The Localism Act 2011

The Localism Act received Royal Assent on 15 November 2011. **Although the Act contains a number of important measures, not all of the measures are in force.**

The Act contains a number of *enabling provisions*. These give the Secretary of State power to introduce regulations and guidance that will make the measures 'live.' **It will not be clear how the measures will work in practice until the government publishes regulations and guidance. The government has not yet published regulations for a significant number of the measures.**

This detailed briefing includes:

- an overview of the main components of the Localism Act
- the estimated timescales for measures to be introduced and regulations to be published - please see the 'Status' section for each measure
- the potential implications of the Localism Act for Wiltshire
- next steps for Wiltshire Council and contact details

Contents

Reform to make the planning system more democratic and more effective		
Abolition of regional planning strategies	Alistair Cunningham, Service Director for Economy and Enterprise	21-22
New legal duty to co-operate when planning sustainable development	Alistair Cunningham, Service Director for Economy and Enterprise	23
Changes to the approval process for local development schemes and development plan documents	Alistair Cunningham, Service Director for Economy and Enterprise	24-25
Reform of the Community Infrastructure Levy	Alistair Cunningham, Service Director for Economy and Enterprise	26-27
Introduction of neighbourhood planning	Alistair Cunningham, Service Director for Economy and Enterprise	28-31
Requirement for developers to consult local communities before submitting applications for planning permission	Brad Fleet, Director of Development Services	32
Changes to planning enforcement	Brad Fleet, Director of Development Services	33-34
Changes to the system of approving nationally significant infrastructure projects	Brad Fleet, Director of Development Services	35-36
Clarification that 'local finance considerations' can be taken into account when assessing planning applications	Brad Fleet, Director of Development Services	37
Reform to ensure decisions about housing are taken locally		
Changes to the system for allocating social housing	Nicole Smith, Head of Strategic Housing	38-40
Changes to local housing authorities' duty to the homeless	Angie Rawlins, Head of Allocations and Options	41-42
New requirement for local housing authorities to publish tenancy strategies	Nicole Smith, Head of Strategic Housing	43-44
Introduction of flexible social housing tenancies and changes to social housing tenancies	Derek Streek, Head of Housing Management	45-46
Abolition of the Housing Revenue Account subsidy and introduction of a self financing system	Derek Streek, Head of Housing Management	47-48
Power for the regulator and Secretary of State to set standards for registered providers of social housing to help tenants exchange properties and purchase properties	Derek Streek, Head of Housing Management	49
Changes to the regulation of social housing	Niki Lewis, Service Director for Communities, Libraries, Heritage and Arts	50-51
Abolition of home information packs	Brad Fleet, Director of Development Services	52
Changes to tenancy deposit schemes for social landlords	Angie Rawlins, Head of Allocations and Options	53

General power of competence for local authorities (s1-8)	Status: in force from 18 February 2012, regulations for parish councils published 27 March 2012

The Act introduces a 'general power of competence' for local authorities in England. This will allow local authorities to do anything an individual can do, as long as it is not specifically forbidden.

Key features of the general power of competence are that:

- it can be exercised in any way whatever; unlike the 'well-being power' it does not need to be used to benefit a particular place or group
- it does not give local authorities power to determine their governance arrangements beyond that permitted by existing legislation
- the power may be exercised for a commercial purpose or otherwise, with or without a charge; but it does not allow a charge to be made for anything a local authority is under a duty to provide
- local authorities can charge for discretionary services on a full cost recovery basis; they may only trade on a commercial basis through a company or social enterprise
- the power is subject to any express prohibitions, restrictions and limitations in existing legislation
- the power must be exercised reasonably
- the Secretary of State can alter, repeal or revoke legislation that overlaps with the general power of competence or makes it difficult for local authorities to use it
- at any time the Secretary of State can make an order which specifies anything local authorities cannot do using the general power of competence

The general power of competence will apply to all local authorities, including 'eligible' parish councils. The eligibility criteria for parish councils include a requirement for:

- at least two thirds of the total number of parish councillors to be elected (rather than co-opted or appointed)
- the parish clerk to hold specific qualifications in local council administration
- the parish clerk to complete all 'relevant training' on the general power of competence, such as training provided by provided by the National Association of Local Councils

To exercise the general power of competence eligible parish councils will need to:

- pass a resolution under Schedule 12 of the Local Government Act 1972 at a council meeting

pass a resolution at each annual meeting that takes place in a year of ordinary elections of parish councillors (the next date for ordinary elections is 2 May 2013

Implications for Wiltshire	Next steps For more information please contact: Frank Cain, Head of Legal Services at frank.cain@wiltshire.gov.uk
The new power is intended to bring about: • greater innovation • a more confident and entrepreneurial approach • the opportunity to deliver greater efficiencies • improved partnership working • the ability for councils to help communities in ways previously outside their remit How the power will work in practice will ultimately depend on how it is interpreted by the courts.	Training will be provided to all Wiltshire councillors and Wiltshire Council staff to raise awareness of the new power and its possible applications. Legal services will consider how best to use this power once the government has published regulations.

Power for ministers to transfer the functions of local public bodies to local authorities and other 'permitted authorities' (s15-20)	Status: unclear, regulations expected 3 May 2012

The Act gives the Secretary of State power to transfer local public functions to 'permitted authorities' – local authorities, economic prosperity boards and combined authorities. This power **cannot** be used to transfer functions to town/parish councils.

'Local public functions' are the functions of public authorities that relate to the local area or people living or working in that area. They do **not** include the power to make regulations or pass legislation. It is not yet clear whether this will apply to the local functions of national bodies, for example Jobcentre Plus.

A function can only be transferred if:

- transferring it will promote economic development and increase local accountability
- the function can be appropriately carried out by the permitted authority
- the permitted authority gives its consent for the transfer

'Permitted authorities' can also submit requests to the Secretary of State asking for the functions of other public bodies to be transferred to them.

When a function is transferred the Secretary of State can:

- change local authority governance arrangements
- transfer current and future property, rights or liabilities from the individual or public body that previously carried out the function (this includes rights and liabilities for employment contracts)

Implications for Wiltshire	Next steps For more information please contact: Frank Cain, Head of Legal Services at frank.cain@wiltshire.gov.uk
The implications will not be clear until the Secretary of State decides which functions should be transferred.	Training will be provided to all Wiltshire councillors and Wiltshire Council staff on the potential uses of this power, including examples of its use elsewhere. The council should explore the use of this power once the full implications are known, including use within the community area.

New arrangements for local authority governance (s21-24, Schedule 2)	Status: regulations on transitional arrangements in force from 4 May 2012

The Act gives **all** local authorities freedom to choose from the following models of governance:

- executive arrangements with a directly elected mayor
- executive arrangements with a leader and cabinet - the chairman or vice-chairman of a local authority cannot be a member of the executive and a maximum of ten councillors can be on the executive
- a committee system
- arrangements prescribed by the Secretary of State – local authorities can submit proposals to the Secretary of State asking him to make specific arrangements and the Secretary of State has power to impose governance arrangements on local authorities

The Act requires local authorities using executive arrangements to set up an overview and scrutiny committee (and sub-committees), which should:

- be able to report to the executive (cabinet) or authority (full council) on any aspect of council business or any other matters that affect residents or the local area
- be able to scrutinise decisions or action taken by the local authority when discharging any of its functions
- have power to ask 'partner authorities' to have regard to its reports and recommendations
- review and scrutinise flood risk management (as the council is a lead flood authority)
- not include any members of the executive - people who are not councillors can be included but they usually do not have any voting rights
- be supported by a designated scrutiny officer who is not the head of paid service, the monitoring officer or the chief financial officer
- have arrangements to allow councillors that do not sit on scrutiny committees to refer matters to them
- include church and parent governor representatives with voting rights at any committee or sub-committee concerned wholly or partly with scrutinising the executive's arrangements for education

Implications for Wiltshire	Next steps For more information please contact: John Quinton, Head of Democratic Services at john.quinton@wiltshire.gov.uk
There are no implications at this stage.	No action is required.

Clarification on the rules of predetermination (s25)	Status: in force from 15 January 2012
This section clarifies how the common law concept of predetermination applies to councillors. Predetermination occurs where someone has a closed mind and is unable to apply their judgment fully and properly to an issue requiring a decision. This can lead to legal challenges and decisions being set aside. The Act makes it clear that a councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A councillor is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it. However, the general position remains that, whatever their views, councillors must approach decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.	
Implications for Wiltshire	Next steps For more information please contact: Frank Cain, Head of Legal Services at frank.cain@wiltshire.gov.uk
This section of the Localism Act clarifies the existing law on predetermination: it is intended to allow councillors to play an active part in local discussions as community leaders before decisions are made without being liable to legal challenge.	Guidance on the new rules has already been issued to all Wiltshire councillors. The council's Code of Good Planning Practice is currently being revised to reflect the new rules.

New approach to local authority standards and abolition of the Standards Board and existing standards regime (s26-37)	Status: Standards Board for England abolished on 1 April 2012, other measures expected July 2012, regulations for pecuniary interests expected 1 July 2012

The Act abolishes the current standards regime, including the statutory model code of conduct for councillors, the national regulatory body, Standards for England, local authority statutory standards committees and the jurisdiction of first tier tribunals in relation to appeals on code of conduct complaints.

