

Localism Act 2011

Report of the Deputy Chief Executive

1. Purpose of Report

- 1.1 To provide Committee with details of the Localism Act 2011.

2. Localism Act

- 2.1 The Localism Act gained Royal Assent in November 2011. The process of bringing the Act into force began immediately following the receipt of Royal Assent, when a number of regulatory powers necessary to lay the groundwork for the introduction of the main legislation were brought into effect.
- 2.2 A number of more substantial provisions were brought into force in January, principally new arrangements to enable councils to move to a committee system of governance. In addition, a number of further regulatory provisions have come into force, together with a number of transitional provisions, notably covering the move to a new standards regime, and arrangement for local governance. Other parts of the Act including the community rights to challenge and bid and neighbourhood planning will come into effect in October 2012.

Commentary

- 2.3 The Act presents a difficult agenda for a local authorities that are responsible for providing services and enhancing the life chances of communities that suffer high levels of deprivation. Whilst the Council is committed to ensuring that it spends fairly and supports those communities that face the most entrenched problems, may not be the best placed to be able to exercise the rights introduced by the Act due to lack of awareness of the opportunities the Act provides, the ability of communities to organise themselves in respect of a particular issue or the lack of informed community activists..
- 2.4 A further area of challenge arises from the fact that the Act doesn't clearly define a role for Elected Members. The Council's Elected Members are Community Champions who will work with communities to enable them to use the new powers they have under the Act – they are democratically accountable local representatives, and should have a pivotal role in this agenda. The Government has failed to recognise the enthusiasm and status that elected members have and ensure that they are not sidelined by a focus on unelected community activists.
- 2.5 The Act provides challenges for changes to local authority business models. The Council will need to take further action to understand the challenges at a detailed level, including how capabilities and structures

may need to evolve to meet future roles and responsibilities. This will include the need to develop new frameworks for performance management and accountability that meet the specific requirements of a local service, and test these models against user experiences, this work is already ongoing and we are reviewing area governance arrangements, Local Area Plans and work programmes.

2.6 There are many provisions within the Act which have the potential to place further resource pressures on councils in already difficult times. These include local referendums, the community right to buy and to challenge and Neighbourhood Plans and Development Orders. The Government will need to provide clarity about the resources that will be available to councils to enable the delivery of these provisions when they come into effect. This concern is particularly acute as councils are unable to be able to accurately predict the numbers, and therefore the cost, of responding to these requests.

2.7 The following sections focus on the main contents of the Act.

3. Local authority governance arrangements

3.1 In addition to the leader and cabinet mayor and cabinet models councils now have the option of adopting a committee system. It will also be possible for councils to propose an alternative model which can be accepted by the Secretary of State if it meets certain criteria.

3.2 Under the committee system, authorities will in the main be able to decide their own decision making structures, and it will be possible for a full council to discharge all of its functions or to delegate certain functions to a committee, sub-committee or an officer. The Secretary of State will use regulations to specify any functions which may not be delegated and which must be exercised by the full council.

3.3 Authorities operating the committee system are not required to operate a formal overview and scrutiny committee; where they do, the Secretary of State may prescribe by regulations how the system is to operate. Requirements for health, flooding, and community safety scrutiny will apply to committee system authorities – these may be the responsibility of a relevant committee or of a separate scrutiny committee.

3.4 The Act also provides an option for councils to propose arrangements which may then be approved by the Secretary of State, and set out in regulations that would apply to all local authorities in England.

Commentary

3.5 The Act consolidates existing governance arrangements and makes some significant changes, particularly welcome to authorities wishing to restore a committee basis for responsibilities. It will be felt by many that more could have been done to strengthen accountability and

transparency through improvements in scrutiny arrangements and the extension of Freedom of Information provisions.

- 3.6 There remains much to come, in terms of the various regulations that are expected imminently and in the medium to long term assessments of the effectiveness of the mayoral system, and an exploration of the extent of the new local authority powers.

4. Scrutiny

- 4.1 The Act replaces the relevant provisions in the 2000 Act in full and consolidates the main part of scrutiny legislation into a single place. The law will continue to be found in Part 1A and Schedule A1 of the 2000 Act. Provisions relating to crime and disorder remain in the Police and Justice Act 2006, and health provisions remain in the NHS Act 2006.

- 4.2 At a late stage in the Lords a group of amendments were agreed to the Bill which:

- § Remove prescription about matters which may be referred to scrutiny by councillors who are not members of a scrutiny committee
- § Remove the link between local government scrutiny and local improvement targets in local area agreements
- § Put the scrutiny committees in non-unitary district councils in an equivalent position to those of other authorities by allowing them to hold partner authorities to account.

