

## Strategy and Partnerships Scrutiny Committee

17 March 2011

### Implications of the draft Localism Bill

#### Purpose / Recommendation

1. **The Committee is invited to consider the potential impact of the Localism Bill on the council and our key partners, and whether more detailed discussions on specific themes within the Bill are required at future meetings.**

#### Background

2. The draft Localism Bill was put before Parliament on 13<sup>th</sup> December 2010 and was given its second reading on 17<sup>th</sup> January 2011. It has since moved to a Public Bill Committee for scrutiny which finished on 10<sup>th</sup> March.
3. Although the Bill is unlikely to become law until 2012 a number of the proposals have been well-trialed and are likely to remain close to their current form.
4. Several could require significant preparation by us and our partners, so there are advantages to being proactive in thinking about the implications and seeking to influence further amendments to the Bill.
5. The proposals in the Bill can be grouped into four broad themes:
  - a. internal issues for Local Government including governance and finance;
  - b. Community empowerment including Big Society;
  - c. Planning
  - d. Housing.
6. The Committee may wish to consider the areas of the Bill of with the greatest potential impact on the work of the council and its partners, and to request updates on progress in preparing for / mitigating these.
7. The attached annex provides an initial summary of issues and considerations to support these discussions.

Stephen Capaldi  
Assistant Chief Executive (Strategy)  
7 March 2011

Contact: [Ben Threadgold, Senior Policy Officer, 01865 32 8219]

## LOCAL GOVERNMENT

### General Power of Competence

8. The Bill proposes allowing councils to do anything unless the law prohibits it, rather than current restrictions allowing us to only do those things permitted in legislation.
9. The Bill gives the Secretary of State power to repeal other statutory provisions he feels restrict or overlap the General Power, or to prevent local authorities (collectively or individually) doing anything in exercising it - this has attracted criticism in significantly limiting the General Power.
10. The Bill allows for the charging for services in exercise of the General Power on a cost recovery basis, providing the service is discretionary and the recipient of the service has agreed to its being provided.

### Governance

11. The Bill permits local authorities to return to a committee system, and discretion to continue with scrutiny arrangements under this system should they wish – however this could not happen before the next Council elections in 2013.
12. The Bill also allows the introduction of an elected mayor if there is a strong desire for one, either politically or in response to a petition. In either case a referendum would be required.
13. It is also proposed to introduce a new requirement for us to have a designated 'Scrutiny Officer', who cannot be the Head of Paid Service, Monitoring Officer or Chief Financial Officer.

### Predetermination

14. This clause provides that an elected member should not be taken to have a 'closed mind' if they have previously indicated what view they would take on an issue.
15. However the rules as drafted in the Bill are not very clear, and imply that the concept of predetermination has not been completely abolished. A Member taking a categorical position in relation to something that needed a decision could still be accused of predetermination.

### Standards

16. The existing Standards Board will be abolished, with Local Government Ombudsmen rulings becoming binding.
17. There will be a new duty to maintain high standards of conduct, but it is not clear how this will be enforced or what would happen if a Member is in breach of that duty.
18. The Council will have the option to continue with its existing code of conduct on a voluntary basis, adopt an amended code or dispense with one altogether.

### Pay Accountability

19. Local authorities will have to approve and publish a senior pay policy statement annually at Full Council, including levels and elements of remuneration for each chief officer, increases and additions, performance

related pay and/or bonuses, remuneration on recruitment or ceasing employment.

20. Statements must be prepared by 31 March of the preceding financial year, starting with 31 March 2012.
21. The Secretary of State has also proposed that Councillors should have to approve local authority salaries of more than £100,000, and will be issuing guidance that any salaries above that will go to a vote of full council.

### **EU Fines**

22. The Bill gives central government the power to require local or public authorities to make payments towards EU financial sanctions, where an authority is believed to have contributed to the imposition of that sanction.

### **Non-domestic rates**

23. Local Authorities will be given the power to set local discounts on business rates to support struggling businesses and to encourage start-ups in their area. Any rate cuts will have to be funded locally, and would require a referendum on their introduction.
24. The clauses allow local authorities to grant discretionary business rate discounts, making small business tax breaks easier to take advantage of, giving affected businesses a greater say in rate supplements, and cancelling certain backdated business rates including port taxes.
25. The Secretary of State also has the power to make provision for a new small business rate relief scheme that would be automatic in some or all cases (ie would not need an application).

## **COMMUNITY EMPOWERMENT**

### **Local Referendums**

26. We will be required to hold referendums on issues if we receive a petition signed by 5% of the population requesting one, all elected members for an electoral area request it, or if we pass a resolution to have one.
27. Although they are not necessarily binding, we will be required to take the outcomes of any referendums into account when making decisions.