It places a duty on all relevant authorities (including parish councils) to promote and maintain high standards of conduct by members and voting co-opted members. Local authorities may establish a standards committee to assist them in discharging this duty.

Local authorities, **including** parish councils are required to adopt a code of conduct which:

- is consistent with the principles of selflessness; integrity; objectivity; accountability; openness; honesty and leadership

- includes such provision as the authority considers appropriate for the registration and disclosure of pecuniary and non-pecuniary interests. Regulations dealing with the registration and disclosure of 'disclosable pecuniary interests' are expected 1 July 2012. Breach of the requirements relating to disclosable pecuniary interests without reasonable excuse will amount to a criminal offence.

The Monitoring Officer is required to establish and maintain a register of members' interests for the principal authority and all parish councils in its area. This must be available for inspection and published on the principal authority's website and on the parish council's website if it has one.

Principal authorities must put in place arrangements for investigating and determining complaints under the code of conduct and deciding what action to take where there is a breach of the code. This includes the appointment of at least one independent person whose views must be sought and taken into account before a decision is made on an allegation that has been investigated. A councillor who is the subject of a complaint may also consult the independent person. There are detailed rules on who is eligible for appointment as an independent person.

Complaints against members of parish councils must be dealt with under the arrangements adopted by their principal authority. Any consequential action in the event of a breach of the code rests with the parish council.

Local authorities (including parish councils) may grant dispensations on the grounds set out in the Act to enable councillors to participate in or vote at meetings where they have a disclosable pecuniary interest.

Transitional regulations on the transfer to the new arrangements are awaited.

All local authorities must publicise the adoption, revision and replacement of a code of conduct

in a way that is likely to bring it to the attention of local residents.

A more detailed briefing note on the implications of this part of the Act can be found here.

Implications for Wiltshire	Next steps For more information please contact: Ian Gibbons, Director of Law and Governance and Monitoring Officer at ian.gibbons@wiltshire.gov.uk
Wiltshire Council needs to decide: • whether it wishes to have a standards committee • what code of conduct should be adopted • arrangements for dealing with complaints under the code of conduct • arrangements for the appointment of independent persons • arrangements for granting dispensations • the level of support it will provide to parish councils to implement the new standards framework Parish, town and city councils will need to decide: • whether they wish to have a standards committee • what code of conduct they wish to adopt - adoption of Wiltshire Council's code of conduct is recommended • arrangements for dealing with dispensations	Work on these issues is already underway. This involves the Constitution Focus Group, Group Leaders, the Standards Committee and a Standards Task and Finish Group set up by the Standards Committee for this purpose. On 7 March 2012 the Standards Committee considered draft documents, including: • the terms of reference for a new standards committee • the proposed procedure for dealing with complaints • the job description and person specification for the independent person Wiltshire Council will develop a code of conduct which will take into account: • expected regulations on interests and any national template code • any national template code that emerges from discussions between the Local Government Association, National Association of Local Councils and the Association of Council Secretaries and Solicitors We will involve parish, town and city councils as much as possible in the development and implementation of these arrangements. The Standards Committee's recommendations will be considered at full council on 15 May 2012. We will arrange a briefing for Wiltshire Councillors before this date.

Requirement for more pay accountability (s38-42)	Status: in force from 15 January 2012
Local authorities and fire authorities must prepare an annual statement for each financial year which sets out the authority's policies on: • the pay of its chief officers (head of paid service, monitoring officer, statutory and non-statutory chief and deputy chief officers) • the pay of its lowest paid employees (including the definition of lowest paid employees and reasons for adopting that definition) • the relationship between the pay of chief officers and employees who are not chief officers The council's pay policy statement for the financial year 2012-13 must be approved by full council before 31 March 2012 and published as soon as possible afterwards. The government has published guidance for local authorities.	
Implications for Wiltshire	**Next steps** For more information please contact: Barry Pirie, Service Director for HR and Organisational Development at barry.pirie@wiltshire.gov.uk
Wiltshire Council needs to produce a pay policy statement which includes information about how pay is determined for all employees, and the ratio between pay for chief officers and the lowest paid council employees.	A pay policy statement was written and approved by Staffing Policy Committee on 22 February 2012. The statement was approved by full council on 28 February. The pay policy statement will be published on the Wiltshire Council website at the start of the new financial year in April 2012.

Power to require public authorities to pay EU fines (s48-56)	Status: unclear, consultation closes 22 April 2012

The Act gives government ministers power to require a 'public authority' to pay all, or part, of a financial sanction imposed on the UK by the European Court of Justice for failure to take action to remedy a breach of EU law.

A 'public authority' is a local authority, or any other body or person that has non-devolved public functions.

To require a public authority to pay a financial sanction, ministers will need to:

- issue an order designating a named public authority in relation to any specific breach of EU law – this should describe the activities of the public authority
- obtain approval for the order from both houses of parliament - only acts or omissions which take place **after** the order has been issued can be taken into account by ministers when they pass on a financial sanction
- set up an independent advisory panel
- issue a warning notice
- take into account an evidenced (and published) report from the independent advisory panel with recommendations on the apportionment of the sum to be paid and any future penalties under the EU financial sanction
- invite representations from the public authority on its ability to pay and the potential impact on its finances
- issue a final notice

The Secretary of State is consulting on a policy statement to be followed by ministers and independent panels that use these powers.

Implications for Wiltshire	Next steps For more information please contact: Michael Hudson, Director of Finance at michael.hudson@wiltshire.gov.uk
There are no implications at this stage.	The council will respond to the Secretary of State's consultation on the policy statement on power for ministers to pass EU financial sanctions to local authorities.

Greater control over business rates/ non-domestic rates (s68-71)	Status: cancellation of backdated business rates in force from 15 January 2012, discretionary relief in force from 1 April 2012, other measures expected April 2012

The Act gives local authorities power to provide discretionary business rates relief in any circumstance subject to two conditions:

- that granting relief can be considered 'reasonable' from the perspective of council tax payers in the local area
- that the authority has regard to any relevant guidance issued by the Secretary of State – the Secretary of State has not issued any new guidance, but the current guidance (which relates to the previous provisions), is very restrictive and it is unclear whether this will be revised

The House of Commons has issued a briefing note on the new power for local authorities to provide discretionary business rate relief in any circumstance. The briefing note suggests that:

- local authorities must be careful not to break state aid rules
- the government will continue to part fund discretionary rate relief for small rural businesses, charities, non-profit organisations and individuals experiencing hardship
- any discretionary rate relief for other ratepayers will need to be funded locally

The Act also:

- introduces a new small business rate relief scheme, which no longer requires ratepayers to apply for small business rate relief
- gives the Secretary of State power to introduce conditions to cancel backdated business rates if a property is incorrectly shown in a local business rates list compiled on 1 April 2005 (in force from 15 January 2012)
- changes the ballot requirements for proposals to introduce a Business Rate Supplement. Business Rate Supplements allow upper tier local authorities to introduce an additional charge on business rates which can be used to fund specific projects in their local area. A ballot of everyone eligible to vote in the local area is now required for all Business Rate Supplements. Currently a ballot is only needed if the money raised from the supplement will be used to fund more than a third of the total cost of the project

Implications for Wiltshire	Next steps For more information please contact: Ian Brown, Head of Revenues and Benefits at ianp.brown@wiltshire.gov.uk
The council introduced a new discretionary rate relief policy in April 2011. This pre-empted the requirements of the Localism Act.	The council will explore the potential and viability of supporting specific types of businesses through discretionary relief, for

Although awards in the past have not explicitly taken the perspective of the council taxpayer into account, this has always been the underlying and implicit aim of the council's policy.	example businesses that support corporate social responsibility, are listed as assets of community value or new town centre start ups.

Referendums for 'excessive' council tax increases (s72-80)	Status: in force now for billing authorities and upper tier authorities, not in force for parish councils until at least April 2013

The Act removes the Secretary of State's power to cap council tax increases and introduces a new power for the Secretary of State to produce a set of principles which will be used to decide whether local authority council tax increases are 'excessive.' If a proposed council tax increase is considered 'excessive,' the local authority will be required to hold a referendum.

The Secretary of State can set different principles for different types of local authorities. For example a different set of principles could be used to decide whether a council tax increase is 'excessive' for unitary councils and district councils. The principles must include a comparison between the proposed amount of council tax and the previous year's council tax. The principles also need to be approved by the House of Commons.

