

CABINET

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THE OVERVIEW AND SCRUTINY COMMITTEE

19 March 2012

LOCALISM ACT 2011

REPORT OF HEAD OF POLICY

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RECENT REFERENCES:

[ST91](#) - Localism Act 2011, 30 January 2012

[OS31](#) – Community Infrastructure Level (CIL) – Update, 23 January 2012

[CAB2258\(LDF\)](#) – Publication of Winchester District Local Plan Part 1 – Joint Core Strategy, 28 November 2011

EXECUTIVE SUMMARY:

This report sets out the main areas affecting local authorities in the Localism Act 2011. It summarises these key areas and their implications, and outlines work carried out to date to address these, where relevant. The Act received Royal Assent on 15 November 2011 and it contains a wide range of provisions covering local government. Further Regulations, and in some instances Government Guidance, is awaited to bring all of the provisions into effect.

The Localism Act seeks to give effect to the Government's ambitions to decentralise power away from Whitehall and back into the hands of local councils, communities and individuals to act on local priorities. The Act includes five key measures that underpin the Government's approach to decentralisation: community rights, neighborhood planning, housing, general power of competence and empowering communities.

The table in Appendix 1 sets out the main areas in the Act which will have an implication for the City Council. It sets out a summary of these areas, the officer responsible and where work is being undertaken to address changes made by the Act, where relevant.

**RECOMMENDATION:**

That Cabinet and The Overview and Scrutiny Committee, note the areas of main relevance to local authorities in the Localism Act 2011, as set out in Paragraph 2 of the Report.

## OTHER CONSIDERATIONS:

### 1 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 1.1 The change in the Localism Act 2011 will significantly impact how the City Council delivers each of its four outcomes. As further work is done to address the changes made it will become clearer as the impact on the Sustainable Community Strategy. However it is likely that this impact will be on how the outcomes are delivered and not what is delivered.

### 2 RESOURCE IMPLICATIONS:

- 2.1 This report gives an overview of the main areas in the Localism Act 2011 which will impact the work of the City Council and has no immediate resource implications. However, as Appendix 1 sets out officers are taking forward work to address each of these areas and resources implications of the Act will become clear as further work is undertaken and will be identified as proposals are brought forward for implementation.

### 3 RISK MANAGEMENT ISSUES

- 3.1 There are no immediate risk management issues associated with this report, however once further work is done to deal with the changes in the Localism Act, potential risks will be highlighted and addressed. However, community expectations may be raised in some areas and in the current economic situation, may give rise to difficult priority or budget choices in future budget rounds.

### 4 EQUALITIES

- 4.1 The Department for Communities and Local Government have Impact Assessed all elements of the Act. As work is done to apply the changes locally, consideration will be given as to whether any further equality impact assessments are required due to local interpretation and implementation of the Act.

## BACKGROUND DOCUMENTS:

None

## APPENDICES:

Appendix 1: Areas of note in the Localism Act 2011 for local authorities

## APPENDIX 1

Areas of note in the Localism Act 2011 for local authorities

Section	Summary	Action (if appropriate)	Officer responsible
Local Government			
General power of competence	This new power replaces the previous power of well-being and gives councils the same broad powers as an individual to do anything unless it is prohibited by statute. This power offers the opportunity for councils to work in new ways without the same concerns over acting ultra vires (beyond their legal powers). However, the power is still subject to some restrictions on its use.	In practice the power is likely to assist in areas where the former well-being power was used. Examples are economic development; partnership working with other public bodies and the voluntary sector. Opportunities for using the General Power of Competence will be kept under review. For example the Council has already considered its legal power to use derivative instruments with regard to Treasury Management. However the General Power of Competence enshrined in the Act is not sufficiently explicit and consequently, the Council does not intend to use	Chief Executive Corporate Director (Governance)

Section	Summary	Action (if appropriate)	Officer responsible
		<p>derivatives. However, should this position change, the Council may seek to develop a detailed and robust risk management framework governing the use of derivatives.</p>	
Abolition of the Standards Board	<p>The Act will abolish the Standards Board regime and replace it with a requirement that authorities promote and maintain high standards of conduct by Members. Local authorities must adopt a code of conduct (currently by July) and will have to investigate allegations of any member failing to comply with it. A late change in the Bill means that the role with parishes continues. The Act will also make it a criminal offence for members to deliberately withhold or misrepresent a personal interest</p>	<p><a href="#">ST 91: Localism Act 2011</a> was received by the Standards Committee in January 2012 and sets out the relevant key points for the City Council. Further Regulations are awaited from Government and guidance from the Local Government Association.</p>	Corporate Director (Governance)
Clarifying the rules on predetermination	<p>Councillors have to take decisions with an open mind. Predetermining a decision (having a closed mind to the issue) can lead to challenge and the decision being quashed. The issue of pre-determination is addressed in the Act, by providing that councillors who express a view on an</p>	<p>Member training to give guidance on predetermination in the light of the Localism Act.</p> <p>Revision of Planning and Licensing Protocols (in light</p>	<p>Head of Democratic Services</p> <p>Head of Legal Services</p>

