

The Localism Act 2011 – reform of the housing system

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

Measure	Lead contact	Page
Reform to ensure decisions about housing are taken locally		
Changes to the system for allocating social housing	Nicole Smith, Head of Strategic Housing	2-4
Changes to local housing authorities’ duty to the homeless	Angie Rawlins, Head of Allocations and Options	5-6
New requirement for local housing authorities to publish tenancy strategies	Nicole Smith, Head of Strategic Housing	7-8
Introduction of flexible social housing tenancies and changes to social housing tenancies	Derek Streek, Head of Housing Management	9-10
Abolition of the Housing Revenue Account subsidy and introduction of a self financing system	Derek Streek, Head of Housing Management	11-12
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	13
Changes to the regulation of social housing	Niki Lewis, Service Director for Communities, Libraries, Heritage and Arts	14-15
Abolition of home information packs	Brad Fleet, Director of Development Services	16
Changes to tenancy deposit schemes for social landlords	Angie Rawlins, Head of Allocations and Options	17

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

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

	<p>duty to offer accommodation that is suitable and reasonable for long term occupation</p> <ul style="list-style-type: none">• 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
<p>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.</p> <p>Tenancy strategies should:</p> <ul style="list-style-type: none"> • 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 <p>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.</p> <p>Before adopting a tenancy strategy or changing it to reflect a major policy change, the local housing authority must:</p> <ul style="list-style-type: none"> • 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
<p>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).</p> <p>The tenancy strategy will need include the council's policy on:</p> <ul style="list-style-type: none"> • 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 	<p>In consultation with its partners, the council will produce a Wiltshire Strategic Tenancy Policy which complies with the requirements of the Localism Act.</p> <p>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.</p> <p>The Wiltshire Strategic Tenancy Policy will be considered by Cabinet in August 2012.</p>

<p>of limited social housing stock and an appeals process</p> <ul style="list-style-type: none">• successions• procedures for disposals and conversions	
--	--

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

<p>tenancy</p> <ul style="list-style-type: none"> • 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. 	
<p>Implications for Wiltshire</p>	<p>Next steps</p> <p>For more information please contact: Derek Streek, Head of Housing Management at derek.streek@wiltshire.gov.uk</p>
<p>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.</p> <p>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.</p> <p>For new tenancies, the Act also changes the rules and circumstances for transfers, exchanges and successions.</p>	<p>The council will:</p> <ul style="list-style-type: none"> • 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
<p>The council needed to raise just over £118 million of funding – this was paid to the government on 28 March 2012.</p> <p>In future the council will need to:</p> <ul style="list-style-type: none"> • 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 <p>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.</p>	<p>The council has already:</p> <ul style="list-style-type: none"> • 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 <p>The council will:</p> <ul style="list-style-type: none"> • consult with tenants on a new offer for stock investment and service development

<p>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)</p>	<p>Status: in force from 15 January 2012, regulations expected 6 April 2012</p>
<p>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.</p> <p>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.</p>	
<p>Implications for Wiltshire</p>	<p>Next steps For more information please contact: Derek Streek, Head of Housing Management at derek.streek@wiltshire.gov.uk</p>
<p>The implications are limited because Wiltshire Council tenants already have access to a national exchange register.</p>	<p>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.</p>

Changes to the regulation of social housing (s178-182, Schedules 16 and 17)	Status: in force from 1 April 2012
<p>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.</p> <p>The new Regulation Committee will have two fundamental objectives which must be achieved with minimum interference:</p> <ul style="list-style-type: none"> • <i>economic regulation</i> 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 • <i>consumer regulation</i> 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 <p>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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>The Act also changes the process for dealing with complaints from social housing tenants by:</p> <ul style="list-style-type: none"> • 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
<p>Tenant scrutiny arrangements are progressing but the council and tenants need to consider the preferred method for referring cases to the Ombudsman.</p> <p>Tenant Panels already exist for the council's</p>	<p>The council will:</p> <ul style="list-style-type: none"> • 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

<p>housing stock in the South of the county and these will continue to be supported.</p>	<p>complies with all regulatory arrangements once they have been finalised</p> <ul style="list-style-type: none">• 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	
<p>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.</p> <p>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.</p>	No action is required	

Changes to tenancy deposit schemes for social landlords (s184)	Status: in force from 6 April 2012
<p>The Act changes the law on tenancy deposit schemes for social landlords by:</p> <ul style="list-style-type: none"> • 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	<p>Next steps</p> <p>For more information please contact: Angie Rawlins, Head of Allocations and Options at angie.rawlins@wiltshire.gov.uk</p>
<p>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.</p> <p>The courts already appear to be exercising discretion and awarding possession of the property to the landlord.</p>	<p>The council will:</p> <ul style="list-style-type: none"> • make sure it provides clear and accurate advice on the changes • provide training and updates for its housing options team and partner agencies