

# REPORT TO COUNCIL

**REPORT OF:** Head of Legal and Democratic Services

**REPORT NO:** LDS056

**DATE:** 1<sup>st</sup> March 2012

<b>TITLE:</b>	<b>Localism Act 2011</b>	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	Statutory requirements	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor Paul Carpenter - Portfolio Holder for Engagement and Corporate Services	
<b>CONTACT OFFICER:</b>	Lucy Youles - Head of Legal and Democratic Services. <a href="mailto:l.youles@southkesteven.gov.uk">l.youles@southkesteven.gov.uk</a> Tel: 01476 406105 Joyce Slater - Human Resources Service Manager <a href="mailto:j.slater@southkesteven.gov.uk">j.slater@southkesteven.gov.uk</a>	
<b>INITIAL IMPACT ASSESSMENT:</b>	Carried out and Referred to in paragraph (7) below:	Full impact assessment Required:
<b>Equality and Diversity</b>		No
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	Localism Act 2011 Draft Pay Policy Guidance The Plain English Guide to the Localism Act Transparency Link: <a href="http://www.southkesteven.gov.uk/index.aspx?articleid=3145">http://www.southkesteven.gov.uk/index.aspx?articleid=3145</a>	

## 1. RECOMMENDATION

It is recommended:

- 1.1 Council note the current update on the commencement of provisions of the Localism Act 2011 (the Act).
- 1.2 Council approve the pay policy statement as drafted and which is attached to this report as the Appendix.

## 2. PURPOSE OF THE REPORT

The purpose of this report is to ensure that all members are aware of relevant provisions of the Act currently in force, to note the content of the Act and to approve the draft pay policy statement.

### 3. DETAILS OF REPORT

- 3.1 The Act was given royal assent on the 15<sup>th</sup> November 2011. Presentations have been made to the Communities, Resources and Engagement Policy Development Groups, Scrutiny and Standards Committees on relevant provisions. It is proposed that relevant provisions will be reported to Council as and when the provisions are brought into force and the appropriate regulations made.
- 3.2 A Commencement Order was made on the 11<sup>th</sup> January 2012 which brought various provisions into force. Most of those provisions relate to the Secretary of State's ability to make regulations in accordance with sections of the Act. At the time of writing this report none of the regulations relating to provisions relevant to this Council have been made.

#### 3.2 Predetermination

The provisions of clause 25 of the Act relating to predetermination were brought into force on the 15<sup>th</sup> January 2012.

It states that:

*“A decision maker is not to be taken to have had, or appeared to have had, a closed mind when making a decision just because:*

- a) the decision- maker had previously done anything that directly or indirectly indicated that view the decision-maker took, or would or might take, in relation to a matter, and*
- b) The matter was relevant to the decision”.*

The enactment of this provision clarifies the current case law relating to predetermination and confirms decisions cannot be challenged because a decision maker has given a prior indication of a view on a matter. The new rules still require a planning committee member to have an open mind when determining a planning application. However, proof of previous campaigning against a proposed planning application would not be proof that the member had a closed mind. If a member attends a developer presentation on a proposed development and gives an opinion on the development, that member can take part in a decision on the development without fear of challenge for views already expressed **provided** that the decision made is reasonable based on the relevant material facts presented to the decision makers when the decision is being considered. This reinforces the “Wednesbury” principle in respect of decision making. This principle relates to a test of reasonableness in local authority decision making. A decision will be Wednesbury unreasonable if it is so unreasonable that no reasonable authority could ever have made it. It means that in reaching its decisions the Council or its committees should only consider relevant matters and not be influenced by anything that is irrelevant. It is usually a test that is applied by the courts when council decisions are challenged by judicial review. It will be open to the Courts to decide at what point a members mind is considered to be closed so as to be unreasonable.

### 3.3 **Standards**

The Standards Board for England was abolished on the 31<sup>st</sup> January 2012. However, the current Members' Code of Conduct and the Standards regime for dealing with complaints will remain in force until, at least, the 1<sup>st</sup> July 2012. The Standards Committee will be considering a draft code and appropriate arrangements in accordance with the provisions of the Act for approval by Council. A county wide approach is being considered to provide consistency. The Act brings a number of proposed changes to the standards regime. It does not remove the need to have high standards of conduct and behaviour at all times. It imposes a framework consisting of broad duties on local authorities as follows:-

- a. to promote and maintain high standards of conduct of its members;
- b. to adopt a members' code of conduct for its members;
- c. to devise and implement "arrangements" for the investigation of alleged breaches of the code and to make decisions on whether the allegations are proven and if they are, what action to take. This will involve the appointment of an independent person to assist with those arrangements;
- d. To maintain a register of members' interests.

