bodies all sat for the first time in 1999. Devolved powers include housing, planning, education, health and regeneration in all four jurisdictions. Retained powers include most taxation, social security (except Northern Ireland, which has a parity agreement), defence and constitutional matters.

The form of devolution in each jurisdiction was varied to begin with and has evolved differently depending upon the context, including local political and electoral support:

- In Scotland, 74% voted in favour of a Scottish Parliament, with 63% also in favour of giving it tax-raising powers. Unlike the other assemblies, a power to introduce a marginal increase in income tax was granted in 1998, but has never been used. Further tax powers were introduced in 2012 and a referendum on Scottish independence in September 2014 resulted in 55% wishing to remain part of the UK. The Smith Commission, convened following the referendum, argued for the further devolution of powers to Scotland, including changes to borrowing powers and to welfare benefits.
- In Wales, 50.3% voted in favour of a Welsh Assembly in 1999. The National Assembly for Wales was not given legislative responsibility, however it received a wide range of administrative powers as listed above. In 2011 in a second referendum, 63% supported the introduction of law-making powers for the Welsh Assembly, now the Welsh Government.

- In Northern Ireland (NI), 71% voted in favour of devolution as part of a wider referendum on the Good Friday Agreement, along with 94% in the Republic of Ireland. Thus in NI devolution was part of a peace settlement to try to bring the Northern Ireland 'troubles' to an end, which included government by a cross-community enforced coalition. This structure proved initially to be unstable and the Assembly did not sit between 2002 and 2007.

All three devolved administrations took housing policy extremely seriously in their early years, for example the ground-breaking Housing (Scotland) Act 2001; the first National Housing Strategy for Wales in the same year; and an inquiry into aspects of housing policy by Northern Ireland's Social Development Committee in 2002.

Pressures on the devolved administrations

Following the establishment of the UK's Conservative and Liberal Democrat Coalition after the 2010 general election, the political make-up of the devolved bodies differed from that of the UK Parliament. In Scotland, the Scottish National Party was in charge; in Wales, a minority Labour administration; and in Northern Ireland, a five-party coalition with the two largest parties being the Democratic Unionist Party and Sinn Féin. None of these parties were in favour of a smaller state or austerity driven welfare reform measures as a matter of principle, unlike the Coalition Government at UK level.

The Global Financial Crisis from 2007 led to the imposition of austerity measures by the Coalition, including restrictions in the block grant to the devolved administrations (less so in Northern Ireland). In addition, welfare reform was introduced with the exception of Northern Ireland, which may set its own legislation in this area. Political differences under devolution have been evident and are beginning to shape new directions for Scotland, Wales and Northern Ireland.

In Scotland, austerity is generally accepted to have been one driver for the 2014 independence referendum, and for the reaction from the UK government to provide Scotland with more tax-raising powers. Scotland has attempted to mitigate the effects of the 2012 Welfare Reform Act through the Scottish Welfare Fund and additional funding for Discretionary Housing Payments, but the impact has still been severe. The potential for a different welfare system was a prominent part of the referendum debate, and has remained on the agenda through the Smith Commission and its subsequent recommendations. It is less clear that this is the situation in Wales, however support for the Welsh Government has increased since 1998. In Northern Ireland, budgets have been to some extent protected and

the Welfare Reform Bill has not yet been introduced; it is likely to be slightly different from the rest of the UK, with extra provisions (such as a much reduced use of the bedroom tax/spare room subsidy) funded from the block grant. NI's Stormont House Agreement linked the passing of the Welfare Reform Bill to the granting of powers to vary the rate of corporation tax, and NI's five coalition parties are in favour of a lower rate, the difference also to be funded from the block grant. In all the jurisdictions, additional measures to mitigate the effects of welfare reform must be funded from cutting spending in other policy areas, or in the case of Scotland from increased taxation. *Austerity has brought home the difference between devolution, which is conditional and constrained, and federalism, where powers can only be removed through constitutional change.*

Localism in the context of devolution

Devolution should not be confused with localism. In the devolved administrations, there is an important local layer of government beneath the assemblies (less so in NI). Localism is not a new concept, having been adopted in some shape or form by governments since the 1970s as part of varying state/civil society dynamics over the years. It brings together spatial, administrative and political characteristics in a variety of combinations across the UK, and can operate either in the interests of communities or very much against them.

In England, the Localism Act 2011 has codified the concept and linked it to the idea of the 'Big Society', which was high profile at the time of the 2010 general election but has since faded from view, never gaining much traction outside England in any case. English localism involves powers for local 'communities' to challenge the standard of public service delivery and take over the running of services, to put together neighbourhood plans, and to allow councils some discretion on social housing allocations and tenancy conditions. Power is dispersed, but in the context of austerity and a punitive welfare system. Local action therefore becomes a necessity rather than a choice, and without adequate support systems the danger is that place-based inequalities may widen.