Billing authorities (for example unitary authorities, upper tier authorities (such as county councils) and local precepting authorities (such as town and parish councils) that want to set 'excessive' council tax increases will have to:

- hold a referendum within a time-frame specified by the Secretary of State - local precepting authorities will need to notify the billing authority of the requirement to hold a referendum and the referendum will be arranged by the billing authority which can recover the costs of holding it from the local precepting authority
- make 'substitute' council tax calculations which are below the level considered 'excessive' – these will be used as the basic amount of council tax if the referendum is rejected
- inform the Secretary of State of the result of the referendum

If a local authority is unable to carry out its functions or balance its budget without setting an 'excessive' council tax increase, the Secretary of State can:

- remove the requirement to hold a referendum for one financial year
- set the amount of council tax for the local authority – until the local authority has changed its calculations to match the amount of council tax set by the Secretary of State, it cannot transfer any money from the collection fund to its general fund (where this applies to a local precepting authority, the billing authority will not be able to transfer any money)

The Act changes the way basic amounts of council tax are calculated by:

- removing the obligation to calculate a 'budget requirement' (the amount that the local authority requires from council tax, revenue support grant, redistributed business rates and other income sources), and
- replacing it with an obligation to calculate a 'council tax requirement' (the amount that the local authority requires from council tax to finance its budget for the year based on expected outgoings and income)
- introducing a requirement for billing authorities to calculate their basic amount of council tax by dividing the council tax requirement by the council tax base.

The Secretary of State can make regulations to alter the rules for calculating the council tax requirement and council tax base.	
Implications for Wiltshire	Next steps For more information please contact: Ian Brown, Head of Revenues and Benefits at ianp.brown@wiltshire.gov.uk
For an organisation the size of Wiltshire Council any referendum will be extremely costly and complex. The council's ambition should be to maximise income through prompt and efficient collection and recovery processes, rather than focusing on excessive council tax increases. The impact for Wiltshire's parishes is more significant: it is not uncommon for parish councils to increase their precepts by 50 percent or 100 percent where the precept is only a few pounds.	The council will give details of the proposals to all town and parish councils. This will ensure they avoid having to undertake a referendum where the cost of the referendum would outweigh the additional income from the 'excessive' increase.

Community right to challenge (s81-86)	Status: regulations expected 30 May 2012

The Act introduces a new right for voluntary and community bodies (that do not make a profit or who use their profits to benefit the community), charities, parish councils and employees to express an interest in providing (or helping to provide) a local authority service.

The Secretary of State will make regulations to:

- specify what an expression of interest should contain
- exclude certain types of services from the community right to challenge
- change the types of bodies that are able to use and have to respond to the community right to challenge
- amend the process local authorities must follow when they receive expressions of interest

Local authorities must consider expressions of interest if they are submitted in writing by a 'relevant body' and comply with requirements outlined by the Secretary of State in regulations.

Although expressions of interest can be submitted at any time, local authorities can:

- set time periods when expressions of interest can be submitted for a particular service - these time periods must be published on the local authority's website
- refuse to consider expressions of interest submitted outside of these time periods - if no time period is specified expressions of interest can be submitted at any time.

The Act outlines the procedure local authorities should follow after receiving an expression of interest. They should:

- publically accept, change or reject the expression of interest in writing – an expression of interest can be altered if the local authority would otherwise reject it and the body that submitted it agrees to the changes
- consider how the expression of interest could promote or improve the social, economic and environmental well-being of the local area

When an expression of interest is accepted a local authority must:

- carry out an **open** procurement exercise for the service and consider how the procurement exercise could promote or improve the social, economic and environmental well-being of the local area
- let the body know the minimum and maximum period between accepting the expression of interest and starting the procurement exercise
- publish details of the service specification on its website

The Secretary of State can also provide advice and assistance (including financial assistance, education or training) for 'relevant' bodies wishing to use the community right to challenge.

Implications for Wiltshire	Next steps For more information please contact: Tony Brett, Head of Procurement at tony.brett@wiltshire.gov.uk
The community right to challenge should be considered in the context of the Public Services (Social Value) Act 2012 which requires all local authorities to take social, economic and environmental wellbeing into	The council will: • set up an internal group of procurement and commissioning practitioners to discuss the implications for future procurement

account at the pre-procurement stage. The council will need to set up a mechanism to receive and respond to expressions of interest from voluntary and community bodies and internal staff. Where the council accepts an expression of interest it must carry out a procurement exercise. The council will need to consider this additional resource requirement alongside its existing planned procurement programme.	activity. This group will be set up by 30 April 2012. • develop an outline approach to dealing with expressions of interest under the community right to challenge, including timescales and the criteria for a valid expression of interest. The outline approach should be ready by 30 May 2012. • review and refine its approach to dealing with expressions of interest – this will take place by 30 June 2012 after the government has published guidance (expected 30 May 2012). • develop and publicise a clear policy on how voluntary and community bodies and employees can exercise the community right to challenge. The policy should be ready by 31 July 2012. • consider the support the voluntary and community sector might need to take up this right successfully in the development of a new voluntary and community support strategy. This action will be taken by Niki Lewis, Service Director for Communities, Libraries, Heritage and Arts. For more information, please contact niki.lewis@wiltshire.gov.uk.

Community right to bid for assets of community value (s87-108)	Status: regulations expected 25 July 2012

The Act places a legal duty on all local authorities to maintain a publicly available list of assets of community value.

A building or land in a local authority's area is an asset of community value **if in the opinion of the authority**:

- current primary use of the building/land or use of the building/land in the recent past furthers the social well-being or social interests (cultural, recreational, or sporting interests) of the local community
- it is realistic to think that now or in the next five years there could continue to be primary use of the building/land which will further the social well-being or social interests of the local community

Local authorities will have some say over the form of the list. Listed assets will be removed from the list after five years. Land and buildings can **only** be listed as community assets if this is permitted by regulations made by the Secretary of State and a parish council or 'voluntary or community body' with a 'local connection' has submitted a 'community nomination.' Listed assets will also need to be entered on the local land charges register.

Owners of listed assets cannot dispose of them without:

- letting the local authority know that they intend to sell the asset or grant a lease of more than 25 years
- waiting until the end of a six week 'interim moratorium' period if the local authority does **not** receive a request from a community interest group to be treated as a potential bidder
- waiting until the end of a six month 'full moratorium' period if the local authority **does** receive a request from a community interest group to be treated as a potential bidder

The owner does **not** have to sell the asset to the community group.

There is also a 'protected period' (18 months from the time that the owner notified the local authority of their intention to dispose of the asset) – during this time there can be no further moratoriums.

Local authorities have a legal duty to:

- consider community nominations and list buildings/ land as community assets if they meet the criteria
- write to unsuccessful community nominators and explain why they have decided not to list the building/land as a community asset
- give written notice of the inclusion or removal of buildings/land from the list of community assets to the owner of the building/land, the occupier of the building/land, the community nominator and anyone else specified in regulations made by the Secretary of State
- draw the owner's attention to the consequences of their building/ land being listed as a community asset and the right to ask for the decision to be reviewed by the local authority
- maintain a publically available list of unsuccessful community nominations, which explains why these nominations were unsuccessful
- make the community nominator and local residents aware when the owner of a listed

asset gives notice of their intention to sell – the local authority is also responsible for updating the entry for the listed asset to include the owners intention to sell and dates for the end of the 'interim' and 'full' moratorium periods and 'protected period'
- notify the owner of a listed asset of a written request from a community interest group to be treated as a potential bidder

The Secretary of State has powers to introduce regulations that set out:

- the types of buildings/land that are **not** of community value – regulations may be based on the owner of the building/land, the occupier of the building/land, the nature of the building/land, the use to which the building/land has been, is being or could be put and the price or value of the building/land
- the contents of the 'community nomination' and the exact meaning of 'voluntary or community body with a local connection' and 'community interest group'
- the procedures local authorities must follow when deciding whether to list buildings or land as community assets
- the procedures local authorities must follow when reviewing decisions to list buildings or land as community assets
- who will be eligible for compensation, how compensation will be calculated and who will be required to pay compensation (depending on the regulations this may apply to local authorities)
- how enforcement action will be carried out

Implications for Wiltshire	Next steps For more information please contact: Brad Fleet, Director of Development Services at brad.fleet@wiltshire.gov.uk
The council regularly receives applications for the change of use of public houses, some of which may be classed as community assets in future. One of the current planning tests of acceptability is evidence that the owner has genuinely tried to sell the premises as a going concern at a market price. The problem has always been agreeing the market value. The council may now have to value each of these assets and presumably cover the cost by placing a charge on the land. The council presumes that any compensation paid as a result of lost income from a delayed sale will be covered by central government funding. Compensation may also need to be paid to avoid breaching Article 1 of the Human Rights Act – the right to protection of property. It is not clear whether the local authority will be required to pay this compensation, but it could be very sizeable. It may also be possible for claimants of	After regulations are published, the council will need to establish clear, county-wide criteria for assets of community value, prepare a list of community assets and set up an evaluation process. The list of assets will be maintained and monitored by a Wiltshire Council officer who will notify interested parties when a listed community asset is placed on the market. The council will need to take enforcement action in line with the regulations in cases where a premature sale takes place. The council's spatial planning team currently produces an Annual Monitoring Report of land use changes linked to the delivery of the spatial plan. With the new GIS spatial monitoring system, it would be simple to include the establishment and monitoring of community assets. The council will need to introduce arrangements to deal with appeals against properties being listed as community assets. This could include Area Boards using local

compensation to argue that a delay on the part of the council or a failure to follow correct processes exacerbated the problem and increased the amount of lost income. These types of claims are difficult to prove but they can be expensive to fight.	knowledge and county-wide criteria to decide/advise on appeals.

