

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	PSOC
2.	Date:	8 th April 2011
3.	Title:	Localism Bill
4.	Directorate:	Chief Executive's

5. Summary

The Localism Bill was introduced in the House of Commons on 13th December 2010 and is now in the Committee Stage. The Bill is made up of:

- 207 clauses
- 24 schedules
- 8 Parts (Part 7 only relevant to London)

The Bill takes forward the Government's stated commitment to devolve power to the lowest level, enabling communities to make decisions as part of the big society. Many provisions enable this by enabling communities to challenge public service providers and for the outsourcing of public services.

6. Recommendations

That PSOC:

- a) Receives the report and comment as appropriate.**
 - b) Gives consideration to the policy implications across a range of services within the Council, and also in relation to the emerging review of Scrutiny and the Self Regulation agenda.**
 - c) Receive further reports in due course on policy developments and implementation including relevant legislation.**
-

7. Proposals and Details

The Localism Bill received its 1st reading on 13th December. It is a substantial Bill of 207 clauses and 24 Schedules. It is currently in the Committee Stage. The Bill started in the House of Commons.

This report gives an overview of the headline provisions most relevant to the Council. Some provisions relevant to Fire Authorities and London are not included. The report also includes in the “Policy and Performance Agenda Implications” section an assessment of the “community engagement” issues arising from the Council, especially where the approach taken by the Bill potentially contradicts the approach taken in Rotherham to date.

Many of the provisions provide amendments and repeals to other legislation meaning that these will need to be cross-referenced to the relevant Acts to enable a thorough assessment of the implications. This together with the diverse range of issues covered by the Bill will require further in depth analysis of the various components in further briefings as the Bill passes through parliament.

The overview of provisions is as follows:

General power of competence

The Bill provides that the Council will have the power to do anything that individuals generally may do.

The Power relates to:

- Power to do it anywhere in the United Kingdom or elsewhere;
- Power to do it for a commercial purpose or otherwise for a charge, or without charge; and
- Power to do it for, or otherwise than for, the benefit of the Council, its area or persons resident or present in its area.

Limitations to the power include anything that is or will be expressly prohibited by other statutes.

Charges will be able to be made for services provided that:

- The service is not one that a statutory provision requires the Council to provide to any person;
- The person has agreed to its being provided; and
- Where otherwise the authority does not have power to charge for providing the service.

The general power is subject to a duty to secure that, taking one financial year with another, the income from charges does not exceed the costs of provision.

Where in exercise of the general power, the Council does things for a commercial purpose; the Council must do them through a company.

The Secretary of State may by Order make provision preventing the Council from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order.

The power will extend to parish councils where a parish council is “eligible” meeting conditions prescribed by the Secretary of State by Order.

Governance

The Governance provisions are extensive. These include:

- Ceasing to operate executive arrangements or alternative arrangements; and
- Starting to operate executive arrangements or a committee system

The Secretary of State may by Order make such transitional, transitory or saving provision as the Secretary of State considers appropriate.

Schedule 2 to the Bill contains significant amendments to governance arrangements, including elected mayors and provisions for the Secretary of State to give directions to hold a referendum.

Predetermination

These provisions deal with the previous requirements for members to be required not to have pre-determined a position before a decision is made.

The proposals provide that a decision maker is not to be taken to have, or to have appeared to have predetermined an issue just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter.

Standards

The Bill contains a duty to promote and maintain high standards of conduct.

The Council may produce a Voluntary code of conduct, which must be approved by the full council and deal with any complaints regarding any breach of the code.

The Secretary of State may by Regulations make provision for or in connection with requiring the monitoring officer of a relevant authority to establish and maintain a register of interests of the members and co-opted members of the authority.

Offences under the regulations will be criminal offences that could lead to a maximum fine of level 5 and disqualification of up to five years.

Pay accountability

The Council will be required to prepare a senior pay policy statement for the financial year 2012/13 and each subsequent financial year setting out the remuneration of its chief officers. A Council's senior pay policy statement must be approved by a resolution of the full Council.

The Council will be required to have regard to any Guidance issued or approved by the Secretary of State.

Repeal of duties relating to promotion of democracy

Chapter 1 of Part 1 of the Local Democracy, Economic Development and Construction Act 2009 (duties relating to promotion of democracy) is repealed. These provisions had never commenced.

Repeal of provisions about petitions to local authorities

Chapter 2 of Part 1 of the Local Democracy, Economic Development and Construction Act 2009 (petitions to local authorities) is repealed. The provisions relating to e-petitions only came into force on 15th December 2010.

Charges for waste services

Schemes to encourage domestic waste reduction by payments and charges are repealed. These are the so called “bin taxes”

EU fines

The Bill makes provision for the recovery of EU money.

