

 Executive Committee – 30th March 2011		Agenda Item No. 6
Title:	The Localism Bill	
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Service Area	Chief Executive's Office	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	Department for Communities and Local Government – A plain English guide to the Localism Bill (January 2011) – Appendix 1	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	Yes

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report author's relevant Deputy Chief Executive, Finance and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Deputy Chief Executive		Author
Chief Executive		Chris Elliott
CMT		Chris Elliott Bill Hunt Andrew Jones
Section 151 Officer		Mike Snow
Portfolio Holder(s)		Cllr Michael Doody
Consultation Undertaken		
N/A		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. **SUMMARY**

- 1.1 This report provides Members with an overview of the Localism Bill which is currently making its way through Parliament. It is probable that the Bill will evolve as it heads towards Royal Assent, however, based on current understanding, officers have provided details of the Bill's main proposals and potential implications.
- 1.2 Officers ordinarily do not provide reports largely for information purposes, however, the significance for local government of the Bill's proposals requires Council members to have a good understanding of the changes. Members may wish to take the opportunity to ask officers to lobby decision-makers where there are issues of particular concern.

2. **RECOMMENDATIONS**

- 2.1 That Executive notes Section 7 of this report which describes the main elements of the Localism Bill.
- 2.2 That Executive considers whether it wishes officers to undertake appropriate lobbying in respect of any policy areas in the Bill where there is specific concern.
- 2.3 That Executive notes at Appendix 2 the Local Government Association's (LGA) most recent response to the Bill.

3. **REASONS FOR THE RECOMMENDATIONS**

- 3.1 On 13th December 2010, the Government published the Localism Bill. The under-pinning philosophy of the Bill is that central government should reduce its influence over local matters and allow communities and councils to take on more responsibilities.
- 3.2 The Communities Secretary has described the Bill as being "the centrepiece of what this government is trying to do to fundamentally shake up the balance of power in this country". Its four most important proposals (introducing a "general power of competence" for English councils, reforming the planning process, encouraging private and third sector organisations to deliver public services and changing the approach to housing policy) will certainly result in a different landscape over the coming years.
- 3.3 In addition to the legislation, the Government also published a Guide to the Localism Bill (Appendix 1), which places the Bill in the strategic context of moving "from Big Government to Big Society". It also aims to serve as a reference point for other government bodies to understand the policy agenda and suggest how they might contribute to the new paradigm. The guide explains that the Government aims to:
 - 1. Reduce bureaucracy that restricts local authorities and communities;
 - 2. Empower communities by creating rights for people to direct the development of their communities;
 - 3. Increase the control that communities have over public finances;
 - 4. Diversify the supply of public services;
 - 5. Make more government information available for public scrutiny; and

6. Strengthen accountability by allowing citizens to change the services provided to them.

3.4 This report outlines how the Localism Bill addresses each of these points and also highlights some of the proposed changes to housing and other policies that are included in the legislation.

3.5 Members may consider that there are some proposals that are so important/significant that lobbying of local MP's or Ministers is required. The LGA has provided its response to the Bill and can be viewed at Appendix 2. Members may wish to echo some of the LGA concerns or raise other issues for officers to take forward.

4. **ALTERNATIVE OPTION CONSIDERED**

4.1 The alternative option would have been not to produce the report, however, the Localism Bill when enacted will be a significant piece of legislation of which all Council Members should be aware.

5. **BUDGETARY FRAMEWORK**

5.1 There are no budgetary implications as a result of this report. It has been produced for information purposes, to stimulate discussion and debate and allow Members to consider whether appropriate representations to decision-makers are necessary.

6. **POLICY FRAMEWORK**

6.1 Warwick District Council has adopted Fit For the Future (FFF). Described therein are the actions it needs to take to contribute to making Warwick district a great place to live, work and visit. FFF recognises that local government operates in an ever-changing external environment and that plans must be flexible enough to respond to Government initiatives and policy changes.

6.2 The Localism Bill presents the Council with both opportunities and threats. A comprehensive understanding of the Government's policy intentions, positions the Council to respond (often pro-actively) to forthcoming changes.