Abolition of regional planning strategies (s109)	Status: in force now, abolition order expected 30 April 2012

The Act abolishes responsible regional planning authorities and the regime for regional planning strategies. At present regional planning strategies remain in force.

It also gives the Secretary of State power to order the abolition of all or part of any previous structure plan policies that were saved as part of the transition to core strategies. Structure plan policies provided a strategic policy framework for land use planning, development and transport.

These provisions came into force when the Act received Royal Assent, but regional planning strategies are likely to continue until at least 20 January 2012 when the government's consultation on the environmental impact of abolishing regional planning strategies finishes. The government intends to issue an order revoking all existing regional spatial strategies and saved structure plan policies as soon as possible.

Implications for Wiltshire	Next steps For more information please contact: Alistair Cunningham, Service Director for Economy and Enterprise at alistair.cunningham@wiltshire.gov.uk
The Adopted Regional Spatial Strategy for the South West (RPG10) has already been implemented at the local level through the Wiltshire and Swindon Structure Plan 2016. As a result of the Localism Act, the more recent draft Regional Spatial Strategy (RSS) for the South West 2006 – 2026 has been abandoned and will not be adopted. Until the draft RSS is formally abolished, the council will need to make sure that the Wiltshire Core Strategy is in general conformity with the draft RSS unless new evidence overrides policies within the RSS. The saved policies of the Wiltshire and Swindon Structure Plan form the most up to date part of the statutory development plan which contains a consistent policy for Wiltshire as a whole.	The council will: • progress locally derived employment land and housing requirements for the period 2006 to 2026, based on up to date evidence, as part of the emerging Wiltshire Core Strategy • implement the recently adopted South Wiltshire Core Strategy – this includes locally derived levels of new employment land and homes and will be used to inform decisions on planning applications in South Wiltshire • continue to prepare the Wiltshire Core Strategy – it will be submitted to the Secretary of State for independent examination by early July 2012. The Wiltshire Core Strategy will ensure consistent, up to date planning policy across the whole of Wiltshire as soon as possible. The Wiltshire Core Strategy will include the recently adopted South Wiltshire Core Strategy • use the emerging Wiltshire Core Strategy to determine planning applications as well as the council's decisions on investments relating to

	the use and disposal of land and regeneration activities

Legal duty to cooperate when planning sustainable development (s110)	Status: in force now

The Act places a legal duty on local planning authorities, county councils and other statutory bodies (to be defined in regulations) to co-operate with each other.

They will be required to:

- engage constructively, actively and on an ongoing basis when preparing development plans, marine plans and other local development documents for 'strategic' activities, such as sustainable development or infrastructure that would have a significant impact on at least two planning areas
- have regard to the activities of each other
- consider whether to consult on, prepare and publish agreements on joint approaches to 'strategic' planning activities
- consider whether to prepare joint local development documents (this only applies to local planning authorities)
- comply with all guidance issued by the Secretary of State on how to comply with the legal duty to cooperate

Implications for Wiltshire	Next steps For more information please contact: Alistair Cunningham, Service Director for Economy and Enterprise at alistair.cunningham@wiltshire.gov.uk
As a new unitary authority Wiltshire Council is already working over a large geography and taking strategic implications into account across a wide area. The council will need to: • develop the expertise of its officers in strategic planning matters • re-establish its strategic planning role • review and reinvigorate its relationships and working arrangements with neighbouring planning authorities in Gloucestershire, the West of England, Somerset, Berkshire, Dorset and Hampshire.	The council will: • respond to formal and informal consultations on planning policy documents prepared by other local planning authorities and statutory bodies defined by the Localism Act and actively engage in the preparation of strategic policy • develop appropriate Officer/Councillor working arrangements with all adjoining local authorities • monitor the activities of adjoining local authorities • exploit opportunities for joint working, building on existing efficient joint working arrangements developed with Swindon Borough Council on Minerals and Waste planning policy matters

Changes to the approval process for local development schemes and development plan documents (s111 – 113)	Status: in force from 15 January 2012

Local development schemes set out the timetable for local planning authorities to produce development plan documents which are used to make decisions on planning applications.

The Act changes the way local development schemes are approved by:

- removing the requirement for local planning authorities to submit local development schemes to the Secretary of State
- introducing a new requirement for local planning authorities to publish their local development scheme, including any changes to the scheme and up to date information on progress against the timetable
- limiting the powers of the Secretary of State to make changes to local development schemes – the Secretary of State can only order changes for the purpose of ensuring 'effective coverage' of the local authority's area

The Act also changes the process for approving and withdrawing development plan documents:

- if it is reasonable to conclude that development plan documents are sound and meet the statutory requirements, the planning inspector must recommend that they are adopted

- if the local planning authority prepared the documents correctly, but the documents are not sound or do not meet the statutory requirements, the local planning authority can ask the planning inspector to recommend changes that would make the documents suitable for adoption – the planning inspector can **only** recommend changes if he or she is requested to by the local planning authority

- local planning authorities can change development plan documents after the inspector has recommended approval as long as the changes do not 'materially affect' the policies in the development plan

- if the inspector recommends non-adoption and changes to the development plan documents that would make it suitable for adoption, local planning authorities can adopt the documents with the main changes recommended by the inspector and any other changes that do not 'materially affect' the policies in the modified development plan

- local planning authorities can withdraw a development plan document any time before its adoption without a recommendation from the planning inspector or an order from the Secretary of State

- the Secretary of State still has powers to order a local planning authority to withdraw a development plan document before it is adopted

- local planning authorities will no longer be required to submit annual reports on the implementation of local development schemes and development plan documents to the Secretary of State - instead they will need to publish this information annually.

The new process will apply to **all** development plan documents that are adopted after the provisions come into force (after 15 January 2012), including those that have been inspected

but have not been adopted.	
Implications for Wiltshire	Next steps For more information please contact: Alistair Cunningham, Service Director for Economy and Enterprise at alistair.cunningham@wiltshire.gov.uk
The Act means the council will: • no longer be required to submit Local Development Schemes to the Secretary of State for approval • need to publish its Local Development Scheme, including any changes to the scheme and up to date information on progress against the timetable • comply with the requirements of the Localism Act when preparing development plans • no longer be required to submit a single annual monitoring report to the Secretary of State each year or to provide data on national indicators • still be required to publish reports covering annual data sets	The council will: • continue to publish up-to-date information on progress against timescales within Local Development Scheme on the Wiltshire Council website and review as appropriate • continually review and improve its monitoring systems to ensure data is collected, analysed and reported on efficiently and effectively

Reform of the Community Infrastructure Levy (s114-115)	Status: in force from 6 April 2012, regulations expected 25 July 2012

The Community Infrastructure Levy (CIL) allows local planning authorities to charge a levy on new development in their area in order to raise funds to meet the associated demands placed on the area and enable growth.

The Act changes the process for setting and approving Community Infrastructure Levy charges by introducing:

- a requirement for local planning authorities to set their charging schedules based on 'appropriate available evidence' (to be determined in regulations by the Secretary of State)
- a requirement for the independent examiner to consider whether the local planning authority has complied with the CIL regulations when setting the charging schedule:
    - if the local planning authority has not complied with the regulations and no changes could be made to the charging schedule to make it compliant the examiner must recommend that the charging schedule is rejected - local planning authorities cannot adopt a charging schedule if the examiner has recommended rejection
    - if changes could be made to the charging schedule to make it compliant with the regulations, the examiner must recommend that the charging schedule is approved with these changes

- very limited discretion for local planning authorities to choose how they respond to changes suggested by the examiner:
    - a local planning authority must have regard to the reasons for the changes suggested by the examiner and can **only** introduce changes that are 'sufficient and necessary' to ensure compliance with the regulations identified by the examiner. They will also be required to publish a report explaining how the charging schedule complies with the regulations.
    - a local planning authority cannot approve a charging schedule if the examiner recommends rejection.

The Act amends the purpose of the Community Infrastructure Levy by:

- explicitly requiring the CIL regulations to make sure local planning authorities will not be able to impose levy charges that make it 'economically unviable' to develop their areas because landowners and developers will be unable to meet the costs of the levy

- widening the definition of 'infrastructure' to include the future maintenance and operating costs of infrastructure

- extending the permitted uses of levy receipts so that they can be applied to a matter that supports development by addressing the demands that it places on the area

- allowing the CIL regulations to require local planning authorities to consider the costs of, and expected sources of funding for, anything other than infrastructure that will address the demands that development places on an area.

The Act also introduces a legal duty to pass levy receipts to other bodies specified by the CIL regulations. The regulations will:

- ensure levy receipts passed to other bodies are only used to support the provision, improvement, replacement, operation or maintenance of infrastructure; or, anything else that addresses the demands development places on an area
- provide details of how levy receipts can be passed to other bodies, including the monitoring, reporting and accounting responsibilities of the local planning authority and bodies that have been given CIL receipts

A government consultation on the draft community infrastructure regulations closed on 30 December 2012.