Section	Summary	Action (if appropriate)	Officer responsible
	<p>issue outside of meetings are not (just by virtue of expressing such a view) to be taken as having a “closed mind”. However, the expression of extreme views which indicate that the councillor does in fact have a ‘closed mind’ to the issue will still mean that a decision involving such a councillor may still be challengeable.</p>	<p>of new conduct provisions) to include changes to take account of Localism Act changes.</p>	
<p>Greater local control over business rates</p>	<p>The Act will amend the <i>Local Government Finance Act 1988</i> to replace the limited circumstances in which local authorities can currently give discretionary relief from non-domestic rates with a power to grant relief in any circumstances provided that it would be reasonable to do so having regard to the interests of council tax payers in its area.</p>	<p>A briefing for Members will be drafted by 31 March.</p>	<p>Head of Revenues</p>
<p>Governance</p>	<p>The Act gives Councils the option of reverting back to the committee system following a two stage process of public consultation. It also allows for local people to petition the Council if they wish to see a directly elected mayor created. Regulations made in December 2011 will require a local authority to hold a referendum on whether it should change</p>	<p>The requirement to hold a referendum on whether Winchester District should be governed by a directly elected Mayor will be addressed as and when the Council is petitioned by local government electors in the area.</p>	<p>Corporate Director (Governance) Head of Democratic Services</p>

Section	Summary	Action (if appropriate)	Officer responsible
	to a different form of governance if at least 5% of the local government electors in the authority's area petition the authority. The Act allows more flexibility in timing when Councils can change to whole council elections if they wish to do so.		
<b>Empowering communities</b>			
Community right to challenge	<p>Under the community right to challenge, the following groups are able to challenge a local authority by expressing an interest in running a service:</p> <ul style="list-style-type: none"> <li>• Voluntary and community groups.</li> <li>• Social enterprises.</li> <li>• Parish councils.</li> <li>• Local authority employees currently delivering a service.</li> </ul> <p>Such a challenge may trigger a procurement process, which would have to comply with any applicable public procurement requirements. The challenging organisation would then be able to bid to provide the relevant services (although there is no guarantee that it will be awarded the contract, which must still be awarded in accordance with Contracts Procedure Rules and procurement legislation).</p>	<p>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.</p> <p>Procedures are to be developed and published setting out the Council's response to such requests and timescales for the following:</p> <ul style="list-style-type: none"> <li>• Periods during which expressions of interest to deliver a particular service</li> </ul>	Head of Policy

Section	Summary	Action (if appropriate)	Officer responsible
		<p>can be submitted</p> <ul style="list-style-type: none"> <li>• The length of time in which an organisation can submit an expression of interest</li> <li>• Minimum and maximum length of time for the procurement exercise.</li> </ul> <p>New procedures will need to take into account existing processes for commissioning services and any impact on accountability and democratic decision making.</p>	
Community right to bid (assets of community value)	<p>These provisions provide extra time for parish councils and local voluntary and community groups to prepare their bid to purchase a listed community asset should the current owner choose to dispose of it.</p> <p>Local authorities will have to maintain a list of public and private assets of community value and consider whether</p>	System to be implemented to determine nominations and record community assets.	Head of Estates



Section	Summary	Action (if appropriate)	Officer responsible
	<p>any asset should be added to the list upon receiving a nomination of an asset.</p> <p>DCLG have published a <a href="#">Policy Statement</a>, clarifying what would be considered as community asset and how they anticipate the scheme working.</p>		
Right to approve or veto excessive council tax rises	<p>The Secretary of State will determine a limit of council tax increases which has to be approved by the House of Commons. If an authority proposes to raise taxes above this limit they will have to hold a referendum to get approval for this.</p> <p>Subject to regulations, a billing authority may recover from a precepting authority the expenses that they incur in connection with a referendum held in relation to the precepting authority's relevant basic amount of council tax. The billing and precepting authorities also have a duty to produce substitute calculations which are not excessive.</p>	Procedures to be developed for the preparation of options should a referendum be required (this may require revision of the Budget and Council Tax setting timetable)	Head of Finance
Transparency over senior council official's pay	The Act introduces a requirement for local authorities, and fire and rescue authorities to produce pay policy statements The statements must set out an authority's policies towards a range of issues relating	The City Council's Pay Policy Statement for 2012/13 was approved by Full Council on 23 February.	Head of Organisational Development