7. **BACKGROUND**

7.1 **Lifting the burden of bureaucracy**

7.1.1 A number of proposals in the Bill attempt to reduce the amount of red tape that the Government believes constrain councils and communities. Amongst other things, it promises to **abolish**:

- a) Regional strategies and targets, and instead allow communities to approve community development projects by a simple majority:-
 - Local Plans will now set out development in consultation with local communities and without the requirement to meet any top-down targets. The New Homes Bonus – a payment to local authorities for new homes that are built in their area but not part of the Localism Bill – is a new incentive designed to encourage local authorities to consent house building in their areas;

- Local authorities will be able to set their own renewable energy targets.
- b) The Standards Board for England, the requirement for authorities to have Standards Committees and the national code of conduct:-
- In place of the Standards Board regime, authorities will have a duty to promote and maintain high standards of conduct by Members and be able to establish their own voluntary codes of conduct. Where there is a code, any complaints that it has been breached may be investigated by the authority but there are no protocols or guidance on how to go about this. If the authority does not have a code of conduct, the Bill does not include any provision for the investigation of complaints about member conduct. This could mean that the only way of sanctioning inappropriate behaviour between elections would be through criminal law or appeals to the local government ombudsman;
 - In addition, Monitoring Officers will be required to compile a register of interests and there will be sanctions for members who fail to comply. A new offence is created for non-compliance with the registration regulations, which could result in a fine or disqualification.
- c) The 'predetermination' rules, which prevent councillors from acting on local issues because of the risk of challenge that they are biased. The Bill makes it clear that councillors can campaign, talk with constituents, express views on local matters and seek to gain support for those views without facing accusations of having a closed mind (predetermination). At present, accusations of predetermination can lead to a legal challenge.

7.1.2 The Government will continue with the "duty to cooperate" for local public service bodies. The Government hopes the duty will act as a "strong driver to change the behaviour of local authorities" after Local Area Agreements cease to exist in March 2011. This could be viewed as a reference to the fact that ministers feel local bodies should be working together much more closely – in shared service arrangements for example – in order to join-up delivery and reduce administration costs.

7.2 **Empowering communities to do things their way**

7.2.1 The Bill will give local authorities and community groups a number of new specific rights. They include:

- Giving English councils a "general power of competence", allowing them to do anything which is not specifically prohibited by law. This much-promised power will mean that innovative initiatives, such as that of London boroughs to set up their own insurance mutual last year, initially ruled ultra-vires by the courts, should not experience similar problems;
- Allowing councils to adopt a committee form of governance, executive arrangements (including a mayor) or another prescribed arrangement. Schedule 2 of the Bill includes provision for the appointment of a Scrutiny Officer to promote and provide support to the overview and scrutiny committee, and also includes a new schedule setting out the powers of executives and overview and scrutiny arrangements;
- Changing the current allocation of responsibilities in planning and building development, such as by:-