Implications for Wiltshire	Next steps For more information please contact: : Alistair Cunningham, Service Director for Economy and Enterprise at alistair.cunningham@wiltshire.gov.uk
The council will need to develop a Community Infrastructure Levy (CIL) charging schedule and a set of administration procedures which comply with the requirements of the Localism Act. The government's consultation on draft CIL regulations focused on: • whether affordable housing should be part of CIL • how CIL should be distributed and spent locally The final regulations are expected 25 July 2012. The development of a CIL charging schedule depends on the emerging Wiltshire Core Strategy because: • the Infrastructure Delivery Plan that underpins the emerging Wiltshire Core Strategy will be a key part of the evidence base for the CIL charging schedule • the council's ability to become a charging authority for CIL depends on the development and progression of the Wiltshire Core Strategy The current process of negotiating section 106 agreements for individual planning applications is time consuming and can delay development. A uniform set of county-wide contributions will reduce debate and speed up the development process.	The council will: • introduce the Community Infrastructure Levy (CIL) within the timeframe specified by the government to make sure contributions can be collected • update its CIL project plan to incorporate the provisions of this section of the Localism Act and regulations from the government (expected 25 July 2012) • prepare a CIL charging schedule and develop arrangements to collect CIL and monitor the expenditure. The charging schedule will meet (or be ready before) the milestones set in the council's Local Development Scheme • consider publishing online, real time information on CIL receipts • work with Area Boards and town/parish councils to liaise with appropriate local stakeholders – this will help the council identify community infrastructure requirements, establish local priorities and implement mechanisms for administering CIL receipts

Neighbourhood planning (s116-122, schedules 9-12)	Status: in force from 6 April 2012, general regulations passed 6 March 2012, regulations for referendums expected 25 July 2012

The Localism Act makes a number of changes to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to introduce neighbourhood planning. This includes:

- *neighbourhood development plans* – these allow parish councils (or 'neighbourhood forums' if there is no parish council) to lead on the development of local policies for the development and use of land in a neighbourhood area
- *neighbourhood development orders* - orders prepared by parish councils (or 'neighbourhood forums' if there is no parish council) which grant planning permission for specific development in a particular neighbourhood area.

The Act places a legal duty on local planning authorities to:

- designate 'neighbourhood areas' when parish councils or bodies capable of being designated as 'neighbourhood forums' where there is no Parish Council (comprised of a minimum of 21 individuals who live or work in the neighbourhood area, including unitary councillors) apply to be designated as neighbourhood areas
- have regard to the 'desirability' of designating existing parish council areas as neighbourhood areas
- follow the procedure for considering neighbourhood development plans and orders outlined in the Act and regulations from the Secretary of State

Neighbourhood development plans:

Unless there are other material considerations, decisions on applications for planning permission must be made in accordance with neighbourhood development plans. According to the draft National Planning Policy Framework (NPPF) neighbourhood development plans must conform to the Local Plan, i.e. the Wiltshire Core Strategy.

The Act provides detail on the expected form and contents of neighbourhood development plans and gives the Secretary of State power to make further regulations. A neighbourhood development plan must:

- specify the period for which it has effect
- not include any references to 'excluded development' (including nationally significant infrastructure projects and minerals and waste)
- only relate to one neighbourhood area – a neighbourhood area cannot have more than one neighbourhood development plan

Neighbourhood development orders:

Neighbourhood development orders cannot apply to more than one neighbourhood area and the local planning authority cannot consider more than one neighbourhood development order for the same neighbourhood area at the same time. Planning permission under a neighbourhood development order can be granted:

- unconditionally; or,

- subject to conditions which specify that the local planning authority must give approval for some of the work permitted under the order - regulations from the Secretary of State may allow parish councils to give approval for work permitted under neighbourhood development orders.

Neighbourhood development orders can be revoked by the Secretary of State or the local planning authority (with the consent of the Secretary of State or to correct errors in the development order). Legal challenges to neighbourhood development orders can only take place if a claim for judicial review is filed within six weeks of the day when the decision was published.

Procedure for introducing neighbourhood development plans and orders:

The procedures for introducing neighbourhood development plans and making neighbourhood development orders are very similar. Proposals for neighbourhood development plans and orders will need to be submitted to the local planning authority by parish councils or 'neighbourhood forums'.

The Act gives the Secretary of State power to make regulations on:

- the expected standards for draft neighbourhood development plans or orders, including documents and information that must accompany proposals for plans or orders
- consultation which must be undertaken by the parish council or neighbourhood forum before proposals for plans or order are submitted to the local planning authority

It also requires local planning authorities to:

- give appropriate advice and non-financial assistance to parish councils or neighbourhood forums to help them make proposals for neighbourhood development plans and orders
- check whether the application meets the requirements of legislation and regulations
- submit the draft neighbourhood development plan or order for 'independent examination' by an independent person with appropriate qualifications who has no interest in the land affected by the draft plan or order (the local planning authority may be required to pay the independent person for their services). The independent examiner will consider whether the plan or order is appropriate in relation to national policy, the strategic policies of the local development plan for the area (i.e. the Wiltshire Core Strategy once adopted) and EU obligations
- hold a referendum on the neighbourhood development plan or neighbourhood development order in the relevant neighbourhood area (this may include an additional referendum if the neighbourhood area has been designated as a 'business area')
- bring the neighbourhood development plan into force or make the neighbourhood development order as soon as reasonable practicable if more than half of those voting in each relevant referendum have voted in favour of the plan. This does **not** apply if the planning authority considers that bringing the plan into force would be incompatible with any EU obligations or any rights under the Human Rights Act. In these circumstances the planning authority must follow a procedure set out in regulations by the Secretary of State
- publish all decisions to accept or reject neighbourhood development plans, including the reasons for making the decision
- follow the procedure for dealing with neighbourhood development order requests set out in regulations from the Secretary of State (the government is currently consulting on these regulations)

Local authorities can refuse to consider 'repeat proposals.' A proposal is a 'repeat proposal' if

a similar proposal has been refused by the local authority or the subject of an unsuccessful referendum within the last two years and there has been no 'significant change' in national policies or guidance or the strategic policies of the local development plan.

Charges to recover costs incurred by neighbourhood planning

The Act gives the Secretary of State power to make regulations on the introduction of charges to cover expenses incurred by local planning authorities when exercising their neighbourhood planning functions.

A charge will need to be paid to a local planning authority when development under a neighbourhood planning order is commenced. Regulations may allow liability for the charge to be passed to land owners and developers before or after the charge becomes due.

Regulations will make provision for enforcement to collect unpaid charges and unpaid charges will be treated as a collectible civil debt due to the local planning authority.

The Act also gives the Secretary of State power to provide financial assistance for neighbourhood planning, for example to help a neighbourhood forum draft a neighbourhood development plan or order.

Implications for Wiltshire	Next steps For more information please contact: Alistair Cunningham, Service Director for Economy and Enterprise at alistair.cunningham@wiltshire.gov.uk
Neighbourhood planning will provide an opportunity for parish councils to lead on the preparation of neighbourhood development plan(s) for their area. Neighbourhood development plans must conform with the existing and emerging Local Development Plan, particularly the emerging Wiltshire Core Strategy. Localism Act introduces a new legal duty for Wiltshire Council (as local planning authority) to support the preparation and administration of neighbourhood planning. Neighbourhood planning will be a potentially onerous and resource intensive process for the council and participating town/parish councils. Full legislation is not currently in place for Neighbourhood Planning – the government is expected to publish the remaining regulations on 25 July 2012.	The council will: • provide workshops for town/parish councils to improve their understanding and knowledge of neighbourhood planning. In March 2012 the council held four events for rural parishes and market towns which focused on the relationship between neighbourhood planning and the emerging Wiltshire Core Strategy • develop guidance and a Wiltshire Neighbourhood Planning web-portal to provide accessible information on neighbourhood planning in Wiltshire. This will include information on projects (such as the Wiltshire's 'front-runner' pilot projects) and guidance on the legality of multiple parishes working together • provide guidance which explains that neighbourhood plans are not compulsory and outlines the choices parishes will need to make when deciding whether a neighbourhood plan is appropriate for them

	• develop procedures to manage the neighbourhood planning process – these will cover governance arrangements and the potential recovery of costs through charges • respond to all government consultations on regulations for neighbourhood planning

Requirement for developers to consult local communities before submitting applications for planning permission (s122)	Status: regulations expected 1 October 2012

The Act introduces a requirement for developers to consult local communities before submitting applications for planning permission.

Before submitting planning applications developers will need to:

- publicise the proposed application in a way that is likely to bring it to the attention of the majority of people who live near the land – this must include information about the length of the consultation and how the developer can be contacted
- consult anyone specified in the development order
- have regard to any advice about good practice for consultation provided by the local planning authority
- consider any comments or responses received during the consultation when deciding whether to make any changes to their proposed planning application
- submit an account of the consultation to the local authority with their planning application

The Act also gives the Secretary of State power to introduce regulations which set out the detail of how developers should consult local communities.