### **Council Tax**

28. The Secretary of State will no longer be able to cap council tax rises, but will set principles to determine what is deemed as excessive – It is not clear what form the principles will take but they must include comparison to the previous year and can include a threshold.
29. Any local authority and larger parishes setting an increase above the threshold will trigger a local referendum. This would be administered by the district councils.
30. The Bill also includes a change in the calculation from setting a budget requirement to setting a council tax requirement.

### **Community Right to Challenge**

31. This part of the Bill enables voluntary and community bodies, charities, parish councils or public sector employees delivering the service, to express an interest in providing or assisting in providing a local authority service.

32. These provisions will be the subject of further regulation by the Secretary of State, including clarifying considerations for authorities when deciding whether to accept or reject an expression of interest (not currently included in the Bill).
33. Where it accepts an expression of interest, the local authority must carry out a procurement exercise for the running of that service. There is nothing to suggest that the service must continue to be run the same way as before the expression of interest is made.
34. If we are proposing to stop a non-statutory service, the Bill won't apply because we will not be seeking to award a contract for on-going delivery of that service.
35. However where we have an on-going commitment (or responsibility) to run comprehensive services we need to think about how we respond to expressions of interest to run part of the overall service.
36. There is nothing to suggest that the community right to challenge extends to assets of community value – ie we do not have to transfer an asset based on an expression of interest unless we choose to include it in the procurement exercise.

### **Assets of Community Value**

37. These clauses set out proposals for the 'community right to buy'. Local authorities will have to maintain a list of public or private assets of community value and a list of assets unsuccessfully nominated for inclusion.
38. In Oxfordshire the lists will be the responsibilities of District Councils, including setting criteria for inclusion and restricted periods before disposal. There is therefore a risk of five schemes with different implications on council property – discussions are already planned at Chief Executive's and Leaders Groups, SPIP etc.
39. The Community Right to Bid gives communities time to develop a bid and raise the capital required to 'save' a site when the owner of an asset included on the list gives notification of their intention to dispose of it (either freehold or on a long lease). It does not guarantee the asset must ultimately be sold to them, although the implication is that this would be the likely result.
40. The clauses do not replace our obligations to achieve the 'best consideration reasonably obtainable' when disposing of land. Equally they do not restrict our existing ability to transfer land at less than market value provided it will contribute to the promotion and improvement of the economic, social or environmental well-being of the area and the difference in market value and price paid is not more than £2 million.

## **PLANNING**

### **Planning Processes and Community Infrastructure Levy**

41. This section introduces many of the changes first suggested in the Conservative Planning green paper and again in the Local Growth White Paper, including the abolition of regional strategies, changes to the local planning process and changes to the Community Infrastructure Levy.
42. The proposals make the duty to cooperate between agencies more formal than previously. However it is weak as drafted as it does not apply to

implementation (only plan making). It also does not apply to all authorities (only local planning authorities)

43. The current proposals in the Bill are that affordable and social housing would be exempt from the Community Infrastructure Levy. This could lead to a shortfall in funding where new development places a demand on public services that would not otherwise be required.
44. It is implied within the Growth White Paper that LEPs could have a role in strategic planning, helping to integrate spatial planning, infrastructure delivery and economic development. However this is not referenced in the Localism Bill, and given LEPs are not subject to the duty to cooperate are likely to focus their limited resources on other priorities.

### **Neighbourhood Planning and the Community Right to Build**

45. The Bill outlines proposals to enable communities to permit development without the need for planning applications.
46. The Community Right to Build is intended to tackle the lack of development coming forward by allowing communities to retain the benefits of development. However it is unclear how this will work and it will not address the shortfall in private and public funding available for investment in infrastructure and services.
47. The proposals feel bureaucratic (requiring referendums, independent examinations appointment of neighbourhood forums etc) and appear unlikely to encourage many communities to come forward to produce neighbourhood plans or enact the community right to build.
48. There is also a significant risk of unintended consequences, such as the knock-on effect to local services if planning is permitted locally without funding allocated to improving infrastructure – it is unclear how (if at all) this could be considered / resolved as part of the process.

## **HOUSING**

49. The details of this section are primarily for district councils but could have implications for us, despite the Bill emphasising proposals will not change existing duties for councils to protect the most vulnerable members of the community.
50. The proposed changes in housing policy, linked to other announcements about affordable rents at 80% of market rate and welfare reform (including caps on housing benefit), could have major implications for funding new homes (or not) and the ability of tenants to afford new rents.
51. Similarly if affordable rents prove to be the opposite, social mobility will be restricted – poorer tenants / those on benefits will be more exposed to market provision and may have to migrate out of London and other high cost areas such as Oxfordshire).
52. Proposals in the Bill allow councils and registered social landlords to grant flexible tenancies in social housing, councils to decide who qualifies for their housing waiting list and changes to the way that local authorities can meet their homelessness duty. Although this could impact on our commitment to maintaining independence and keeping people in their own homes as long as possible, and could have implications for other vulnerable groups, there also appears a clear government intention to

## SYP9

target social housing to those in greatest need which should favour or protect the most vulnerable and those on lowest incomes.