

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	<b>Meeting:</b>	Cabinet Member for Community Development, Equality and Young People's Issues
2.	<b>Date:</b>	16 <sup>th</sup> January 2012
3.	<b>Title:</b>	Localism Act 2011 – Update on Communities and Parish and Town Councils
4.	<b>Directorate:</b>	Resources & Neighbourhoods and Adult Services

### 5. Summary

The Localism Act 2011 (c. 20) received Royal Assent on 15<sup>th</sup> November 2011. This report gives an overview of the 'community empowerment' provision of the Act together with an initial assessment of issues for consideration by the Council, and policy areas that the Council will either need to, or may wish to review as a result.

The report also sets out the proposed courses of action for the Council in moving forward towards commencement of the provisions of the Act and implementation in Rotherham.

### 6. Recommendations

**That Members:**

- a) **Receive the update on the Act and give consideration the issues identified;**
  - b) **Note the proposed course of action towards implementation including further reports and members' seminars; and**
  - c) **Consider how they would wish to be involved in the process towards implementation and identify any specific areas for consideration in further reports.**
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## **7. Proposals and Details**

The Localism Act 2011 (c. 20) received Royal Assent on 15<sup>th</sup> November, the Bill having started in the Commons on 13<sup>th</sup> December 2010. Details of the original Bill proposals have been set out in previous reports and briefings, however, a number of amendments have been made during the passage through Parliament. The main amendments include the following:

- Extension of the general power of competence to Integrated Transport Authorities; Passenger Transport Executives; Economic Prosperity Boards; and Combined Authorities;
- Inclusion of provisions for the transfer of functions from other public bodies to local authorities. This follows the Government statements about transferring functions to elected mayors, but as drafted would include all local authorities;
- Changes to existing provisions for changing local authority election arrangements;
- Changes to the Bill's original proposals to now require every local authority, including parish councils to adopt a code of conduct, and to have arrangements for enforcing the code. There are also enhanced provisions for declaring interests;
- Changes to provisions for pay policy statements including the lowest paid employees;
- Expansion of the provisions relating to imposing EU sanctions. These amendments put on the face of the Act many provisions that the Government had intended to set out in Regulations;
- The provisions for petitions for the calling of local referendums have been withdrawn;
- More details included on processes for the Community Right to Challenge and Assets of Community Value;
- Further details on arrangements for and use of Community Infrastructure Levy;
- Various amendments to development control provisions including devolved decisions and enforcement;
- Several technical amendments relating to housing tenancies including amendments to other Acts of Parliament.

### **7.1 Localism Act 2011 Overview**

The Localism Act is an extensive Act running to 483 pages of 241 Sections in 10 Parts and 25 Schedules. There are provisions that apply to London and Wales only that are not covered in this report. The overview focuses only on the provisions of the Act that are relevant to Rotherham.

Most provisions of the Act will come into force on a date to be decided by the Secretary of State. It is expected that the Act will be fully in force in April 2012.

Many detailed provisions will be set out in Orders and Regulations that have not yet been published; however, these will be within the powers provided by the Act.

## 7.2 Local Government

The Standards Board for England is abolished along with the model code of conduct and requirements for Standards Committees. Every authority will be under a duty to promote and maintain high standards of conduct. There will be a requirement for each authority to adopt a code of conduct and for arrangements to be in place to consider complaints and recommend actions. The arrangements will have to include the views of an independent person. Parish councils will be able to adopt the code of the district council. Every Monitoring Officer will be required to maintain a register of interests. In district councils, this will include registers for parish councils. There are various provisions for declaration including on taking up office and in relation to specific decisions. Breaches will be able to lead to criminal conviction and disqualification.

***The provisions to abolish the Standards Board for England and related actions came into force on the day of the Act. Any outstanding investigations will be returned to be dealt with locally. Discussions are already underway with parish councils on how the new standards requirement may work locally. The Council will need to decide its code of conduct and standards arrangements.***

## 7.3 Community Empowerment

### Local referendums abandoned

The clauses that created a general power for the electorate and local communities to trigger a local referendum were withdrawn as the Bill reached its final stages in the Lords. In separate provisions the Act introduces referendums on council tax, right-to-build and neighbourhood planning. The Act also repeals the duty to promote democracy.

### Council tax referendums

The Act provides that each year, as part of announcing the local government provisional finance settlement the Government will set out principles and calculations that will determine an amount of Council Tax to be raised by each authority, above which the increase will be regarded to be “excessive”. The Government will be able to apply different principles to different classes of authority. Where an authority proposes to adopt a budget that would require an “excessive” increase in Council Tax, that increase would require approval in a referendum. Where an “excessive” increase is proposed by a “major precepting authority (County; Fire; Police etc); or a local precepting authority (parish council) it would be for the Council as the billing authority to make arrangements for the referendum. In all cases, a reserve budget meeting the Government’s principles and calculations would need to be in place to be implemented should a referendum reject an “excessive” increase in Council Tax. Regulations will make provisions about the holding of referendums.