Implications for Wiltshire	Next steps For more information please contact: Brad Fleet, Director of Development Services at brad.fleet@wiltshire.gov.uk
The council will need to add pre-submission consultation to the current planning application validation checklist. Officers will need to assess evidence of consultation before a planning application can be registered. If the evidence is inadequate, this will delay the registration of the planning application. It is likely that these additional consultation requirements will apply to 'major' schemes. Refusing to register applications before adequate consultation has been undertaken may be seen as additional 'red tape'. The council will need a clear policy on what it regards as 'good practice' for consultation on planning applications.	The council will add pre-submission consultation to the planning application validation checklist. This cannot be done until the government publishes regulations (expected October 2012) and the council knows: • the level of consultation required • which types of planning application will require pre-submission consultation The council will review and update its Statement of Community Involvement to reflect the new requirements. The council will issue clear guidance on 'good practice' for consultation with communities before submitting a planning application. For some types of planning applications this may include a requirement to consult Area Boards.

Changes to planning enforcement (s123-127)	Status: in force from 6 April 2012

The Act allows local authorities to refuse to consider planning applications for development that has already taken place in circumstances where an enforcement notice was issued for all or part of the development **before** the planning application was submitted.

It also changes the right to appeal against enforcement notices to prevent appeals against similar developments using both planning application and enforcement routes.

The Act allows local planning authorities to take enforcement action against concealed 'breaches of planning control' (development that has taken place without planning permission or where the developer has failed to comply with the conditions of planning permission) by:

- applying to the magistrates' court for a 'planning enforcement order' – this must be within six months of the day when the local planning authority discovered the breach of planning control and the magistrates' court can only make a 'planning enforcement order' if they are satisfied that the individual has deliberately concealed the breach of planning control
- serving a copy of the application for a planning enforcement order on the individual that will be given an enforcement notice if the order is granted
- including all 'planning enforcement orders' in their enforcement registers

The Act raises the maximum penalty for failing to comply with a notice on the conditions of planning permission from level three on the standard scale (currently £1,000) to level four (currently £2,500). It also gives local planning authorities powers to:

- remove structures which are used for illegal advertisements after a removal notice has been served
- take action against persistent fly-posting on surfaces
- remove signs (including graffiti) that they consider offensive or detrimental to the amenity of the area after an action notice has been served
- remove signs or graffiti at the expense of the owner of a building or land when requested to by the owner

Implications for Wiltshire	Next steps For more information please contact: Brad Fleet, Director of Development Services at brad.fleet@wiltshire.gov.uk
The council will be able to refuse to consider planning applications where: • an enforcement notice has already been issued; or • the applicant is still able to appeal an earlier decision not to grant planning permission. This will reduce delay because work will not be duplicated across a planning appeal and an enforcement appeal. The council will be able to take action against concealed breaches of planning control after the normal time limits for enforcement have	The council will: • refuse to consider planning applications where the legislation allows • seek an order through the Magistrates Court in cases of concealed breaches of planning control Information on the new rules will be published on the Wiltshire Council website.

expired. This will act as a strong deterrent and reduce the number of unauthorised developments. However, the impact on Wiltshire will be minimal because deliberate concealment does not happen very often.	

Changes to the system for approving nationally significant infrastructure projects (s128-142)	Status: in force from 1 April 2012

The Act makes a number of changes to the regime for approving nationally significant infrastructure projects. The changes include:

- abolishing the independent Infrastructure Planning Commission (IPC), transferring all of the IPCs property, rights and liabilities to the Secretary of State (this will be treated as a relevant transfer for the purposes of the TUPE Regulations 2006) and giving the Secretary of State powers to make transitional arrangements for applications received before or after the abolition of the IPC

- giving the Secretary of State the right to appoint an inspector (or panel of inspectors) to examine applications for nationally significant infrastructure projects and make recommendations to the Secretary of State and allowing the Secretary of State to charge fees for the costs incurred in considering applications for planning permission for major infrastructure projects

- requiring the House of Commons to approve all national policy statements and amendments that significantly ('materially') change existing national policy statements- this must be done within 21 sitting days unless the Secretary of State requests an extension (up to another 21 sitting days)

- clarifying the rules for consultation with local planning authorities - where a national policy statement has been changed consultation only needs to be carried out on the changes and not on the whole of the policy statement

- giving the Secretary of State powers to:

    - change the types of consents that are automatically granted when consent is granted for a nationally significant infrastructure project, such as consent under the Electricity Act
    - decide that infrastructure projects below the threshold set in the Planning Act 2008 are nationally significant and require development consent – this power can only be used when the Secretary of State receives a written request and the Secretary of State is required to make a decision with 28 days
    - allow applicants (or proposed applicants) to serve a notice on the landowner requiring them to write to the applicant with the name and address of anyone with an interest in the land or anyone who may be entitled to make a relevant claim for compensation (e.g. for compulsory purchase of the land or a reduction in the value of the land because of public works)
    - require successful applicants for development consent to gain approval throughout the project from the Secretary of State or the local planning authority

- no longer requiring applicants for development consent to publish a statement setting out how local people will be consulted on the proposed application – a statement of when and where the statement can be viewed will still need to be published in a local newspaper

- extending the ability of applicants to compel landowners to allow them to enter their land to survey it – this now applies regardless of whether the applicant is likely to ask for compulsorily purchase of the land

Implications for Wiltshire	Next steps For more information please contact: Brad Fleet, Director of Development Services at brad.fleet@wiltshire.gov.uk
It is unlikely that a nationally significant infrastructure project, such as a major train line or a power station, would take place in Wiltshire. If a nationally significant infrastructure project does take place in Wiltshire, decision making will be taken out of the council's hands. However, the council would be a key consultee in any decision making process.	The council will: • respond to any relevant government consultations on nationally significant infrastructure projects that affect Wiltshire • work with the Swindon and Wiltshire Local Enterprise Partnership as appropriate

Clarification that 'local finance considerations' can be taken into account when assessing planning applications (s143)	Status: in force from 15 January 2012
The Act amends the Town and Country Planning Act 1990 to make it clear that local planning authorities can take 'local finance considerations' into account when assessing planning applications. Local finance considerations are defined as: • grants or financial assistance that are, could be or would be provided to the local authority by a government minister, such as the New Homes Bonus • money that the local authority has received, will receive or could receive from the Community Infrastructure Levy	
Implications for Wiltshire	**Next steps** For more information please contact: Brad Fleet, Director of Development Services at brad.fleet@wiltshire.gov.uk
Previously planning applications were based on compliance with the council's policy and the visual or environmental impact. The Localism Act adds a new consideration: how much money the council will receive if it grants planning permission. This is subjective and very much a political decision. This may make decision making more complicated and less transparent than it is at present.	The council will produce clear and transparent guidelines on the weight it will give to financial considerations in the planning process.

Changes to the system for allocating social housing (s145-147)	Status: unclear, consultation closed 30 March 2012, regulations on preference for armed service personnel expected 1 June 2012

The Act gives local housing authorities power to decide the classes of people that are eligible for social housing and the factors that will be considered when allocating housing. However, the Act also gives the Secretary of State power to make regulations that specify:

- the classes of people that should be given priority
- factors that local housing authorities **cannot** take into account when allocating housing

Local housing authorities will have a legal duty to:

- make sure people who apply to be allocated social housing are informed of their right to free information, advice and assistance
- maintain a social housing 'allocation scheme' which sets out the housing authority's priorities and procedures for allocating social housing
- not allocate social housing to anyone who is already a secure, introductory or assured tenant of private registered provider of social housing or a registered social landlord unless a change of accommodation is needed and has been requested by that individual and the housing authority is satisfied that the individual should be given 'reasonable preference' *

*This takes existing social housing tenants who are not in housing need off the allocations system and leaves them to be dealt with through a system of internal transfers. Although the Act itself does not require it, the changes introduced by the Act imply that registered providers, including the council, will have to rethink their approach to transfers, with a certain proportion of their vacancies being made available exclusively for existing tenants who have no priority status. This will require a possible change in the way that Homes 4 Wiltshire operates.

The social housing allocation scheme must:

- include a statement of the authority's policy on offering people a choice of housing accommodation or the opportunity to express a preference about the housing allocated to them
- be framed so as to secure that 'reasonable preference' is given to people who are homeless, owed a duty by any local housing authority or already occupy accommodation secured by a local housing authority, living in unsatisfactory housing conditions, who need to move on medical or welfare grounds (including grounds that are related to a disability) and who need to move to a particular place in the local area if failure to do so would cause hardship to themselves and others.
- explain the authority's priorities for deciding factors that will be taken into account when allocating social housing – these could include the financial resources available to the person to meet their housing costs, the behaviour of proposed person (and members of their household) and any local connection between the person and the local area.
- have regard to the housing authority's current homelessness strategy and tenancy strategy
- be transparent – a person who applies for housing is entitled to sufficient information to

enable them to assess how their application is likely to be treated and how long it will take.

The government has published a consultation on statutory guidance for the allocation of social housing. This includes regulations to improve access to social housing for former and serving armed forces personnel. A draft response to this consultation paper has been written and is awaiting final approval.

