

**The Localism Act 2011 – new rights and powers for communities and individuals**

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 section 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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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
<p>The Act gives local authorities power to provide discretionary business rates relief in any circumstance subject to two conditions:</p> <ul style="list-style-type: none"> <li>• that granting relief can be considered 'reasonable' from the perspective of council tax payers in the local area</li> <li>• 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</li> </ul> <p>The House of Commons has issued a <a href="#">briefing note</a> on the new power for local authorities to provide discretionary business rate relief in any circumstance. The briefing note suggests that:</p> <ul style="list-style-type: none"> <li>• local authorities must be careful not to break state aid rules</li> <li>• the government will continue to part fund discretionary rate relief for small rural businesses, charities, non-profit organisations and individuals experiencing hardship</li> <li>• any discretionary rate relief for other ratepayers will need to be funded locally</li> </ul> <p>The Act also:</p> <ul style="list-style-type: none"> <li>• introduces a new small business rate relief scheme, which no longer requires ratepayers to apply for small business rate relief</li> <li>• 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)</li> <li>• 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</li> </ul>	
Implications for Wiltshire	Next steps For more information please contact: Ian Brown, Head of Revenues and Benefits at <a href="mailto:ianp.brown@wiltshire.gov.uk">ianp.brown@wiltshire.gov.uk</a>
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

<p>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.</p>	<p>example businesses that support corporate social responsibility, are listed as assets of community value or new town centre start ups.</p>
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## 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  
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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.

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](mailto: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](mailto:niki.lewis@wiltshire.gov.uk).

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](mailto: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

<p>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.</p>	<p>knowledge and county-wide criteria to decide/advise on appeals.</p>
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