In Scotland, community ownership and control has a long legacy, not least in housing. The Community Empowerment and Renewal Bill, currently under consideration, includes an extension of Community Right to Buy, the right to challenge service delivery, and support for tenant management organisations. It also promotes community-asset ownership and community anchor organisations, roles often undertaken by housing associations. In Wales and Northern Ireland, localism is less of a familiar concept. Some aspects of the Localism Act 2011 apply to Wales, which is also pursuing community asset transfer (which is popular across the UK). In Northern Ireland, a restructuring of local government from April 2015

includes the introduction of a statutory community planning system and the devolution of a small number of services to local level, including planning, urban regeneration and community development. However, many important services such as housing, social services and education will remain at regional level and there is still disquiet about the exercise of local discretion in a divided society.

The social housing sector under devolution

Governance in hard times

The UK Government's austerity agenda has had an impact on the governance of social housing in all four jurisdictions. In England, Scotland and Wales, the impact of the Coalition's welfare restructuring through the Welfare Reform Act 2012 has been profound. The 'bedroom tax'/'spare room subsidy' is the most prominent aspect for social landlords but by no means the only one. The bedroom tax has led to a measurable increase in the proportion of tenants in arrears and the amount they owe. This means the cost of collecting rent and supporting tenants in arrears has also risen for landlords. Discretionary Housing Payments have been found to be inadequate and there remains a lack of small properties for households who wish to move, although some landlords are responding to this in terms of changing their allocations policies and development priorities. Wider reforms to the Housing Benefit system have also hit low-income and young household hard, through restrictions to the Shared Accommodation Rate and levels of Local Housing Allowance.

Other aspects of welfare restructuring have affected household income, with the biggest falls coming from the introduction of Employment and Support Allowance to replace Incapacity Benefits, changes to tax credits, and uprating of payments below the rate of inflation. The move to Universal Credit, paid monthly, may cause problems with budgeting, and assumes certain levels of IT literacy as applications are required to be completed online. Sanctions imposed on JSA claimants are also a matter of concern (this measure also applies to Northern Ireland), and reflect the increasingly conditional nature of welfare support in the UK. Many households with benefit income are affected by more than one of these changes, and people with disabilities have been identified as the group that has been most disadvantaged. The overall loss of income causes a dilemma for the governance of social housing, for example it introduces a new dimension into decisions on rent increases. Welfare restructuring is, however, only one component of a wider austerity agenda which is having an impact on social landlords. There is increasing pressure on supply, due to increasing need, along with failure in England to replace Right to Buy losses with an equivalent new property (the Right to Buy in Scotland will end in August 2016). Low paid and

insecure employment is on the rise, which may also contribute to rent arrears and which, along with more restrictive mortgage criteria, has led to declining home ownership and an increase in demand for intermediate products such as mid-market renting and shared equity. Registered Social Landlords need to consider whether to begin or expand operations in these areas; all social landlords also need to bear in mind the impact of austerity on 'housing plus' activities. Finally, reductions in public subsidy – applied in different ways across the UK – are leading to RSLs looking for new forms of private finance such as bonds, at a time when their income stream is becoming less secure. All social landlords, but particularly those dependent upon private finance, must meet the sometimes contradictory requirements of regulators, lenders, and increasingly vulnerable tenants. Although this applies across the UK, the situation appears to be most acute in England.

New threats to the social housing sector also raise questions about the scale and nature of governance. Does increased risk pose less of a threat to larger organisations, and if so is there now a renewed incentive for mergers – especially outside England, where there has been less of a trend towards this in previous years? And can tenants make a meaningful contribution to governance in the current climate? These questions were addressed in our Seminar Series Briefing 2 (Moore and McKee, 2014). In Wales and Scotland there is an increasing interest in community-led housing options, which in Scotland builds on a longer tradition. The Welsh 'community mutual' model includes tenants as majority shareholders. In Scotland, community-based housing associations are thriving as part of a wider promotion of community assets, despite cuts to new build programmes. In both jurisdictions there is an emphasis on wider regeneration activities. In England, community land trusts and self-help housing groups are growing, albeit in a social housing environment dominated by large housing associations. In Northern Ireland a restructuring of the social housing sector is under way which includes the planned dismantling of the Northern Ireland Housing Executive and its replacement with several large housing associations (Moore and McKee, 2014). This finance-driven plan is at an early stage. At the same time NI's existing housing associations are embarking on a series of mergers and other collaborative partnerships which are leading to an increase in their size. Although some associations have tenants on their Board of management, there is no plan for community-led housing bodies.

Thus there is evidence of the development of different types of community-led social landlords across the UK, most prominently in Scotland and Wales, along with the continued existence of RSLs of different sizes, even if some are unable to develop new homes at the present time. This bodes well for the sector across the UK, despite the increasing risks it faces from other directions.

Access to social housing

Unlike welfare benefits, access to social housing is a devolved function across the UK and here there are policy differences, although all within a continuum of conditionality. Policies in all jurisdictions are affected by financial cutbacks as decided by the UK Parliament and administered by the UK Treasury. Although conditionality itself is not a new element in the allocation of public goods, it is instructive to trace how the balance between rights and discretion is being reconstructed in the different jurisdictions.