- Removing the ability of the Planning Inspectorate to re-write local plans (although inspectors will still need to agree that authorities' plans are 'sound'). In addition:
 - The Bill will remove procedures on Local Plan timetabling and monitoring.
 - Planning inspectors will continue to assess local plans at a public examination and authorities will only be able to adopt plans judged 'sound' by the inspector. Inspectors will only be able to suggest changes to a Local Plan if requested to do so by the local authority.
 - Local authorities will be able to suggest changes during the examination and withdraw development plan documents before their adoption, without seeking clearance from central government.
 - Local authorities will have to publish up to date information about the planning documents they are preparing.
 - Central government's powers to direct changes to local plans will be more limited.
- The Bill introduces the ability for Parish Councils and other designated neighbourhood forums to ask Councils to develop Neighbourhood Development Orders (NDO) and within this Community Right to Build (CRTB) and Neighbourhood Area Plans (NAP). Such Orders and Plans will be subject to public consultation, external examination and a referendum at which at least 50% of those voting must be in support. There are some exemptions and there is an ability to refuse requests. These need to comply with the overall District plan which remains a duty for Councils to prepare.
 In basic terms a NDO would in effect grant planning permission to certain forms of development. The easiest way to think of this is an extended version of the permitted development order. A NAP is a much localised version of a local plan. A CRTB would grant consent to a specific form of development on a specific site and could be requested by a community organisation – not just a Parish Council. There is provision for the Council to seek cost recovery though it is not clear from whom in respect of NAPs. There also seems to be a suggestion that costs can be recovered from those developing under NDOs but it is unclear at present.
- Introducing a new right for communities to be consulted before developers submit large planning applications. Developers will be required to have regard to any opinions raised during this consultation when deciding whether to make any changes before submitting their planning applications.
- Abolishing the Infrastructure Planning Commission (IPC) and placing the responsibility for approving major infrastructure developments with ministers. This measure will replace the IPC with a system of Ministerial consent for major infrastructure projects and ensures Parliamentary approval of National Policy Statements before they can be designated.
- In addition, the Government has promised that community groups will have access to civil servants (dubbed 'bureaucracy busters') for support in setting up local projects.

7.2.2 Ministers have suggested that a 'community' is "around the size of a parish area, or a couple of local authority wards", but the concept will need to be defined in law ahead of the Bill receiving Royal Assent. For the time being we should assume that 'communities' are collectives of people at a level below that of the single-tier or district council. They may get involved in running public services, but are unelected and have no power to levy taxes or charges. The role of parish and town councils in this scenario remains unclear.

7.3 **Increasing community control of public finances**

7.3.1 Although the Bill gives local authorities additional freedoms, it also contains several provisions that bypass councils and will instead increase the power that residents will have over local public spending. In many cases these could act as additional constraints on the authority, such as:

- requiring local authorities to hold a referendum on any proposed Council Tax increase above a certain threshold. This replaces the Secretary of State's power to cap, but ministers will still be able to decide on the threshold above which any proposed increases are 'excessive' and therefore must be subjected to a locally funded vote;
- allowing councils to grant a discount/add a supplement (subject to business approval) in business rates – but not to increase them above the level set nationally;
- scrapping the power for councils to introduce 'bin taxes';
- requiring local authorities to allocate a proportion of Community Infrastructure Levy (CIL) revenues back to the neighbourhood from which they are raised – although councils will have greater control over setting their charging levels. CIL funds can also be spent on the ongoing costs of infrastructure, as well as the initial costs of new infrastructure.

7.4 **Diversifying the supply of public services**

7.4.1 The Government aims to "break open" public sector monopolies, in keeping with recent policy announcements on 'free schools', employee mutuals and GP commissioning in the NHS. Proposals in the Bill that embody this principle could have major implications for the future delivery of public services. They include introducing:

- a community "right to challenge" a local authority, which would allow voluntary and community organisations, social enterprises and council employee groups (or 'mutuals') to express an interest in running any service for which the authority is currently responsible. This is expected to break down the traditional way of commissioning and delivering public services, as local authorities will be required to consider the proposals, modify (where appropriate) and then 'accept' or 'reject' them. Any potential provider will be able to raise a challenge if it believes it could provide services more efficiently and effectively than the local authority. As a result, Councils may need to instigate numerous formal procurement processes, in which the challengers could bid to provide services alongside everyone else. From an authority's perspective there will also be various logistical issues to overcome: it could prove very costly and time-consuming for authorities to consider all of the proposals; it may be difficult to ensure that each challenger receives a fair hearing; and, if the process results in a formal procurement, the traditional delivery organisations with their well-established resources may still be able to present a more credible tender;

- a “community right to buy” that will allow community organisations to bid for the ownership or leasehold of assets that they value, from which they can deliver existing or new services.

7.4.2 Related to this issue is the Government’s decision to withdraw the two-tier code, which means that suppliers will no longer be asked to provide new members of staff with terms and conditions that are no worse than those of the public body. It is believed that this will make it much easier for private and third sector organisations to provide public services at lower cost.