This involves “EU financial sanctions” as lump sum or penalty payments (or both) imposed after by the Court of Justice of the European Union under Article 260 of the Treaty on the Functioning of the European Union.

A Minister of the Crown may require a local or public authority to make a payment of an amount determined by the Minister in respect of any EU financial sanction imposed on the United Kingdom.

The provisions include the requirements for warning notices; and EU financial sanction notices

Non-domestic rates

The Bill makes several amendments to other legislation including:

- Ballot for imposition and certain variations of a business rate supplement making changes to the process of the ballot and information to be provided;
- Non-domestic rates: discretionary relief changes to the eligibility criteria for relief subject to having regard to any relevant guidance;
- Small business relief addressing maximum rateable value of hereditaments and other related matters; and
- Cancellation of liability to backdated non-domestic rates providing that the Secretary of State may by regulations provide that, in a prescribed case, the chargeable amount for a hereditament in England for a chargeable day is zero.

Local referendums

A Council will be required to hold a referendum in accordance with duty set out in the Bill, subject to certain conditions. The conditions cover:

- That the Council receives a petition for a referendum that complies with “the required percentage” being 5%; or
- One or more members of the authority makes a request;

The Council would be able to provide a facility for making petitions under this section in electronic form to the authority.

The Council may determine that it is appropriate to hold a local referendum; or decline on grounds of:

- The Council thinks that action taken to promote or oppose the referendum question is likely to lead to contravention of an enactment or a rule of law;
- The Council thinks that the matter to which the referendum question relates is not a local matter;
- That the referendum question relates to a matter specified by order by the Secretary of State; or
- The Council thinks the petition or request is vexatious or abusive.

If the determination is that it is appropriate to hold the referendum, the Council will be required to make arrangements for the referendum to take place.

It will be for the Council to decide the question to be asked in the local referendum and date for holding the referendum.

If the question to be asked in the referendum relates to a matter over which a partner authority has an influence, the Council would be required to inform the partner authority of the matters listed in subsection

The persons entitled to vote in a local referendum held by a principal local authority are those who, on the day of the referendum:

- Would be entitled to vote as electors at an election for members for an electoral area which is situated in the area in which the referendum is to be held (“the referendum area”); and
- Are registered in the register of local government electors at an address within the referendum area.

The Secretary of State may by regulations make provision as to the conduct of local referendums.

As soon as is reasonably practicable after the result is known, the Council would be required to consider what steps (if any) the authority proposes to take to give effect to the result, and if the Council decided to take no steps to give effect to the result, it must publish that decision in such manner as it thinks appropriate together with the reasons for that decision.

The Secretary of State may by regulations make provision about the holding of polls or referendums by parish councils.

Council tax

The Bill makes provisions for the calculation of a level of Council Tax increase by the Secretary of State, where if the Council wished to increase Council Tax by more than this amount, a referendum would have to be held to approve the proposed increase or default to the level indicated in the Secretary of State's calculation.

The Bill also makes provisions for major precepting authorities.

Community right to challenge

The Council would be required to consider an expression of interest in providing or assisting in providing a relevant service on behalf of the authority functions, other than a service of a kind specified in regulations made by the Secretary of State.

An expression of interest could be submitted by:

- A voluntary or community body;
- A body of persons or a trust which is established for charitable purposes only;
- A parish council;
- Two or more employees of the Council; or
- Such other person or body as may be specified by the Secretary of State by Regulations.

Whilst an expression of interest may be submitted at any time, the Council would be able to specify periods during which expressions of interest, or expressions of interest in respect of a particular relevant service, may be submitted to the Council.

If the Council accepted the expression of interest it must then carry out a procurement exercise relating to the provision on behalf of the authority of the relevant service to which the expression of interest relates.

The Council would be required in considering an expression of interest, to consider whether acceptance of the expression of interest would promote or improve the social, economic or environmental well-being of the authority's area.

Assets of community value

The Council will be required to maintain a list of land in its area that is land of community value.

Where land is included in the Council's list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry

For the purposes of the Bill, whether or not a building or other land is land of community value is to be determined in accordance with Regulations made by the appropriate authority.

Regulations under subsection may, in particular:

- Provide that a building or other land is land of community value, or that a building or other land is not land of community value, if the building or other

land is specified in the regulations or is of a description specified in the regulations;

- Provide that a building or other land in a the Council's area is land of community value, or that a building or other land in a local authority's area is not land of community value, if the Council or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations;
- Make provision as to matters that are, or as to matters that are not, to be taken into account by the Council or other person when deciding whether land is of community value.

In relation to any land, those matters include;

- The owner of any estate or interest in any of the land or in other land;
- Any occupier of any of the land or of other land;
- The nature of any estate or interest in any of the land or in other land;
- Any use to which any of the land or other land has been, is being or could be put;
- Statutory provisions, or things done under statutory provisions.

