

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Cabinet
2.	Date:	8th February, 2012
3.	Title:	Localism Act 2011
4.	Directorate:	Resources

5. Summary

The Localism Act 2011 (c. 20) received Royal Assent on 15th November 2011. This report gives an overview of the final provisions 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. Detailed reports for Cabinet Members will be prepared in the relevant Directorates to take forward implementation of the Act.

The Overview & Scrutiny Management Board received the report at its meeting on 16th December and resolved that in addition to reports to Cabinet Members, that this report should be presented to Cabinet at the next available meeting.

6. Recommendations

That Cabinet:-

- a) **Receives the overview of the Act and gives consideration to the issues identified; and welcomes the ongoing work of the Overview & Scrutiny Management Board in assessing and making recommendations on this legislation;**
- b) **Encourages members to participate in the seminars detailed in the “addressing the Act in Rotherham” section of the report, recognising the important role of members as leaders in the community, taking forward a proactive drive to the change agenda for the benefit of Rotherham;**
- c) **Note the proposed course of action towards implementation including specific detailed reports to Cabinet Members together with work with parish councils and the voluntary & community sector.**

7. Proposals and Details

The Localism Act 2011 (c. 20) received Royal Assent on 15th November, the Bill having started in the Commons on 13th December 2010. Details of the original Bill proposals have been set out in previous reports and briefings, however, a number have 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.

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 most provisions of the Act will be in force by June 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. The overview covers where detail will be set out in this way.

Part 1: Local Government

The power of well-being is replaced by a “general power of competence”, described as being able to do anything that an individual can do. The requirements of use of the power of well-being in relation to the Community Strategy are removed as is the requirement to adopt a Community Strategy.

There are however, limits to the use of the power arising from other legislation, and the Government can also prescribe other limits. Any use of the power for commercial trading will have to be undertaken through a company. The Government will be able to set out limits by Order.

The power also applies to “eligible” Parish councils. The Government will determine what qualifies as “eligible” in an Order. There are similar powers for Fire and Rescue Authorities; Integrated Transport Authorities; Passenger Transport Executives; Combines Authorities; and Economic Prosperity Boards.

In practice there is probably little impact for Rotherham imposed by the changes, however, the Council may wish to explore any new opportunities arising. It may be that Fire & Rescue and Integrated Transport Authorities will wish to explore the new powers provided to them.

There is provision for the transfer of public functions of other public bodies to local authorities. There will be a process for local authorities to propose transfers and for the Government to delegate functions with conditions. There is a condition that the transfer of any function is likely to promote economic development or wealth creation or increase local accountability. Any transfers and conditions would be set out in an Order and would not include any power to make Regulations.

This provision follows Government statements about providing additional powers and functions to elected mayors. Whilst the Act provides that any Council can propose transfers, the Government will set out detail in Regulations what will be considered in any proposal. It may be that the Regulations will provide that transfers would be to councils with elected mayors. The provision to make Orders came into effect on 3rd December.

The Act repeals the current arrangements for governance of local authorities as set out in the Local Government Act 2000, and inserts a new Part into that Act. Most of the provisions in the new Part are similar to the current arrangements. The main changes are:-

- Councils will be able to return to the committee system. Under these arrangements, the Government will be able to set limits on what can be delegated to committees. Councils that return to the committee system will have to establish an Overview & Scrutiny Committee to deal with those as issues that are prescribed as scrutiny functions;

- Scrutiny provisions remain largely the same with extended provision in relation to flood risk management;
- In the Leader & Cabinet model, the prescription of the Leader's term of office is removed, but the Government can prescribe this in Regulations;
- The Government will be able to prescribe a governance model different to the Mayor & Cabinet; Leader and Cabinet; or committee system set out in the Act. Local authorities will be able to propose alternative forms of governance for consideration by the Government;
- Whilst local authorities will be able to implement changes in their form of governance, the Government will have the power to order the holding of a referendum in areas of all councils; certain classes of council; or a particular council on a change in their governance arrangements, including the type of governance arrangement to be the subject of the referendum. There is specific provision for the holding of a referendum for an Elected Mayor. Regulations will make provisions about the holding of referendums; and
- The governance arrangements will be required to be set out in a constitution that includes the authorities' standing orders; code of conduct; and anything else that the Government may prescribe.