7.5 **Opening up Government to public scrutiny**

7.5.1 The Bill will require English councils and fire and rescue authorities to produce a senior pay policy statement every year – and any changes to this would have to be agreed by Full Council (or a meeting of members for fire and rescue authorities). Since the Bill’s publication there has been a further proposal that salaries above £100,000 must be agreed by Full Council.

7.5.2 The Guide to the Localism Bill also suggests that public bodies should publish more and better information about the outcomes they deliver, alongside their spending data. This echoes previous ministerial statements about improving the transparency of council performance data in order that ‘armchair auditors’ (rather than the soon-to-be-defunct Audit Commission) can hold them to account effectively. However, neither the guide nor the Bill itself gives any further details on what this might mean, or exactly which outcomes organisations should report on in this way. We are awaiting details about the extent to which Government intends to introduce a new national ‘performance framework’ for local government.

7.6 **Strengthening accountability to local people**

7.6.1 Following on from the recent Home Office announcement that England and Wales will soon have elected police and crime commissioners, the Localism Bill proposes further changes along these lines. They include:

- Giving local residents the power to instigate, via a petition, local referendums on any local issue: Although these referendums will be non-binding, local authorities and other public authorities will be required to take the outcomes into account in decision making. As these local referendums can be on any local issue, they could be instigated in response to planning applications;
- Holding referendums on introducing elected mayors in 12 English cities – Birmingham, Bradford, Bristol, Coventry, Leeds, Leicester, Liverpool, Manchester, Newcastle upon Tyne, Nottingham, Sheffield and Wakefield. These referendums will take place in May 2012 and any subsequent mayoral elections would be held twelve months later using the Supplementary Vote system;
- Working to increase choice in public services so that service users can “vote with their feet” and choose a different provider if they are dissatisfied with the current service.

7.6.2 There is a proposal that public bodies will no longer have a duty to promote greater involvement in local democracy – something that was only introduced in 2009.

7.7 **Reforms affecting Social Housing**

7.7.1 The Bill includes a number of other significant proposals, including the following major reforms to social housing:

- Allowing social landlords to introduce fixed-term tenancies (of a minimum of two years), in addition to lifetime ones;
- Allowing councils to find homes in the private rented sector for families who are eligible for social housing, instead of being obliged to provide accommodation for them;
- Removing tenants who are not in housing need from the scope of the allocation rules;
- Allowing councils to decide who should qualify to go on their housing waiting list (although the rules for eligibility will be set centrally);
- Making it easier for social tenants to relocate through a new internet-based National Homeswap Scheme;
- Replacing the Housing Revenue Account subsidy system with a locally-run system that allows councils to keep rental income and use it to maintain their homes. To achieve this, the Bill will enable a one-off payment between Government and each council. Full details are awaited. However, there is now a concern that the Government will have the power to re-open the settlement at any time and also contrary to original indications, it is proposed that the Government will receive 75% of any council house sale receipts. There is also a proposal to put a cap on the borrowing limit;
- Abolishing the Tenant Services Authority, transferring its remaining functions to the Homes and Communities Agency and encouraging tenants to scrutinise the services offered by their landlords.

7.8 **Other proposals in the Bill**

- Gives the Secretary of State a general power to order councils to contribute to the UK's obligation to pay a fine, if an act or omission of the Council can be shown to have contributed to the fine being imposed. This could be very costly and damaging to local and public authorities, as infraction proceedings brought by the EU (for breaches of its procurement rules, for example) tend to be very lengthy and costly. EU treaties clearly state that only national governments are liable for fines, and there has been no consultation on this proposal.
- Changes some of Greater London's governance structure, including abolishing the London Development Agency and giving the boroughs more control over local planning decisions.
- Allows councils to review and scrutinise the flood risk management functions of risk management authorities that may affect the authority area.
- Provides the primary legislation that is necessary to make a number of changes to government and inspection bodies, such as the abolition of the Regional Development Agencies, the Audit Commission and local government inspection frameworks, and the establishment of Local Enterprise Partnerships.