Land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value in response to a community nomination, or where permitted by Regulations made by the appropriate authority.

The owner of land included in the Council's list of assets of community value will be able to ask the Council to review the authority's decision to include the land in the list.

An owner of land included in the Council's list of assets of community value will not be able to enter into a disposal of the land unless each of conditions are met:

- That the owner has notified the local authority in writing of the owner's wish to enter into a relevant disposal of the land;
- That the interim moratorium period has ended without the local authority or the owner having received during that period, from any community interest group, a written request for the group to be treated as a potential bidder in relation to the land;
- That the full moratorium period has ended; and
- That the protected period has not ended.

Plans and strategies

There are extensive proposed changes to planning. These are best summarised as follows:

The requirement for Regional Strategies is repealed and all Regional Strategies will be revoked.

Proposals for local plans include changing role of the Planning Inspectorate to assessing local plans at a public examination. However, the Council will only be able

to adopt plans judged as satisfying requirements by the inspector. The monitoring of plans is also included.

Community infrastructure levy

The provisions for Community Infrastructure Levy (CIL) are amended to include:

- A charging authority must use appropriate available evidence to inform the charging authority's preparation of a charging schedule;
- Arrangements for examination of a charging schedule; and
- CIL Regulations may require that CIL received in respect of development of land in an area is to be passed by the charging authority that charged the CIL to a person other than that authority.

CIL Regulations would provide for, in relation to CIL passed to a person in discharge of a duty make provision about the use of and accounting for the CIL.

Neighbourhood planning

Any qualifying body will be entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development order.

A "qualifying body" means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development order to act in relation to a neighbourhood area as a result of section

The Secretary of State may with the consent of the Treasury make regulations providing for the imposition of charges for the purpose of meeting expenses incurred (or expected to be incurred) by local planning authorities in, or in connection with, the exercise of their neighbourhood planning functions.

The Secretary of State will also have the ability to provide financial assistance, or make arrangements for the provision of financial assistance, to any body or other person for:

- The purpose of publicising or promoting the making of neighbourhood development orders or neighbourhood development plans and the benefits expected to arise from their making, or
- The purpose of assisting anyone to make proposals for such orders or plans or to do anything else for the purposes of, or in connection with, such proposal or such orders or plans.

Consultation

There is to be a requirement to carry out pre-application consultation where a person proposes to make an application for planning permission for the development of any land in England, and the proposed development is of a description specified in a development order.

The applicant will be required to publicise the proposed application in such manner as the person reasonably considers is likely to bring the proposed application to the

attention of a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land.

Retrospective planning permission

A Council will be able to decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which an enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.”

Provisions also include:

- Time limits for enforcing concealed breaches of planning control and enforcement procedures; and
- Remedying persistent problems with unauthorised advertisements

Nationally significant infrastructure projects

The Infrastructure Planning Commission is to be abolished and the property, rights and liabilities will vest in the Secretary of State.

Allocation and homelessness

The Council shall not be able to allocate housing accommodation to:

- Anyone from abroad who is ineligible for an allocation of housing accommodation by virtue of the provisions of the Bill, or
- Two or more persons jointly if any of them is a person mentioned above; or
- Anyone subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is ineligible for an allocation of housing accommodation by a local housing authority in England unless he is of a class prescribed by regulations made by the Secretary of State.

The Council will be required to have an “allocation scheme” for determining priorities, and as to the procedure to be followed, in allocating housing accommodation. This is to include all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are taken.

The scheme will be required to include a statement of the authority’s policy on offering people who are to be allocated housing accommodation:

- A choice of housing accommodation; or
- The opportunity to express preferences about the housing accommodation to be allocated to them.

Social housing: tenure reform

A Council will be required to prepare and publish a “tenancy strategy” setting out the matters to which the registered providers of social housing in its district are to have regard in formulating policies relating to:

- The kinds of tenancies they grant;
- The circumstances in which they will grant a tenancy of a particular kind,

- Where they grant tenancies for a term certain, the lengths of the terms; and
- The circumstances in which they will grant a further tenancy on the coming to an end of an existing tenancy.

There are also provisions in relation to flexible tenancies, tenancy transfers and succession to secure tenancies.

Housing finance

Proposed reforms to Housing finance include the establishment of local Housing Revenue Accounts and the abolition of the Housing Subsidy system. There is proposed to be a one off settlement to deal with capital debt. The Council would, in future then fund its own HRA and associated investments through income derived from rents.

Housing mobility

The Bill provides for the Secretary of State to make arrangements for a national tenant exchange scheme.

The Bill also provides for a type of mutual exchange where the landlords are different providers.

Regulation of social housing

Transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency.