Implications for Wiltshire	Next steps For more information please contact: Nicole Smith, Head of Strategic Housing at nicole.smith@wiltshire.gov.uk
The new powers for local authorities to set their own allocations qualification criteria (within the terms of the national framework) will affect 16,631 households in Wiltshire currently seeking affordable housing on the housing register. The council's banding criteria may change in line with national and local priorities for allocation. The Act will: • allow local authorities to decide which classes of persons are or are not qualifying persons to be allocated housing • take existing social tenants (not in need) out of the scope of the allocations scheme. Major decisions the review of the Homes4Wiltshire choice-based lettings allocation scheme will have to consider include: • whether to award a high priority to under-occupation • the extent to which a local connection should influence qualification or banding • whether priority for homeless cases should be reduced from Platinum to Gold – the Localism Act allows local authorities to discharge their duty to homeless applicants by offering a private sector let • whether to improve the access of service personnel to social housing • whether to reward civic engagement when allocating social housing The exclusion of non-priority existing social	The council will: • undertake a full review of the Homes4 Wiltshire choice-based lettings allocation scheme – the current allocation policy complies with the requirements of the Localism Act so the review will focus on taking advantage of local freedoms. • review its policy on transfers for council tenants • make sure all housing register application forms notify the applicant of their right to free information, advice and assistance • conduct a review with the housing providers on how we manage all transfer cases to ensure they are no longer considered as allocations unless they meet the required criteria

housing tenants from the housing register and government policy statements on the ability of existing tenants to transfer suggest internal transfers will fall outside the scope of any future statutory allocations scheme. This means the council and other social landlords will need to revise their approach to internal transfers. The council will also need to work with other social landlords to clarify a number of issues, such as: • which vacancies will be eligible for transfers • the proportion of transfer vacancies compared to allocations vacancies • whether transfers should include inter-landlord transfers • whether social landlords would like to use the Homes 4 Wiltshire scheme or different schemes to handle transfers • whether Wiltshire Council transfers should be prioritised on the basis of time on the waiting list or a needs based priority system	

Changes to local housing authorities' duty to the homeless (s148-149)	Status: regulations expected 16 July 2012

The Act allows local housing authorities to meet their duty to the unintentionally homeless by offering suitable accommodation in the private rental sector as long as the tenancy is fixed for at least 12 months.

The local housing authority is not subject to a duty to the unintentionally homeless if:

- the applicant refuses an offer of housing that the local housing authority considers suitable – the applicant must be informed of the possible consequences of refusal (and (acceptance) and their right to ask the local housing authority to review the suitability of the accommodation
- the offer of accommodation is not a private rental sector offer
- the housing authority notifies the applicant that they no longer think they are subject to the duty

If an applicant becomes unintentionally homeless and re-applies for accommodation within two years of accepting an offer of accommodation in the private rental sector the local housing authority still has a duty to provide accommodation regardless of whether the applicant has a 'priority need.'

Implications for Wiltshire	Next steps For more information please contact: Angie Rawlins, Head of Allocations and Options at angie.rawlins@wiltshire.gov.uk
The Act breaks the link between statutory homelessness and lifetime tenancies. This means the council can: • actively pursue more private sector opportunities for the unintentionally homeless - the accommodation must be suitable and reasonable for long term occupation • consider reducing the priority status of statutory homeless cases The council anticipates: • an increase in the use of the private sector • a requirement to offer 12 month tenancies rather than the standard six month Assured Shorthold Tenancy.	The council will: • work to secure private sector opportunities for homeless applicants. This may include setting up a commercial lettings agency which will appeal to landlords and provide sufficient opportunities for tenants. • meet and consult private landlords and lettings agents to make it easier to recruit and retain them in a changing market and climate of local housing authority cuts • work with landlords to create 12 month tenancies and reduce the likelihood of break clauses being used during the 12 month tenancy period • review its rent deposit policy to make it more flexible so it can be tailored to landlords and letting agents • write a policy for the use of the new

	duty to offer accommodation that is suitable and reasonable for long term occupation • provide training and information for stakeholders and the voluntary and community sector to explain the new power and processes.

Requirement for all local housing authorities to publish tenancy strategies (s150-153)	Status: tenancy strategies may be required by April 2013

The Act introduces a new duty for every local housing authority to write and publish a tenancy strategy within a year of the measures coming into force (Local Government Lawyer estimate the strategies will need to be in place by April 2013). Local housing authorities must have regard to this strategy when exercising their housing management functions. They are also required to keep the strategy under review and they may modify or replace it from time to time.

Tenancy strategies should:

- set out the matters registered providers of social housing should consider when setting policies on the type of tenancies they will grant, how they will decide which type of tenancy to grant, the length of tenancies and when they will grant a further tenancy before the end of an existing tenancy
- summarise those policies of registered providers of social housing and explain where they can be found
- be regularly reviewed and updated when necessary
- be available for inspection (free of charge) by members of the public

When preparing its tenancy strategy a local housing authority must have regard to its current scheme for allocating social housing (see above) and its current homelessness strategy.

Before adopting a tenancy strategy or changing it to reflect a major policy change, the local housing authority must:

- consult with every private registered provider of social housing in the area
- consult anyone else specified in regulations from the Secretary of State

Implications for Wiltshire	Next steps For more information please contact: Nicole Smith, Head of Strategic Housing at nicole.smith@wiltshire.gov.uk
The council will need to have a tenancy strategy (the Wiltshire Strategic Tenancy Policy) in place 12 months after this part of the Localism Act comes into force (potentially by April 2013). The tenancy strategy will need include the council's policy on: • the percentage of affordable rent – this could cause a potential increase in the housing benefit bill • the use of flexible tenancies – the council anticipates an increased turnover of tenancies because of the growth in homelessness. This will increase the council's administration costs. • exclusions – options for lifetime tenancies • review criteria – to help make best use	In consultation with its partners, the council will produce a Wiltshire Strategic Tenancy Policy which complies with the requirements of the Localism Act. The council has produced a draft Wiltshire Strategic Tenancy Policy with housing providers and other stakeholders. This will go out to consultation for three months from March 2012. The Wiltshire Strategic Tenancy Policy will be considered by Cabinet in August 2012.

of limited social housing stock and an appeals process • successions • procedures for disposals and conversions	

Introduction of flexible social housing tenancies and changes to social housing tenancies (s154-166 and Schedule 14)	Status: in force from 1 April 2012, regulations published 1 April 2012

The Act gives local housing authorities power to offer 'flexible tenancies' to new social tenants and family intervention tenants (tenants with neither assured or secured tenancies who are being provided intensive support in purpose built units). This **only** applies to **new** tenancies.

A 'flexible tenancy' is a secured tenancy with a fixed term of two years or more. A new tenancy can become a flexible tenancy when:

- the landlord serves a notice on a tenant that their family intervention tenancy will become a secure tenancy of more than two years
- a 'demoted tenancy' (a less secure type of tenancy because of the tenant's antisocial behaviour) becomes a secure tenancy of more than two years
- the landlord offers a flexible tenancy at the end of an introductory tenancy (this only applies if the landlord has informed the tenant of this in writing before the start of the introductory tenancy)

The Act outlines the process social housing landlords should use to offer and end flexible tenancies:

- the landlord is required to serve a notice on the tenant and the tenant has the right to ask the landlord to review the decision to offer or end a flexible tenancy
- the tenant must ask for a review within 21 days of receiving the landlord's notice - the tenant can also ask the landlord to review the length of the tenancy, but only if the proposed length contravenes the landlord's policy on the length of flexible tenancies.

The Act gives the Secretary of State power to make regulations about the procedure to be followed when a tenant asks for a review of the landlord's decision. Tenants will also have the right to end a flexible tenancy by giving the landlord a month's notice in writing.

The Act also makes a number of changes to social housing tenancies:

- flexible tenancies and assured tenancies that are granted by private registered providers in England will no longer need to be executed by deed or registered with the land registry
- existing secure tenants and assured tenants that exchange their properties with social tenants with flexible tenancies will be able to retain the same level of security of tenure
- landlords can only refuse to let tenants exchange properties on grounds specified in Schedule 14 of the Act – these include unpaid rent and accommodation being too large for one of the tenants exchanging properties
- only spouses or civil partners that occupy the accommodation as their main home at the time of the tenant's death will have the right to inherit a secure tenancy – this only applies to new tenancies after the measures in the Act come into force
- landlords can try to recover possession of a property six to twelve months after they become aware of the previous tenant's death rather than from the actual date of the tenant's death – this only applies if the person who succeeded the previous tenant is not their spouse or civil partners, the property is too large for that person and the landlord proposes to move them to a smaller property.
- a court cannot make an order for possession of a property let by a private registered social housing provider with a fixed term of two years unless the landlord has written to the tenant giving them six months notice that s/he does not intend to grant another

tenancy

- tenants of private registered social housing providers with assured shorthold tenancies will have the right to acquire their property subject to regulations from the Secretary of State – this only applies to new assured shorthold tenancies after the measures in the Act come into force
- landlords have 'repairing obligations' for flexible and assured tenancies with a fixed term of seven years or more.