Commentary

- 4.3 The Act makes it clearer that scrutiny's future lies in a view of public services as they are delivered across a given locality – not just those for which the council has a direct responsibility. Local authorities generally will have far wider powers to influence policy and public service delivery in their area. As a function of the council, scrutiny has the potential to use such powers to investigate issues beyond its traditional remit, but which nonetheless affect local people. It is acknowledged that there is a lack of formal powers for scrutiny to explicitly carry out a particular review, but developing new models for the scrutiny function will help it to compliment other governance arrangements within the council.

5. Council tax referendums

- 5.1 Local authorities will be required to hold a referendum if calculations based on principles determined annually by the Secretary of State result in a Council Tax for the financial year that is 'excessive'. The principles, which include a comparison with the previous year, must be approved by the House of Commons. The Secretary of State has the option of specifying an alternative amount for two or more authorities.
- 5.2 An authority that wishes to propose a Council Tax increase that exceeds that allowed by the principles set by the Secretary of State will be required to produce a substitute set of figures, which will apply if their

main proposal is not approved in a referendum. If an authority fails to hold a referendum the substitute calculation will apply by default – an authority can in effect decide to forgo a referendum and adopt its substitute calculation.

Commentary

- 5.3 Councils must comply with central objectives or put them to the electorate in a referendum. The referendum process creates the appearance of local democracy, but the central mechanism is for the Secretary of State to set the parameters for the amount of Council Tax annually, taking this responsibility away from local representatives. In effect, the referendum process will be used inversely to enforce a Council Tax framework based on the principles set by central government.

6. Community Right to Challenge

- 6.1 This part of the Act opens the way for voluntary and community organisations, not-for-profits, charities and social enterprises to trigger a procurement process by expressing an interest in providing or assisting in the provision of council services. It will also be possible for two or more local authority employees to put forward an expression of interest.
- 6.2 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.
- 6.3 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.

Commentary

- 6.4 Doubts were expressed during the passage of the Bill on the likelihood that exercise of the right to challenge would result in local organisations providing services, and an unsuccessful effort was made to restrict the process to local applicants. Similarly, concerns were expressed about the potential of the scheme to create advantages for commercial bodies. While ministers rejected this risk they confirmed that it is intended that national organisations should be in a position to make applications to carry out services in particular local authority areas.
- 6.5 This provision has to be seen in the context of the Open Public Services White Paper which is intended to open up public services to private and

third sector providers. Councils will need to assess the implications for their processes and for accountability and democratic decision making, issues that also deserve to be addressed by local government representatives nationally.

7. Planning

7.1 Part 6 of the Localism Act addresses changes to the planning system.

7.2 The act sets out:

- § The abolition of regional spatial strategies (RSS) as part of the planning framework and the return of powers over housing and planning matters to local authorities;
- § A duty to co-operate: the act includes a new duty on local planning authorities to 'co-operate in relation to planning of sustainable development';
- § Changes to the enforcement regime, including a new power for LPAs to 'refuse to make a decision on a retrospective planning application while enforcement action is taking place' and a new 'planning enforcement order' to counter deliberate deception or concealment to avoid planning regulations.

7.3 The act retains the Community Infrastructure Levy (CIL) but includes some provisions for communities to have more control over how the levy is spent and how that spending is monitored.

7.4 The act creates provisions for parish/town councils or neighbourhood forums to:

- § Prepare neighbourhood plans that, if they pass certain tests such as aligning with existing plans and receiving a majority in a local referendum, will be adopted and become a material consideration;
- § Put forward neighbourhood development orders to secure planning permission for developments they support.

7.5 Applications for consent for development of major infrastructure projects will now be decided by the Secretary of State, following a recommendation by a planning inspector from the Major Infrastructure Planning Unit.

7.6 The commencement order bringing various parts of the Localism Act 2011 into immediate force was published on 15 January. The government has also confirmed that some remaining key changes will come into effect in April including the strengthening of planning enforcement, including powers to prevent the "twin tracking" of a retrospective planning application with an appeal against an enforcement notice on grounds planning permission ought to be granted. The retrospective planning application would still have its usual right of appeal. The second enforcement power to come into effect in April is to enable Local Authorities to take action against concealed

breaches of planning control even after the usual time limit for enforcement has expired.

- 7.7 The commencement order on 15 January clarified the rules on predetermination. The clarified rules still require a planning committee member to have an open mind when determining a planning application. However, proof of previous campaigning against a proposed planning application would not be proof that the member had a closed mind.