### 3.4 **Members' Code of Conduct**

The Council will be required to adopt a new code of conduct for members. The Council's new Code of Conduct must be consistent with the seven principles which underpin the current regime:-

- ◆ Selflessness
- ◆ Integrity
- ◆ Objectivity
- ◆ Accountability
- ◆ Openness
- ◆ Honesty
- ◆ Leadership

In respect of failure to comply with the code, the Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology from members. Where a failure to comply with the Code of Conduct is found sanctions may include reporting the breach to Full Council or recommendation to the member's Group Leader .

### 3.5 **Register Of Interests**

Under current arrangements, members are required to disclose any personal interests and also any prejudicial interests.

The Localism Act recognises the importance of declaring interests. It proposes a different system. Interests are defined as "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer will be required to maintain a register of such interests, which must be available for inspection and available on the Council's

website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the Council offices and on the Council's website.

At present it is not clear what Disclosable Pecuniary Interests will comprise. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member's own interests, but also those of the member's spouse or civil partner, or someone living with the member in a similar capacity. This has parallels with the current system.

The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

### 3.6 **Pay Policy Statement**

The Act requires the Council to approve a pay policy statement by 31<sup>st</sup> March 2012. Guidance has been issued in draft form and there is no date by which the guidance will be finalised. The pay policy statement is a statement of what is already in place, and existing policy statements have been incorporated into the statement. The guidance requires the calculation of pay ratios. It is a requirement that a pay policy statement is adopted by the Council.

It should be noted that nothing in the pay policy statement provisions in the Act or in the draft guidance is intended to supersede existing responsibilities and duties placed on authorities in their role as employers under relevant employment legislation. Authorities must bear in mind these responsibilities and duties when formulating a pay policy statement.

### 3.7 **Community Right to Challenge**

The Act gives a right for any voluntary, community or employee body to express an interest in taking over the management of a facility or the provision of a service and require the Council to consider the proposal and, if required, undertake a competitive procurement exercise for the provision of that service.

These provisions are not yet in force and regulations are required before the provisions come into effect. Members will be given further information when the regulations are available.

### 3.8 **Assets of Community Value**

The **Assets of Community Value provision** was originally referred to as the '*community right to buy*' in the Localism Bill. This allows specified public bodies to nominate buildings and land that they consider to be of value to the community. The Council will be required to consider whether that property should be included in a list of such assets and maintain the list. If any of the assets on the register are put up for sale, the community is given an opportunity to express an interest in purchasing the asset, and to bid to buy the asset.

This does not give any rights of first refusal or to obtain the land at less than market value. There is no requirement to sell to a community interest group at full or discount price. The sale will be at the discretion of the land owner. This provision only provides an opportunity for community groups to be made aware of the sale and allow them to seek the funding to purchase the asset at market value. The Council will still have to comply with its own legal requirements to obtain 'best value' for its assets.

These provisions are not yet in force and regulations are required before the provisions come into effect Members will be given further information when the regulations are available.

### 3.9 **Housing**

There are wide ranging implications arising from the Act for the way we will deliver the Council's housing service.

We are still awaiting the commencement dates for many of the changes. Full consideration will be given when Regulations are in force.

#### Allocations

The Act specifies that the future allocation of housing will only be given to eligible persons, with the Local Authority deciding who qualifies. The Secretary of State has the power to prescribe classes of people who are eligible or ineligible.

Local authorities must put in place an allocations scheme for determining priorities and procedures to follow. Reasonable priority must be given to certain specified groups of people.

#### Homelessness duty

Local authorities can discharge their duty to persons with priority need who are not intentionally homeless into the private rented sector, whereas previously an applicant could refuse the private rented sector and wait in temporary accommodation for a council property.

#### Tenure and tenancy strategies

The Act provides that tenure can be provided for a minimum of two years (although only below five years if there are exceptional circumstances) as opposed to previous lifetime tenancies.

There will be no automatic succession rights to spouses or partners. Beyond this, councils will have flexibility to develop tenancy agreements to meet their local need.

Every local housing authority has a duty to produce a tenancy strategy and for registered providers of social housing to have regard to this.

### Housing finance

The Act abolishes the majority of the current housing revenue account national subsidy framework and replaces it with a new 'self financing' system.

The Act has reverse provisions in place that allow the Secretary of State to re-open the debt settlements in the future.

The Act enables the Secretary of State to retain a proportion of Right to Buy receipts and is also more prescriptive about local authorities can do with Right To Buy receipts..

### Regulation of social housing

The Localism Act reforms the way that social housing is regulated with the functions of the current regulator, the Tenant Services Authority (TSA) being transferred to the Homes and Communities Agency (HCA) via a regulatory committee.

