

London Borough of Bromley

Report No.RES12018

PART I – PUBLIC

Agenda Item No.:

Decision Maker: Executive & Resources PDS

Date: 25th January 2012

Decision Type: Non-Urgent Non-Executive Non-Key

TITLE: LOCALISM ACT 2011

Contact Officer: Mark Bowen, Director of Resources
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Chief Officer: Director of Resources

Ward: N/A

1. Reason for Report

- 1.1 To up-date Members on the contents of the Localism Act.
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2. **RECOMMENDATION(S)**

- 2.1 **That Members propose the necessary actions to secure the timely implementation of the provisions of the Localism Act.**

Corporate Policy

1. Policy Status: To be determined
 2. BBB Priority: Children & Young People/Excellent Council/Quality Environment/Safer Bromley/Supporting Independence/Vibrant Thriving Town Centre/N/A
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Financial

1. Cost of proposal: To be determined
 2. On-going costs: N/A/Non-recurring cost/Recurring Cost
 3. Budget Head/Performance Centre:
 4. Total current budget for this Head:
 5. Source of Funding:
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Staff

1. Number of staff (current and additional): To be determined
 2. If from existing staff resources, number of staff hours:
-

Legal

- 1) Legal Requirement: The majority of the provisions of the Act will come into force over the next 9 months. The Act includes both statutory requirements and permissive powers.
 - 2) Call In: Call In is not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected)
-

Ward Councillor Views

- 1) Have Ward Councillors been asked for comments: N/A
- 2) Summary of Ward Councillors comments:

3. COMMENTARY

3.1 The Localism Act received Royal Assent on 11th November 2011. The Act is a substantial piece of legislation comprising 241 Sections and 25 Schedules. These will be supplemented by Regulations and Statutory and Non-Statutory Guidance. The Government has published a “Plain English” guide to the Act which can be accessed at:
<http://www.communities.gov.uk/documents/localgovernment/pdf/1896534.pdf>

3.2 To date only a handful of the provisions have come into force. However, it is anticipated that the bulk of the Act will have full effect over the next 9 months.

3.3 This report summarises some of the key aspects of the Act. The Director of Resources will be attending the meeting to answer any specific questions.

4. General Powers of Competence

4.1 The first part of the Act delivers a radical change to the decision making framework for local authorities. Previously, as statutory corporations, local authorities had to establish a specific power to enable them to act (unlike a private individual who can act as they wish unless the law says they cannot). The Local Government Act 2000 had previously given increased flexibility through the wellbeing powers which gave general powers to act in the economic, social or environmental wellbeing of a local authority’s area. However, the Localism Act goes much further and places a local authority in the same position as an individual with full capacity.

4.2 The power is constrained by existing prohibitions will prevent the general power being used and subsequent prohibitions which are specifically written into legislation. The general power also does not absolve local authorities from following the general principles which apply on local authority decision making and does not prevent rationality and reasonableness challenges being brought.

4.3 The limitations to actions which an individual can exercise also prevents certain activities; for example local tax raising being carried out by local authorities as an individual has no power to levy taxation.

4.4 The general power is an improvement on the present position. However, the critical question is how liberally it will be interpreted by the Courts where its use is challenged.

4.5 The Act also includes some provisions encouraging or supporting commercial activity. However, if a local authority is looking to trade at a profit, with some modest exceptions that will need to be carried out through a separate legal entity.

5. Governance

5.1 The Act allows local authorities the option to convert back to a Committee style system. Members may recall that when Bob Neill, MP, attended a previous meeting of this committee he advised that he would promote an amendment to the Bill to permit changes in governance structures outside an authority’s usual electoral cycle.

The Act includes this change and an authority can decide to implement a committee system within the 3 days following its Annual Meeting in any year and not just following a local election. Where a change to governance arrangements is made, it cannot be reversed for 5 years without approval through a local Referendum.

- 5.2 The other governance models are the Mayor and Cabinet or the Leader and Cabinet options. There have been some changes to the “strong Leader” model introduced by the Local Government and Public Involvement in Health Act 2009, in that the Leader no longer has a mandatory 4 year term (that is now discretionary) but the majority of changes made by that Act remain.
- 5.3 Authorities which revert to the Committee system can maintain Scrutiny Committees. If Scrutiny Committees are not maintained then any statutory scrutiny functions e.g. around health and crime and disorder must be undertaken by the ordinary Committees.
- 5.4 The duty to promote democracy ceases from 15th January 2012. However whilst there is a provision to repeal the statutory petition scheme included in the Act, a commencement date has not been fixed for this provision.
- 5.5 The Constitution Improvement Working Group has recently been reconvened at the request of this Committee and will be considering detailed reports on the governance options.

6. Pre-determination

- 6.1 Section 25 of the Act modifies the present position on pre-determination so that, in the majority of cases a Member who is a decision maker will not be taken to have a closed mind when making a decision just because “the decision maker had previously done anything directly or indirectly indicated that view the decision maker took or would or might take in relation to the matter and ...the matter was relevant to the decision.”
- 6.2 This section applies to decisions made after it comes into force on 15th January 2012 but comments made prior to commencement on decisions made afterwards are given the same protection.