Commentary

- 7.8 There has been debate within local government and outside over whether the revised policy landscape, at least in planning terms, would see a focus on devolving power to communities and lead to a relatively emasculated council tier. But local planning authorities do still have a very secure place in the planning system.
- 7.9 The Planning Advisory Service (PAS) is urging elected members to embrace neighbourhood planning, and to take a proactive role in helping to determine how this takes root in their local areas. It has published a guide to neighbourhood planning for ward councillors – key to their guidance is that elected members need to provide clarity to forums at the very beginning of the neighbourhood planning process about what will and will not be possible because of the restrictions that apply. Put simply, communities have been led to believe that they will be ‘in the driving seat’ when it comes to planning locally. But as the provisions make clear, neighbourhood forums need to work within the opportunities and constraints of the existing hierarchy of plans.

8. General Power of Competence

- 8.1 The General Power of Competence replaced the well-being power Section 2 of the Local Government Act 2000 from April 2012. It is intended to provide local authorities (and parish councils that meet certain minimum standards) with the same capacity to act as an individual. The intention is to:
- § Allow authorities to act in their own financial interest to generate efficiencies and secure value for money outcomes and to raise money by charging for discretionary services and trade in line with existing powers.
 - § Allow authorities to engage in activities outside the well-being power, such as providing certain indemnities and guarantees and engaging in speculative activities.

9. Mayoral arrangements

- 9.1 The Secretary of State has powers to trigger a mayoral referendum under the Localism Act and has made orders for mayoral referendums in the eleven largest English cities, Birmingham, Leeds, Sheffield, Bradford, Manchester, Liverpool, Bristol, Wakefield, Coventry, Nottingham and Newcastle-upon-Tyne.

9.2 Under the Act, proposals must promote economic development or wealth creation or increase local accountability in relation to the function. Separate City Deal negotiations (under which each city is able to specify the particular powers they need and want to boost local growth) are ongoing between city representatives and the Government with the eight 'core cities', Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, Nottingham and Sheffield and their Local Enterprise Partnerships. In February Liverpool became the first city to agree a City Deal with the Government, Greater Manchester signed a City Deal in March.

10. Community Assets

10.1 Parish and community councils and local voluntary and community organisations will be able to nominate local land or buildings to be included in a list of community assets maintained by local authorities. A property will be included where its current primary use furthers the social wellbeing or social interests of the local community, and where it is realistic to think that this use will continue. A property will also qualify when it has been in such use in the recent past, and this may realistically recur within the next five years (whether or not in the same way before).

10.2 Inclusion will require the owner of the property to notify the local authority when intending to dispose of a listed asset, so triggering a moratorium period during which community interest groups can apply to be treated as potential bidders. The owner will be able to begin the sale process after an interim period of six weeks if no bidder has come forward, if a written intention to bid is received in that time then the full six month moratorium period will apply. An eighteen month protection period has also been created: if this expires before the property is sold the original notification process must start again.

11. The new standards framework

11.1 The Act abolishes the Standards Board regime – the Standards Board for England, standards committees of local authorities, the jurisdiction of the First-tier Tribunal in relation to local government standards in England, and model codes of conduct for councillors. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First-tier Tribunal loses its jurisdiction over councillor conduct issues.

11.2 The new regime applies to local authorities and a number of other public authorities in England, including parish councils. All will be under a duty to 'promote and maintain high standards of conduct by members and co-

opted members of the authority' who are entitled to vote in committees and sub-committees.

12. Social housing

12.1 The Act allows councils to set criteria for whom they will accept onto social housing waiting lists, and to refuse to allow people who do not qualify to join the list. Every local housing authority (in England) needs to prepare an allocation scheme which sets out their priorities for determining housing need.

12.2 Councils can fulfil their duty to someone who is homeless and has a 'priority need' (such as having dependents) by offering them a single privately rented housing tenancy for one year. Previously, councils were obliged to offer a social housing dwelling unless the tenant asked for a private sector one.

12.3 Local housing authorities must now prepare a tenancy strategy to guide decisions social landlords working in their area make on:

- § The kinds of tenancies they grant;
- § The circumstances in which they will grant a tenancy of a particular kind;
- § The length of tenancies;
- § The circumstances in which they will grant another tenancy when an existing one expires.

12.4 For new social housing tenants, landlords can now issue fixed-term ('flexible') tenancies: social housing no longer comes with a 'tenancy for life'. The Act sets a minimum of two years. There are also reforms to how the social housing sector is regulated. The act paves the way for tenant panels, which social landlords will be expected to support to 'refer complaints against the social landlord'. Social housing tenants will also now have a single body to contact when making complaints about their landlord: the Independent Housing Ombudsman.

12.5 To make it easier for people living in social housing to move to a different home the act enables legislation for facilitating the exchange of tenancies. The government has launched HomeSwap Direct, a national home swap scheme for social housing tenants.

13. Recommendation

That the Committee notes the details of the Localism Act 2011 including potential implications for the City Council and Scrutiny Committees.

14. Background Papers

Localism Act 2011 – Department for Communities and Local Government