There is no requirement for the Council to review its current governance arrangements; however, Regulations may result in some minor changes. Whilst the Government have already announced that they will require the holding of referendums for elected mayors in some areas, it is not known to what extent they will use the broader powers to provide for referendums contained in the Act. The new provisions inserted into the Local Government Act 2000 came into effect on 3rd December.

Restrictions on timetables for moving to whole council elections are removed. The only restriction remaining is that in two-tier areas, a district election cannot be held at the same time as the county election.

Unless the Council wished to move to whole Council elections, these provisions of the Act will have no effect in Rotherham.

The issue of "predetermination" is addressed to provide that because a member has spoken about or campaigned on an issues before being involved in a decision on that issue, that that member is not considered to have had a "closed mind" when being involved in taking the decision.

Whilst this change in legislation is supposed to free up members to be able to campaign on issues and represent their constituents on issues affecting there area, it still requires that the member has a "open mind" at the decision making meeting. How this works in practice remains to be seen.

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.

Every authority will be required to adopt a Pay Policy Statement. This will be required to set out the authority's policies on the remuneration of its chief officers, the remuneration of its lowest paid employees and the relationship between the remuneration of its chief officers and the remuneration of its employees who are not chief officers.

This provision in the Act follows Government statements about what have been described as excessive pay for local government officers. The requirement is that the first statement is approved by the full Council before the 31st March 2012, and then annually before the 31st March. In preparing the statement, the Council will be required to have regard to Government Guidance. This provision in the Act is likely to attract criticism of pay levels, which the Council will need to be prepared for.

Some provisions of previous legislation are repealed. These are the duty to promote democracy (never brought into force); requirements for handling petitions; and charge-and-reward waste reduction schemes.

The Council adopted and implemented a petitions scheme in accordance with legislative requirement. The Council could continue with, amend, or withdraw the current arrangements.

Part 2: EU Financial Sanctions

The Act gives discretionary power to the Government to require a public authority to pay all, or part, of a financial sanction imposed on the UK by the Court of Justice of the European Union. The Act sets out the requirement for the Government to issue a policy statement covering the operation of this Part of the Act and sets out processes and procedures. Part 3 of the Act covers EU Sanctions in relation to Wales.

The U.K. is at risk of E.U. sanctions for failing to achieve targets set out in Directives. Some of the targets have to be met by actions through local government. Currently, the Government have no means of passing on sanctions. Clearly, this provision is about securing payment from local authorities, however, it is not known what level of risk this poses to the Council.

Part 4: Non- Domestic Rates

This Part covers ballots for imposition and certain variations of a business rate supplements; discretionary relief; small business relief; and cancelling of liability to backdated non-domestic rates.

The provisions in relation to business rates implement some Government commitments that are not identified in the current circumstances to have implications for the Council's priorities. Provisions for discretionary relief came into force on 3rd December.

Part 5: Community Empowerment

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 3rd 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.

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. Challenges will be permissible at any time unless that council has set out a timetable for commissioning of the service subject to challenge. In each case, the council will have to consider the challenge and either accept or reject the challenge. Regulations will set out grounds for consideration. Should the challenge be accepted, a procurement process will have to be undertaken in accordance with procurement rules. The Act sets out maximum times for consideration of challenges and undertaking procurement.

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.

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.

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.

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.

Part 6: Planning

Regional Strategies are abolished with immediate effect. Local authorities with responsibility to adopt development plans will be under a duty to co-operate in developing their respective plans, which are to deliver “sustainable development”. There are also changes to the inspection process as part of adopting development plans. There will also be a duty to publish implementation of local development schemes and local development policies.

These changes enhance the importance of the Council's Local Development Framework, which is expected to be adopted in the near future. The LDF will provide the local policy framework within which other key planning changes will have to relate to.

The Act amends current provision for “Community Infrastructure Levy”. It provides for changes in the use of evidence in compiling the charging schedule and extends the permitted uses of levy receipts. Regulations will aim to ensure that the imposition of a levy charge in an area will not make the development of the area economically unviable.

Community Infrastructure Levy will be heavily prescribed by Regulations. Details of the Regulations will be needed to assess the implications.

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.

The Act makes new provision about consultation on proposed developments. In particular prospective developers will be required to undertake public consultation prior to submitting a planning application.

The Act provides new powers in relation to planning enforcement including retrospective applications; unauthorised advertisements & defacement of premises; time limits; and penalties. The Act also provides that when deciding a planning application, “local finance considerations” will be able to be taken account of. It will be for the authority to determine what weight to give to each material consideration.

These should be welcome changes. Some details are still to be set out in Regulations.