Section	Summary	Action (if appropriate)	Officer responsible
	<p>to the pay of its workforce, particularly its senior staff and its lowest paid employees.</p> <p>Pay policy statements will have to be prepared for each financial year, beginning with 2012-13. They must be approved by full Council.</p>		
<b>Planning</b>			
Abolition of regional strategies	<p>S109 of the Localism Act makes provision for the revocation of regional strategies but before this can happen the impact of the revocation of each strategy has been subject to an environmental impact assessment. These were completed in 2011 and consulted on until January 2012 and the outcomes of these will dictate the final programme for revocation. At this point there is no indication as to whether all Regional Strategies will be revoked at once or one at a time. DCLG are reluctant to give a date as to when the Regional Strategies will finally go.</p>	<p>Revocation of the South East Plan will be relevant to the preparation of the Joint Core Strategy.</p>	<p>Head of Strategic Planning</p>
Duty to cooperate	<p>S110 of the Act sets out a new duty to co-operate which requires planning authorities to address planning issues that have a significant impact on at least 2 planning areas or on a planning matter that falls within the remit of a county</p>	<p>Duty to Co-operate already implemented as part of Joint Core Strategy work (Strategy covers the area of the South Downs National Park within the</p>	<p>Head of Strategic Planning</p>

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	<p>council. Councils must address such issues and plan for them and engage constructively, actively and on an ongoing basis to develop strategic policies. This is now one of the tests the inspectorate will be looking for compliance with when examining local plans.</p>	<p>District). Work with other relevant authorities has also been on-going and will need to be undertaken in the preparation of other aspects of the Local Plan.</p>	
Neighbourhood planning	<p>This is a new tier of planning introduced by the Localism Act and provides for parish councils or neighbourhood forums to prepare a Neighbourhood Development Plan. This will be required to follow national planning guidance and policies in the Core Strategy and human rights legislation. Neighbourhood Planning Regulations are in the process of being finalised and these will set the formal process that will be required to be complied with including examination and a referendum of the document, prior to its adoption.</p>	<p>The City Council would need to approve the neighbourhood planning forum (in unparished areas) and the area to be covered by a Neighbourhood Plan.</p> <p>Denmead is currently in Wave 4 of the neighbourhood plan frontrunners and is at the stage of planning and starting the work on its Neighbourhood Plan.</p> <p>A briefing for Members on various planning policy documents, including Neighbourhood Plans took place on 29 February.</p>	Head of Strategic Planning
Neighbourhood Development Order/Community right to	This involves a similar process to neighbourhood planning but affects a site	Similar to Neighbourhood Planning.	Head of Planning Management,

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build	for a specific purpose rather than a wider area or neighbourhood. A Community Right to Build Order will give community organisations the ability to take forward development in their area without the need to apply for planning permission, subject to certain qualifications.		Head of Strategic Planning
Requirement to consult communities before submitting certain planning applications	<p>S122 of the Act requires developers to consult local communities before submitting planning applications for certain developments. The thresholds of development will be specified by secondary legislation. The DCLG has stated that this requirement will initially apply to major planning applications. This is intended to give local people an opportunity to comment on proposed development while they have a chance to influence proposals before they are finalised. Developers will be required to have regard to any responses received during the consultation when deciding whether to make any changes to the proposed development, before submitting their planning applications.</p> <p>The Government has requested views on what the requirements for pre-application consultation should be and has also published a basic guide on the subject.</p>	None at present. Validation procedures to be reviewed once the secondary legislation is in place. The Council has for a number of years asked developers to carryout pre-application consultation in accordance with the Statement of Community Involvement.	Head of Planning Management