7. Standards

- 7.1 The national regulatory function through Standards for England will cease on 1st April and the present standards regime is expected to end in its entirety on 1st July 2012.
- 7.2 The Act includes a general duty to promote and maintain high standards of conduct by Councillors and, whereas the mandatory National Code of Conduct will be withdrawn, each authority must adopt a Code of Conduct which deals with the conduct expected of its Councillors which is consistent with these general principles.
- 7.3 The Monitoring Officer is required to keep a Register of Members’ Interests which must be published on the Council’s web-site as well as being available at the Council offices. Members are given more flexibility around not needing to declare registered

interests at meetings. Members with disclosable pecuniary interests cannot participate in decisions relating to those interests (subject to a new dispensation regime). However, an authority can allow them to sit in on matters relating to those interests. Failure to declare a relevant pecuniary interest or taking part in a decision where a Member has such an interest without reasonable excuse becomes a criminal offence. Proceedings will be brought by the Director of Public Prosecutions with the maximum penalty being a fine of £5,000. This is effectively a reversion to the pre-2002 position.

- 7.4 Authorities are required to put in place internal systems for the investigation of allegations of the breach of their Code of Conduct and need to appoint an independent person who they will consult after an investigation and who will also be available to liaise with Members who are the subject of a complaint. The definition of an independent person rules out all current independent members of the Council's Standards Committee.
- 7.5 Further reports on this part of the Act will be provided to the Standards Committee and the Constitution Improvement Working Group before any matters are brought to full Council for decision.

8. Pay Accountability

- 8.1 Local authorities are required to publish a pay policy statement which sets out how decisions are made about the salaries of the highest paid officers and how that relates to the lowest paid jobs. The statement must be approved by full Council before the end of this current Financial Year and will be considered by the Special Council meeting in March.

9. EU Sanctions

- 9.1 The final provisions in the Act are much diluted from those in the original Bill. However, subject to the Secretary of State producing the necessary policy on the enforcement, local authorities may be required to contribute to fines imposed by the EU if their actions have played a part in the imposition of the sanction.

10. Non-Domestic Rates

- 10.1 The main change is in section 69 of the Act which amends section 47 of the Local Government Finance Act 1988 to allow local authorities to reduce the business rates of any local ratepayer (not just those who can currently be granted discretionary relief). Central Government will, however, continue to part fund discretionary reliefs in the same circumstances and to the same degree as in previous years. Local authorities will be responsible for fully funding any other discounts granted. It is expected these changes will be in place for financial year 2012/13.
- 10.2 The Act also requires ballots for future business rate supplement schemes, introduces modest flexibilities for small business relief.

11. Council Tax

- 11.1 Chapter 1 of Part 5 of the Act has been brought into force for the current budget setting process. This has replaced the old “capping” regime. Now, if a local authority wishes to set a Council Tax which exceeds the threshold set by Government, it must secure endorsement for that increase through a local Referendum.
- 11.2 The limit set by the Government for the 2012/13 budget setting process is 3½%. Only, increases above this level require endorsement through Referendum.

12. Community Right to Challenge

- 12.1 Under these provisions, local voluntary and community groups, charities and two or more Council employees are given the right to express an interest in running or assisting running Council services.
- 12.2 Where a request is made from an eligible person under the Community Right to Challenge, there is a need to consider that request. Where a “challenge” is accepted that triggers a procurement exercise in which the challenging organisation/individual(s) can bid.
- 12.3 An expression of interest can only be rejected on specified grounds. The full details will become clear when the necessary Regulations are published but, from consultation documents published last Autumn, likely grounds for rejection could include:
- That the relevant body is not suitable to provide the service;
 - The service has been stopped or decommissioned or a decision has already been taken to enter into a procurement process;
 - Where an expression of interest is frivolous, vexatious or contains unsatisfactory, inadequate or incorrect information;
 - Accepting the challenge would lead the authority to contravene any law.

13. Community Right to Bid

- 13.1 This is sometimes incorrectly called a “right to buy”. What the provisions actually require is for local authorities to keep lists of assets of community value. Assets of community value can be nominated by the community and the local authority must consider adding them to the list.
- 13.2 When assets on the list of community value come up to sale, community organisations must be given the opportunity to bid and raise finance. These provisions apply to both land and assets owned by the local authorities and public bodies and those owned by the private sector.
- 13.3 Further reports will be produced as the detail becomes available.

14. Planning

14.1 There are a range of significant changes to the planning system. Whilst, these will be dealt with in reports to other parts of the Council, the headline provisions include:

- Abolishing Regional Strategies and the Infrastructure Planning Commission;
- Introducing land use planning in the form of neighbourhood plans;
- A new Community Right to Build (where local groups can promote development);
- Revisions to the community Infrastructure levy.
- Bringing in a new regime for pre-application consultations with the local community for certain developments;
- New planning enforcement rules giving council's power to take action where an authorised development has been concealed.

15. Housing

15.1 As Bromley does not hold its own housing stock the majority of the tenancy and regulatory reforms will not have a direct benefit. Greater flexibility to discharge homelessness duties through private sector accommodation may assist. Also the provisions around the abolition of the housing revenue account will need careful consideration in case it gives greater flexibility in property procurement/management.

16. London

16.1 The Act enhances the Greater London Authority's housing powers and includes compulsory purchase powers for housing and introduces powers for Mayoral Development Corporations to boost regeneration.

17. FINANCIAL IMPLICATIONS

17.1 The financial implications for the proposal under the act will be considered when matters are brought to members for decision

18. LEGAL IMPLICATIONS

18.1 These are set out in the body of the report.

Non-Applicable Sections:	Policy Implications Personnel Implications
Background Documents: (Access via Contact Officer)	