The Act abolishes the “Infrastructure Planning Commission” and transfers powers directly to the Secretary of State in relation to national planning policy and nationally significant projects. There will be some implications for consultation with local authorities arising from these changes.

Part 7: Housing

The provisions of this Part of the Act apply to “Housing Authorities”. They will have differing impacts depending on if they are a direct supplier of social housing,

including through arms length management, and operating a Housing Revenue Account, or not.

The Act provides that authorities will be able to discharge their Homelessness Duty by providing accommodation in the private sector with a minimum 12 month tenancy without requiring the applicant's agreement. The Act requires that a "Housing Authority" must adopt a "Tenancy Strategy" setting out the matters to which all registered providers of social housing in the area should have regard in framing their own tenancy policies. It also requires that when formulating its homelessness strategy, it must have regard to its current allocations scheme and "Tenancy Strategy".

The Council will need to make changes to its current policies to provide that persons no longer deemed eligible can no longer be allocated social housing. Additionally, the Council will need to develop and adopt a Tenancy Strategy in accordance with the provisions of the Act. In both cases, Regulations may prescribe certain conditions to be complied.

The Act also provides that "Flexible Tenancies" can be introduced; and for standards facilitating exchange of tenancies to be set out by the Housing Regulator.

The provision for Flexible Tenancies is a power that the Council will need consider implementing. This provision is not compulsory. It will be for the Housing Regulator to set out the arrangements for exchanges, details of which are awaited.

In regulating social housing, the Act abolishes the "Office for Tenants and Social Landlords", transferring functions to the "Homes and Communities Agency". In addition, complaints by local authority tenants will be considered by the "Independent Housing Ombudsman" alongside complaints by tenants of private providers of social housing, instead of the Local Government Ombudsman.

For authorities operating a "Housing Revenue Account", the Act provides that each area will have its own self financed ring fenced account. This will involve transferring housing debt held at a national level to local authorities. A formula will be used to determine the allocation of the debt, which will take account of the ability of the local rent income to service debt. Local authorities will finance future capital investment through receipts and borrowing, however, the Government will place a cap on the amount of debt permissible in each "Housing Revenue Account". A portion of receipts, currently 75%, from "Right to Buy" sales will still have to be paid to the Government.

The Government is currently consulting on the final settlement figures for Housing Revenue Accounts.

Part 8: London

Not included in this overview.

Part 9: Compensation for Compulsory Acquisition

This Part makes amendment to legislation in relation to the status of planning permission when making Compulsory Purchase Orders.

Part 10: General

This part makes provisions in relation to tax and the coming into force of provisions of the Act.

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;
- Information sessions for managers; and
- A further programme of members' seminars, this time each one focussing on part of the Act.

The programme of members' seminars will be particularly important for members to be able to assess the implications and opportunities presented by the Act and identify options for actions and developments in Rotherham. The first seminars will be held in March covering governance and housing.

The governance seminar will enable members to explore taking forward their community leadership role in light of the direction of the Act, meaning a move to challenge and adversity rather than the partnership approach set in previous Acts. It will also explore how other legislation and the Open Public Services White Paper interact with localism and the issues that these bring. Most critically, the seminar will enable members to address how they can use the provisions of the Act to proactively drive benefits for Rotherham, using their roles as leaders within the community; and what enhancements to the working of local governance will enable them to do this. The outcomes of this seminar will not only lead to further reports to Cabinet and scrutiny, but will set the framework for the remaining seminars covering detailed components of the Act and other new legislation, building on the new general power of competence.

The timing of some reports will be dependant on the publication 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 3rd 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 Act should not be seen in policy isolation from other government legislation that impact on the Council. These include:-

- Health & Social Care Bill;
- Protection of Freedoms Bill;
- Public Bodies Bill; and
- Welfare Reform Bill.

The Education Act 2011 (c. 21), which received Royal Assent on the same day as Localism, will also have an inter-related impact, as will governance arrangements arising from the Police Reform & Social Responsibility Act 2011 (c. 13). A Local Government Finance Bill is also expected in the near future following government consultations of localising Support for Council Tax; and in relation to future arrangements for Business rates.

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))

The Localism Act 2011 (Commencement No. 2 and Transitional and Saving Provision) Order 2012 (S.I. 2012 0057 (C. 2))

Contact Name:

Steve Eling, Policy Officer, Resources Directorate, ext 54419,
steve.eling@rotherham.gov.uk