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Strengthening enforcement rules	<p>The Localism Act makes provision for the following, although the relevant parts of the Act have not yet come into effect:</p> <ul style="list-style-type: none"> <li>• The power to decline retrospective planning applications</li> <li>• Extending time limits on taking enforcement action against people who conceal unauthorised development.</li> <li>• New financial penalties</li> <li>• Increased powers to deal with unauthorised advertisements</li> </ul>	Review use of new enforcement powers and implement accordingly	Head of Planning Management
Community Infrastructure levy	<p>Regulations covering CIL already exist and a number of LAs have agreed charging schedules - WCC will commence preparation of its CIL Charging Schedule shortly. The Localism Act clarifies the matters to be taken into account in examining CIL proposals and that CIL can be used to replace, run or maintain infrastructure, as well as provide it. The Act enables regulations to be put place specifying the proportion of CIL receipts to be spent in the local area in which development takes place.</p>	<p>A report on CIL and the work undertaken to meet the programme for production was received by the Overview and Scrutiny Committee 23 January 2012.</p> <p><a href="#">OS31 – Community Infrastructure Level (CIL) - Update</a></p>	Head of Strategic Planning
Reform of how local plans are	Revised local plan regulations are being	To be taken into account in	Head of Strategic

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made	<p>finalised but some changes to the local plan system were introduced in January 2012 which included :</p> <ul style="list-style-type: none"> <li>• Local Development Schemes are no longer required to be submitted to Secretary of State for approval,</li> <li>• Annual Monitoring Reports (AMRs) are to be more accountable to the public (revised regulations specify further changes to AMRs and their content)</li> <li>• The role of planning inspectors examining development plans – Local Planning Authorities must formally request the inspector to consider 'main' changes; changes can no longer be imposed.</li> </ul>	the Core Strategy examination and in producing/updating the AMR and Local Development Scheme.	Planning
Nationally significant infrastructure projects	The Infrastructure Planning Commission has been abolished and its functions transferred to the Secretary of State.	None	Head of Planning Management
<b>Housing</b>			
Social housing allocations reform	The Act gives local authorities greater freedom to set their own policies about who should qualify to go on the waiting list for social housing in their area. Local authorities must put in place an allocations scheme for determining	A briefing for Members is being arranged on the implications of changes to social housing and the Localism Act.	Head of Landlord Services, Head of Strategic Housing

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Social housing tenure reform	<p>priorities and procedures to follow.</p> <p>New tenures will be provided for a minimum of two years (although only below five years if there are exceptional circumstances) as opposed to previous lifetime tenancies. There will be no automatic succession rights to spouses or partners. Beyond this, councils will have flexibility to develop tenancy agreements to meet local need.</p> <p>Every local housing authority has a duty to produce a tenancy strategy and for registered providers of social housing to have regard to this.</p>	<p>A draft Tenancy Strategy is currently being prepared. This issue, along with the potential for operating flexible tenancies within our own housing stock will be considered by Cabinet (Housing) Committee later in the year.</p> <p>An initial paper on this issue and the directions made to the Social Housing Regulator were considered in CAB2228 (HSG) dated 22 September 2011.</p>	
Reform of social housing regulation	<p>The Localism Act reforms the way that social housing is regulated with the functions of the current regulator, the Tenant Services Authority (TSA) being transferred to the Homes and Communities Agency (HCA) via a regulatory committee. The regulator will set a standard for all local landlords.</p> <p>The functions of the Local Government Ombudsman will also be transferred to the Housing Ombudsman Service (HOS). The remit of the HOS will be</p>		

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	extended to cover the tenants of local authority housing as well as those of Housing Association Registered Providers (HARPs).		
Reform of council housing finance	The Act abolishes the housing revenue account (HRA) Subsidy System and sets out how councils can become self-financed.	<p>This has progressed as proposed in the Act and the implications on the Council are set out CAB 2287 (HSG), which has been reviewed by Cabinet and by Council on 23/2/12.</p> <p>Self Financing for the HRA commences on 1/4/12 and the Council will take on debt totalling £167m, to be serviced directly from rental income.</p> <p>This new approach to funding Council housing services provides opportunity to invest more in the maintenance of Council homes and to implement a New Build programme amounting to £42 million in the next 10 years.</p>	Head of Landlord Services, Head of Finance



<b>Section</b>	<b>Summary</b>	<b>Action (if appropriate)</b>	<b>Officer responsible</b>
Reform of homelessness legislation	Local authorities can discharge their duty to persons with priority need who are not intentionally homeless by placing them in accommodation in the private rented sector, whereas previously an applicant could refuse such an offer in the private rented sector and wait in temporary accommodation for a house in the public sector (Registered providers or the local authority).	The City Council already offers those who are homeless a deposit to help them secure accommodation in the private sector, and this approach will be maintained.	Head of Strategic Housing
National home swap scheme	The Localism Act makes provision for a national home swap scheme.	The City Council already participates in a national home swap scheme so this will not affect our housing service.	Head of Strategic Housing