

The Localism Act 2011 – new freedoms and flexibilities for local government

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 this part 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

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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
<p>The new power is intended to bring about:</p> <ul style="list-style-type: none"> • 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 <p>How the power will work in practice will ultimately depend on how it is interpreted by the courts.</p>	<p>For more information please contact: Frank Cain, Head of Legal Services at frank.cain@wiltshire.gov.uk</p> <p>Training will be provided to all Wiltshire councillors and Wiltshire Council staff to raise awareness of the new power and its possible applications.</p> <p>Legal services will consider how best to use this power once the government has published regulations.</p>

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
<p>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.</p> <p>'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.</p> <p>A function can only be transferred if:</p> <ul style="list-style-type: none"> • 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 <p>'Permitted authorities' can also submit requests to the Secretary of State asking for the functions of other public bodies to be transferred to them.</p> <p>When a function is transferred the Secretary of State can:</p> <ul style="list-style-type: none"> • 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.	<p>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.</p> <p>The council should explore the use of this power once the full implications are known, including use within the community area.</p>

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
<p>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.</p> <p>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.</p> <p>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.</p>		
Implications for Wiltshire	Next steps For more information please contact: Frank Cain, Head of Legal Services at frank.cain@wiltshire.gov.uk	
<p>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.</p>	<p>Guidance on the new rules has already been issued to all Wiltshire councillors.</p> <p>The council's Code of Good Planning Practice is currently being revised to reflect the new rules.</p>	

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
<p>Wiltshire Council needs to decide:</p> <ul style="list-style-type: none"> • 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 <p>Parish, town and city councils will need to decide:</p> <ul style="list-style-type: none"> • 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 	<p>For more information please contact: Ian Gibbons, Director of Law and Governance and Monitoring Officer at ian.gibbons@wiltshire.gov.uk</p> <p>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.</p> <p>On 7 March 2012 the Standards Committee considered draft documents, including:</p> <ul style="list-style-type: none"> • 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 <p>Wiltshire Council will develop a code of conduct which will take into account:</p> <ul style="list-style-type: none"> • 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 <p>We will involve parish, town and city councils as much as possible in the development and implementation of these arrangements.</p> <p>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.</p>

Requirement for more pay accountability (s38-42)	Status: in force from 15 January 2012
<p>Local authorities and fire authorities must prepare an annual statement for each financial year which sets out the authority's policies on:</p> <ul style="list-style-type: none"> • 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 <p>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.</p>	
Implications for Wiltshire	<p>Next steps</p> <p>For more information please contact: Barry Pirie, Service Director for HR and Organisational Development at barry.pirie@wiltshire.gov.uk</p>
<p>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.</p>	<p>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.</p> <p>The pay policy statement will be published on the Wiltshire Council website at the start of the new financial year in April 2012.</p>

Power to require public authorities to pay EU fines (s48-56)	Status: unclear, consultation closes 22 April 2012
<p>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.</p> <p>A 'public authority' is a local authority, or any other body or person that has non-devolved public functions.</p> <p>To require a public authority to pay a financial sanction, ministers will need to:</p> <ul style="list-style-type: none"> • 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 <p>The Secretary of State is consulting on a policy statement to be followed by ministers and independent panels that use these powers.</p>	
Implications for Wiltshire	<p>Next steps</p> <p>For more information please contact: Michael Hudson, Director of Finance at michael.hudson@wiltshire.gov.uk</p>
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.