Commencement

Most provisions are to come into force on a date to be determined by the Secretary of State, with some provisions intended to commence two months after the passing of the Act. The Act is expected to receive Royal Assent around December 2011. Many provisions would in effect commence from April / May 2012.

8. Finance

There will be financial implications arising from the proposals in the Bill. The most critical is likely to be the proposed arrangements for any increase in Council Tax. In effect, it will be the Secretary of State that determines what the maximum increase will be, unless the Council were prepared to hold a referendum on an alternative amount.

There could also be considerable costs if the Council were required to undertake several procurement exercises in accordance with the provisions under "Community right to challenge".

9. Risks and Uncertainties

Whilst the Bill sets out detail in respect of many of the provisions, it also contains 142 so called “Henry VIII” powers, where the legislation gives the Secretary of State new powers to determine the detail, and to make changes to the detail. This creates an uncertain environment for commencement of the provisions and future implementation.

10. Policy and Performance Agenda Implications

The Government’s policy direction is driven by its statements about the “Big Society”, pushing powers to communities and doing away with big government. This is reinforced by the Government’s statement on public service reform, setting out the objective for non-public providers to run schools, hospitals and council services such as maintaining parks, adult care, special schools and roads maintenance.

There are many policy implications arising for the Council. In relation to community engagement, Part 4 “Community Empowerment” and Part 5 “Planning” are most relevant. There are also housing implications, the detail of which will be set out in draft Directions to be published for consultation later in the year.

The most significant policy shift is a move away from a co-operative approach of partnership working, to an adversarial one of challenge. In fact the word “partnerships” only appears once in the Bill, and that’s in relation to levying land development charges.

Whilst the Bill will not directly prevent the nature of partnership working taken forward by the Council over many years, it could create a dilemma where organisations that the Council is seeking to have a co-operative relationship with choose to take the approach of challenge. Members will need to consider a policy response to this. These provisions in the Bill will create the same issues for the relationship with any community forums and neighbourhood working and in relation to parish councils.

There is the possibility that the “Community right to challenge” will come to nothing in practice, or certainly as it relates to community organisations bidding for services. In practice, should a challenge be received, it will be difficult for most community organisation to participate in the legalities of the procurement process, probably leading to a private sector body winning the contract.

The approach to “Assets of community value”, as set out in the Bill assumes that community groups will have access to the finances to buy any of the listed assets (assuming that the owner is selling as well), and the finances to operate the facility, as it is assumed that this is about moving away from public subsidy. However, members will need to consider how these provisions in the Bill sit alongside the Council’s approach to community control and ownership of assets and associated service provision.

The provision about referendums sets out thresholds for the calling of a referendum and the procedures to be followed. These, with the exception of a referendum on a

Council Tax increase, will be triggered by a petition containing the requisite number of signatures. In contrast to this, the requirement for the Council to handle petitions, introduced by the Local Democracy, Economic Development and Construction Act 2009 (c. 20) will be repealed by the Bill, along with the “duty to promote democracy” albeit that the later has never been brought into effect. The Council has fully implemented the petitions provision, including amendments to the Council’s constitution. In light of this, members will need to consider how the changes included in the Bill should impact on how the Council handles petitions.

The community engagement policy implications arising from the planning provisions could be considerable. At this stage EDS identify the following:

- A new relationship between the Council and the community for the purposes of both Planning Policy and Development Management, ie at what level are decisions made on planning applications;
- An extra role for the Council in supporting neighbourhood planning including implications of this and what resources may be required;
- Progressing the LDF Core Strategy to adoption in order to provide a strategic framework for the distribution of new development in the long term;
- The Community Right to Build will give local communities the power to take forward development in their area without the need to apply for planning permission; and
- Changes to the Community Infrastructure Levy: regulations will require some of these funds to be passed to neighbourhoods where the development has taken place.

Much of the detail around these issues will be set out in Regulations and there remains a significant degree of uncertainty. Notwithstanding this members will need to give consideration to the Council’s policy direction, especially around neighbourhood planning, the role of community forums; area assemblies; and parish councils.

Given the wide range of policy implications arising from the Bill, a series of action have been put in place to ensure a “one council” approach. These include:

- Set up a project steering group made up of officers from Policy, Community Engagement, Planning, Housing, Procurement and Neighbourhoods;
- Running members seminars to raise awareness of Bill and what it means for them through Members Development Programme;
- Currently establishing where we are at against the requirements of the Bill and any gaps;
- Intention to bring a report/action plan to SLT and Cabinet in May/June; and
- Will be running workshops for the Parish Council Network and the VCS in future, so you all know what impact it will have on you and your organisations

11. Background Papers and Consultation

Localism Bill as introduced in the House of Commons on 13th December 2010.

Contact Name:

Steve Eling, Policy Officer, extension 54419, steve.eling@rotherham.gov.uk