Implications for Wiltshire	Next steps For more information please contact: Derek Streek, Head of Housing Management at derek.streek@wiltshire.gov.uk
The Localism Act gives councils the option of introducing new flexible (fixed term) tenancies of two years or longer. If the council decides to introduce flexible tenancies this would need to be set out in its tenancy policy. The Chartered Institute of Housing's guidance on tenancy strategies indicates that registered providers will need to start developing tenancy policies (to dovetail with the statutory tenancy strategy) from April 2012. For new tenancies, the Act also changes the rules and circumstances for transfers, exchanges and successions.	The council will: • produce a new tenancy policy (in its role as a provider of social housing) – a draft tenancy policy is currently being prepared • consider (and if appropriate consult on) whether it wishes to introduce a flexible tenancy option(s) – and if so the nature of that option(s) • advise tenants on all statutory changes that will affect their tenancy rights should they change tenancy – this will happen after the new tenancy has been introduced • revise tenancy agreements and create new documents, such as leaflets and handbooks to highlight tenant's rights and obligations in relation to new tenancies • revise policies and procedures where necessary • provide staff training on changes to tenancy rights

Abolition of the Housing Revenue Account subsidy and introduction of a self financing system (s 167-175, Schedule 15)	Status: powers for the Secretary of State to make regulations in force now

The Act will abolish the Housing Revenue Account (HRA) subsidy in England (a system of annual subsidies controlled by Whitehall). It gives the Secretary of State power to introduce a new local self-financing system for council housing. The existing HRA subsidy system will stay in place until the new system is implemented – this is expected to start in April 2012.
Under the new system councils will be able to keep all of their rental income and use it to support their own housing stock. The Act gives the Secretary of State power to:

- calculate the value of each local housing authority's housing service (according to a formula which includes income, expenditure and debts from carrying out its housing functions) and use this to decide the 'settlement payment' (the payment the government will receive or make when the new system is introduced)
- direct local housing authorities to make a payment to the government - this should be treated as capital expenditure
- make a payment from the government to some local housing authorities - this should be treated as a capital receipt that can only be spent on housing
- re-calculate the settlement payment if circumstances have changed – this may mean the government has to make a payment to the local housing authority or vice versa
- direct when and how local housing authorities should make payments to the government and set the rate of interest that will be charged by the government on any money that is not paid on time
- set a maximum amount of debt that can be held by each local housing authority
- make agreements with local authorities which mean they do not have to give the government a percentage of the money they earn from the sale of council houses purchased by council tenants using the right to buy

The Secretary of State can use these powers differently for different areas, different local housing authorities or different types of local housing authority. The Secretary of State is required to consult with any representatives of local government or relevant professional bodies before directing local housing authorities to make a payment to the government or receive a payment from the government.

Local housing authorities have a legal duty to give the Secretary of State any information that is requested to exercise the powers listed above: if they fail to provide information the Secretary of State can exercise his powers on the basis of any estimates or assumptions he considers appropriate.

In October 2010 the Housing Minister and Local Government Group issued a joint statement on self-financing. This suggested that under the new system councils will need to work with their tenants to develop and introduce a long term, sustainable plan for housing in their area which considers:

- the investment needs of existing homes and scope to replace stock with new homes that better meet future needs
- the rents the council will need to charge and how the income will be used
- how information will be given to tenants and local taxpayers about income, spending and investment plans after the subsidy system is removed.

Implications for Wiltshire	Next steps For more information please contact: Derek Streek, Head of Housing Management at derek.streek@wiltshire.gov.uk
The council needed to raise just over £118 million of funding – this was paid to the government on 28 March 2012. In future the council will need to: • manage the debt charges for this debt • make sure there is sufficient income to manage and maintain its properties as well as servicing the debt The new self financing arrangements will mean there is more money available to spend on the housing service. The council and its tenants will need to agree new priorities for investment and spending.	The council has already: • agreed a budget for 2012/13 that takes the new self-financing regime into account • put in place a treasury management plan • raised funding to pay the government on 28 March 2012 • briefed tenants on the new arrangements The council will: • consult with tenants on a new offer for stock investment and service development

Power for the regulator and Secretary of State to set standards for registered providers of social housing to help tenants exchange properties and purchase properties (s 176-177)	Status: in force from 15 January 2012, regulations expected 6 April 2012
The Act gives the social housing regulator power to set standards for registered providers which require them to comply with rules about methods of helping tenants exchange properties. It also allows the Secretary of State to direct the regulator on methods of helping tenants to exchange properties. The Act allows tenants who hold shares in their landlord's organisation (i.e. in a registered private provider of social housing) to benefit from payments which can help them to move out of their socially rented property and purchase a property or acquire a long-leasehold interest (over 21 years) in a dwelling.	
Implications for Wiltshire	Next steps For more information please contact: Derek Streek, Head of Housing Management at derek.streek@wiltshire.gov.uk
The implications are limited because Wiltshire Council tenants already have access to a national exchange register.	The council needs to make sure that access to the national exchange register complies with the requirements of the Localism Act and any associated guidance and regulations.

Changes to the regulation of social housing (s178-182,Schedules 16 and 17)	Status: in force from 1 April 2012

The Act abolishes the Tenant Services Authority (TSA) as the regulator for social housing in England and transfers its functions to a new Regulation Committee of the Homes and Communities Agency. The TSA is consulting on changes to the current regulation framework.

The new Regulation Committee will have two fundamental objectives which must be achieved with minimum interference:

- *economic regulation* to ensure value for money, the financial viability and proper management of providers of social housing and to guard against the misuse of public money
- *consumer regulation* to make sure social housing is well managed and of appropriate quality, tenants are involved in management issues and are given an appropriate degree of choice and protection

Any action taken by the Regulation Committee must be exercised in way that minimises interference and is proportionate, consistent, transparent and accountable. The Regulation Committee can only use its monitoring and enforcement powers if:

- it has reasonable grounds to believe that there has been a failure which has resulted in serious harm to the registered provider's tenants or potential tenants
- there is a significant risk that if no action is taken the failure will result in serious harm to the registered provider's tenants or potential tenants.

The Act gives the regulator powers to set standards for registered providers which require them to comply with specified rules about the minimum and maximum levels of rent then can charge and the extent to which they can increase or decrease rent.

The Act also changes the process for dealing with complaints from social housing tenants by:

- making sure all complaints are referred to the Ombudsman by an MP, local councillor or designated tenant panel (unless 8 weeks have elapsed since the end of the landlord's complaint process or the designated person declines to refer the complaint or agrees it can be made direct by the tenant)
- introducing a unified service for investigating complaints about social landlords – all complaints from social housing tenants will be considered by the Independent Housing Ombudsman (currently complaints from tenants of local housing authorities are made to the Local Government Ombudsman and complaints from tenants of private providers are made to the Independent Housing Ombudsman.)

Implications for Wiltshire	Next steps For more information please contact: Niki Lewis, Service Director for Communities, Libraries, Heritage and Arts at niki.lewis@wiltshire.gov.uk
Tenant scrutiny arrangements are progressing but the council and tenants need to consider the preferred method for referring cases to the Ombudsman. Tenant Panels already exist for the council's	The council will: • consult with tenants, councillors, local MPs and the complaints dept with a view to setting up procedure for referring cases to the Ombudsman • make sure it understands and

housing stock in the South of the county and these will continue to be supported.	complies with all regulatory arrangements once they have been finalised • consider (with tenants) scrutiny proposals that are being developed by a group of tenants • continue to support tenant panels and make sure tenants are aware of the new complaints arrangements .

Abolition of home information packs (s183, Schedule 18)	Status: in force from 15 January 2012
The Act abolishes the legal duty to provide a home information pack.	
Implications for Wiltshire	**Next steps** For more information please contact: Brad Fleet, Director of Development Services at brad.fleet@wiltshire.gov.uk
Some of the information supplied in home information packs was supposed to come from local authorities: planning history, other land charges etc. The legal duty to provide home information pack was never implemented so there are no significant implications for Wiltshire. House purchasers (as opposed to vendors) will still require this information and will continue to obtain it, as they do now, from the local authority. The Council's ability to charge for this information has already been eroded by other legislation. Therefore this section of the Act will have no material impact on council services.	No action is required

Changes to tenancy deposit schemes for social landlords (s184)	Status: in force from 6 April 2012

The Act changes the law on tenancy deposit schemes for social landlords by:

- extending the time limits within which a landlord must comply with the requirement to protect a deposit for an assured shorthold tenancy by placing it in a tenancy deposit scheme and provide information to the tenant from 14 to 30 days
- making it clear that penalties for non-compliance will apply when the landlord has not complied with these timescales
- making it clear that penalties for non-compliance will also apply when the tenancy has ended
- giving the courts discretion about the level of penalty that may apply
- clarifying that landlords are allowed to seek possession of a property when the deposit is not held in a tenancy deposit scheme or the time limits have not be complied with as long as action has been taken to remedy the situation.

Implications for Wiltshire	Next steps For more information please contact: Angie Rawlins, Head of Allocations and Options at angie.rawlins@wiltshire.gov.uk
There are no specific implications. In the majority of cases where the council financially assists a household into the private sector the council will hold the deposit. The courts already appear to be exercising discretion and awarding possession of the property to the landlord.	The council will: • make sure it provides clear and accurate advice on the changes • provide training and updates for its housing options team and partner agencies