***The provisions for Council Tax are clearly designed to enable the Government to limit authorities’ ability to raise revenue. The provisions on the face of the Act are supplemented by several provisions for Orders, Regulations and Directions. These provisions came into force on 3<sup>rd</sup> December***

***It is not yet known what the Government will see as an acceptable Council Tax increase in each year, but the issue for all local authorities will be to consider if the public would be likely to vote for what will be legally described as an “excessive” increase in a referendum, should the Government’s effective “cap” be insufficient. The further prospect for the Council would be arranging referendums for major or local precepting authorities. In theory, there could need to be four referendums on the same day in parts of Rotherham if there were “excessive” increases proposed by:***

- ***The Borough Council;***
- ***Fire and Rescue;***
- ***Police; and***
- ***Parish.***

***It is likely that local authorities will avoid referendums, meaning that the Government will effectively set a “cap” but will be able to say that the decision was local. There will be a need to view the provisions for Council Tax alongside other proposed changes to local government finance. These are expected to be set out in a Local Government Finance Bill in the near future.***

***It is worth noting that the government are not exercising their powers to set a precept increase referendum trigger for parish councils (local precepting bodies) for 2012/13. They have, however, indicated that they may use the power in future years.***

#### **7.4 Community Right to Challenge**

The Act provides that the Council will have to consider challenges from charities; community and voluntary organisations; any two members of staff; parish councils; and anyone else permitted through Regulations by the Government, to take over the delivery of services provided by the council.

On receipt of an application, the council will consider whether to accept or reject the proposal (with possible modifications). An application may only be rejected on specified grounds. In reaching a decision, it will be necessary to consider the social, economic or environmental implications of the proposal. In the case of acceptance, the council will carry out a normal procurement exercise for the service - on a scale proportionate to the value and nature of the service - again taking account of its social, economic or environmental potential.

Councils will be responsible for setting the timetable, taking account of budgetary and decision-making requirements, though the factors to be considered will be covered in guidance. It will be a requirement to publish details of the local framework, and of certain stages in the process of an application.

Much of the detail of how the right to challenge will work in practice will be set out in regulations and guidance. The government estimates that this power should come into effect in October 2012. No date has yet been given for publication of regulations and guidance. A decision is pending on which if any services may be exempted from the scheme.

***The Council will need to consider the implications arising from these provisions as part of the strategic approach to commissioning.***

***It is not known what level of interest will be generated by these new provisions, however, there have been some national charities that have welcomed the changes and would appear to be ready to bid. The provisions clearly link to the Government's aspirations set out in the Open Public Services White Paper, published in the summer, which would divest the public sector of virtually all direct service provision.***

***There could be a detrimental impact for local voluntary organisations with a risk of them being squeezed out in the required procurement processes. There is also a risk of "stalking horses" being used to meet the criteria for challenge to get the procurement process started, only to be followed through by a national body or private company. Some detail in relation to these provisions will be set out in Regulations. These will include criteria that the Council will have to use in considering a challenge; and that the Government will be able to extend the categories of organisations that can put in a challenge.***

## **7.5 Assets of Community Value**

There will be a requirement for the Council to maintain and publish a list of "assets of community value". Regulations will set out what qualifies or otherwise for inclusion in the list. Parish councils and community and voluntary organisations with a local connection will be able to nominate land and buildings to be included in the list. Regulations will establish the definition of "local connection". Owners will be able to appeal against inclusion in the list. Assets will be included on the list for five years and may be removed after that.

Where land nominated crosses local authority boundaries, there will be a requirement for those authorities to co-operate.

A second list will be required to include land which was nominated, but failed to meet the criteria to be included on the list of "assets of community value".

Where an owner of an asset included on the list intends to dispose of the asset, they will be required to notify the authority. Whilst there are exceptions, a six week moratorium will apply to most proposed disposals pending a proposal to purchase by a "community interest group". The moratorium may be extended to six months at the request of the "community interest group". What constitutes a "community interest group" is to be set out in Regulations. Regulations will also make provision for the payment of compensation under the Act including calculating how much and who will be required to pay.

The Government has taken powers in the Act to provide advice and assistance, including financial, to organisations taking forward the right to challenge and taking over assets.