In England, the Localism Act 2011 and subsequent guidance has introduced a much larger amount of local discretion to the social housing allocations process, within the framework of still prioritising 'reasonable preference' groups and meeting statutory homeless obligations. Discretion includes the option of 'flexible' tenancies (normally for a minimum of five years, but as low as two is permissible); homelessness duty to be discharged by an offer in the private rented sector without the applicant's consent; and applicants being required to live in the area for at least two years before being considered for social housing. Councils also have discretion to exclude households from the waiting list for various other reasons, such as past behaviour. These reforms have fundamentally challenged the notion of a social housing tenancy for life in England, which tenants elsewhere in the UK continue to enjoy.

Wales operates a variant of the English model but does not compel homeless applicants into the private rented sector. However, as has been observed in Scotland and to a lesser extent in Northern Ireland, once a power exists to use the private rented sector to discharge a statutory obligation, it can be used in practice even without overt coercion of the applicant. Given the different tenancy conditions that exist in the PRS, it then becomes both the cause of homelessness and a route out of it. In Northern Ireland, the allocations process is carefully controlled at regional level with a single allocation route administered by the Northern Ireland Housing Executive. The responsibility has not been delegated to local councils in the recent reform of local government, as it is still considered to be too sensitive an issue. Unlike the rest of the UK, local lettings schemes are only permitted if agreed by the Department of Social Development, and choice-based lettings are only at the pilot stage. Social housing tenancies remain permanent, with the exception of provision of an introductory tenancy. In Scotland, the Homelessness etc. (Scotland) Act 2003 widened eligibility under homelessness legislation by removing the 'priority need' category which still exists in the rest of the UK. Although local authorities can, and indeed do, discharge their statutory duties into the private rental sector. A single Scottish Secure Tenancy from 2001 and the Scottish Social Housing Charter from 2010, provide a floor of rights for social housing tenants across the sector, however, more recently there have been moves by the Scottish Government to

introduce 'introductory' tenancies for all new tenants: a measure that has come under heavy critique from a coalition of Charitable and Third Sector organisations. At the same time, legislation since 2001 has progressively restricted the Right to Buy in order to protect supply, especially in areas of high need. There is no residence restriction on joining a social housing waiting list.

Therefore a range of approaches to access social housing are evident across the UK. To this we must add that practice would vary within England, given the amount of local discretion now permitted. However, in every jurisdiction more progressive legislation can be compromised by lack of resources, and other financial pressures such as welfare restructuring. There are times when austerity may compromise local policy preferences in the devolved administrations. Despite this, access to social housing provides a good illustration of how changes can still be made under devolution, in contrast to the impact of welfare restructuring where this power has only been available in Northern Ireland.

Conclusion

Both devolution and localism are contributing to a restructuring of the UK state, albeit in an uneven manner and with distinct pockets of resistance in the devolved administrations. Overall, the trend is toward a smaller state, with service provision contracted out to the market or voluntary sector, and conditional access to services rather than a rights-based system. Civil society is becoming drawn into the provision of former 'public' services in order to fill the gap as the state retrenches, whilst the role of the market is expanding to provide services under contract and also access to loan finance for social purposes. All these factors are having an adverse impact on social housing provision.

Both devolution and localism provide opportunities for new sites of empowerment for both the local state and civil society. However, political drivers at UK level from 2010 onwards (and arguably before that) raise the question whether responsibility is being devolved without power. For example, it was clear in the 2014 referendum on Scottish independence that some political parties were actively campaigning against austerity measures and would not have chosen to implement the Coalition's welfare reforms. Equally, RSLs as civil society organisations are now facing new risk factors that were not of their making. This raises the question whether further social housing policy divergence within the UK may occur in future years, with England becoming more and more distinctive in the UK context. We suggest that the ongoing impact of constitutional change on social housing policy and practice will continue to be of the utmost importance.

If you are interested in reading further on this theme, please see presentations on the website by:

- Kim McKee, University of St Andrews (Seminars 1 and 3)
- Tony Manzi, University of Westminster (Seminar 1)
- John Flint, University of Sheffield (Seminar 2)
- Greg Lloyd, University of Ulster (Seminar 2)
- John McPeake, Northern Ireland Housing Executive (Seminar 2)
- David Robinson, Sheffield Hallam University (Seminar 2)
- Mary Taylor, Scottish Federation of Housing Associations (Seminar 2)
- Keith Edwards, CIH Wales (Seminar 3)
- Jenny Muir, Queen's University Belfast (Seminar 3)
- Keith Dryburgh, Citizen's Advice Scotland (Seminar 3)
- David Orr, National Housing Federation (Seminar 3)
- Peter Wells, Sheffield Hallam University (Seminar 3)
- Colleen Rowan, GWSF (Seminar 3)

Please also see Moore, T. and McKee, K. (2014) *Briefing 2: Localism and New Housing Futures*, St Andrews: University of St Andrews.

http://big societylocalismhousing.co.uk/wp-content/uploads/2012/08/Final_Localism-Housing-Futures-Briefing-2.pdf

Further information about the seminar series can be found at:

<http://big societylocalismhousing.co.uk/>

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