***To what extent this enables community organisations to protect community facilities; pubs and post offices remains to be seen, however, it could prove to be a bureaucratic burden for the Council. The issue of paying compensation could prove to be a risk if the Regulations provide that it is the local authority that pays.***

## **7.6 Neighbourhood Development Orders**

A key component of the Planning changes in the Act relate to neighbourhood planning including “Neighbourhood Development Orders”. These will provide that such Orders may be developed by parish councils, or where there is no parish council, a “Neighbourhood Forum”. A “Neighbourhood Forum will need to open for membership to residents, business owners and elected members for that neighbourhood and will need a minimum of 21 members.

“Neighbourhood Development Orders” will be able to provide certain types of planning consent. Additionally, “Neighbourhood Development Orders” qualify as “Community Right to Build Orders” where they are proposed by a community organisation that is incorporated for the purpose and where at least half of its members live in the neighbourhood. The provisions for “Community Right to Build Orders” apply the same to parished and non-parished areas.

“Neighbourhood Development Orders” will have to go through the process of inspection and adoption including approval by referendum. The local Planning Authority will be able to charge the parish council or community forum or organisation for costs. Regulations will make provision for levying charges and the Government will be able to make grants to meet these costs.

***Neighbourhood Planning is one of the Government’s key policy objective’s delivered by the Act. It is seen as streamlining planning, replacing targets for housing and alike with locally driven motivation for new house building aligned to the new homes bonus and other developments. However, the Government have already had to respond to allegations that their proposals will bring about development of “green belt” land. In practice, “Neighbourhood Development Orders” that involve controversial plans for new development, including housing, are not likely to be less controversial just because they are promoted by a parish council or community organisation.***

***It may be that some proposals for neighbourhood planning come forward, however, notwithstanding the localism claim of the provisions of the Act, any parish council or community organisation will have to manage their way through a mass of Government Regulation and bureaucracy to get their “Neighbourhood Development Order” approved. They will also have to meet the costs, and there can be no certainty that any Government grant would meet the full costs.***

## **7.7 Addressing the Act in Rotherham**

Given the cross-cutting nature of this legislation, the Council has taken a co-ordinated approach to assessing the issues arising whilst the Bill was passing

through parliament. This has involved a series of reports and members seminars to highlight the provisions and enable early discussions, including with parish councils and the voluntary & community sector.

There will continue to be a whole Council approach now that the Act has been passed, facilitating detailed reports and briefings to be made in the New Year in a co-ordinated way. Within a timetable of measures these will include:

- Detailed reports to Cabinet Members on the issues arising within their portfolio;
- Reports to Standards Committee;
- Reports to Cabinet as required;
- Reports to Scrutiny as required;
- A further programme of members' seminars, this time each one focussing on part of the Act; and
- Information sessions for managers.

The timing of some reports will be dependant on the publications of further details in Orders; Regulations; and Guidance.

## **8. Finance**

There will be financial implications arising from the proposals in the Act. The most critical is likely to be the arrangements for any increase in Council Tax. The provisions for Council Tax have commenced from 3<sup>rd</sup> December but it is not yet clear when they will fully take effect. However, transition provisions are being made for the financial year beginning on 1st April 2012.

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". There will also be costs associated with maintaining of a list of "assets of community value" and associated functions. The Government has given a commitment to comply with the "new burdens principle" whereby they will fund additional costs arising from any new requirements placed on local authorities. There has not yet been any indication that additional money is likely to be received by the Council to fund additional costs arising from the Act.

## **9. Risks and Uncertainties**

Whilst the Act sets out detail in respect of many of the provisions, and there is certainly far more detail than was set out in the original Bill, there are still a significant number provisions for the Secretary of State to determine the detail, and to make changes to the detail, by Orders and Regulations. This provides a degree of uncertainty until such Orders and Regulations are published.

The programme of reporting will mitigate any risks arising from the uncertainties by ensuring that fully detailed reports are made in a timely manner, providing for informed decisions in good time.

## **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 policies on public service reform, The Open Public Services White Paper, 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. The Government also clearly believes that local communities will drive the planning process, bringing forward proposals to shape their neighbourhoods; including the building of new houses, tempted by the receipt of "New Homes Bonus".

The provisions of the Act do not directly impact on the objectives of the Council's Corporate Plan. There are some policy and strategy requirements, especially in relation to Planning and Housing. The Council may also wish to review policies around community engagement; partnership working; and commissioning in light of the provisions of the Act. There will also need to be amendments to the Council's constitution.

## **11. Background Papers and Consultation**

Localism Act 2011 (c. 20)

The Localism Act 2011 (Commencement No. 1 and Transitional Provisions) Order 2011 (S.I. 2011 2896 (C. 103))

LGiU Essential Policy Briefing Localism Act: Community Rights

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