The regulator will set a standard for all local landlords.

### Democratic filter and Housing Ombudsman

To enable greater consistency across the housing sector in handling complaints; the functions of the Local Government Ombudsman will be transferred to the Housing Ombudsman Service (HOS). The remit of the HOS will be extended to cover the tenants of local authority housing as well as those of Housing Association Registered Providers (HARPs).

Further reports will be presented to the PDG, Cabinet and Council depending on the issue and policy proposal for change or otherwise as and when the relevant parts of the Act and the Regulations are in force and guidance has been issued.

## 3.10 **Planning**

A number of planning provisions, related to both policy preparation and development management, were introduced by the Act the two most discussed during the course of the Act being the abolition of Regional Spatial Strategies (RSS), although it should be noted that the Secretary of State cannot use this power of revocation until a Strategic Environmental Assessment of the impact of RSS withdrawal has been completed, and Neighbourhood Planning, including enabling local communities to prepare Neighbourhood Development Plans.

Other planning provisions relate to pre-application consultation by developers, enforcement, nationally important infrastructure projects, the Community Infrastructure Levy and procedural and other matters relating to the Local Development Framework. The more significant elements of the Act, including the preparation of Neighbourhood Plans, require Regulations to be made to bring them into effect and it is expected that these will be in place by April 2012.

## **REFERENDUMS**

The Localism Bill contained provisions to enable the public to require local referendum to be held on any local issue that they thought important. During the passage of the Bill this was dropped with the exception of referendum for:

- ◆ Council Tax increases
  - ◆ Business Rate Supplements
  - ◆ Neighbourhood plans
- 
- Council Tax Increases

Before the provisions of the Localism Act, there was no requirement to hold local referendum on any aspect of a local council's decisions about the level of its council tax. The Secretary of State previously set high level parameters about the level of council tax increases (and changes in the associated budget requirement calculations) and, if a local authority breached these, had the power to impose an alternative budget level or impose restrictions on future budget levels.

The Act changes this significantly. Before the start of each budget process the Secretary of State will define what the 'maximum increase' (in % terms) by which a local authority can raise its Council tax without the need to hold a local referendum. If a local authority exceeds the stated level, the authority must hold a local referendum at its own expense.

A Billing Authority may recover from another major precepting authority the expenses in relation to a referendum undertaken on their behalf.

The Billing and precepting authorities also have a duty to produce substitute calculations which are not excessive. These will have effect for that financial year if the result of the referendum is that the proposed amount of council tax is not approved by a majority of persons voting in the referendum.

The timing of any referendum is very important. Ideally this would take place before a local authority sets its budget, but this seems unlikely from the current regulations. It is more likely that any referendum would take place after a local authority has set its Council Tax and therefore there are a number of administrative (and cash flow implications) to be dealt with. Further guidance is expected on this.

- Neighbourhood Plans

Neighbourhood plans are designed to facilitate the devolution of planning responsibilities to a lower more local level.

Parish Councils or in unparished areas Neighbourhood Forums (community groups and businesses) will be able to prepare neighbourhood plans and permit certain development without the need for planning permission (through a Neighbourhood Development Order). Neighbourhood plans, however, must be consistent with local plans. They have to comply with the Core Spatial Strategy and other Council planning policies, so the popular misconception that they can

be used to resist development already provided for is incorrect. The plans will have to be subject to independent examination and then a local referendum.

Further reports will be brought before Members when regulations and the timetable for implementation are available

#### **4. OTHER OPTIONS CONSIDERED**

The Council is required to have a pay policy statement in place by the 31<sup>st</sup> March 2012. The approval of the statement could be delayed pending the receipt of the final guidance. If the statement attached to this report is not adopted it is unlikely this Council would be able to publish a pay policy statement before the statutory deadline.

#### **5. RESOURCE IMPLICATIONS**

The resource implications of each provision of the Act will be considered as and when such provision is brought into force.

#### **6. RISK AND MITIGATION (INCLUDING HEALTH & SAFETY AND DATA QUALITY)**

Members will be updated on the commencement of various provisions from time to time to ensure they are aware and can make appropriate decisions

#### **7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

There are no issues relating to equality impact assessments in respect of this report. Individual policies relating to provisions of the Act will be assessed as they are produced.

#### **8. CRIME AND DISORDER IMPLICATIONS**

There are no crime and disorder implications arising from this report.

#### **9. COMMENTS OF FINANCIAL SERVICES**

As stated above, the financial implications of each provision will be considered at the appropriate time. There are no financial implications relating to the contents of this report. The pay policy statement is a statement which reiterates existing policy.

#### **10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES**

The comments of the Head of Legal and Democratic Services are included in this report.

#### **11. APPENDICES:**

Appendix - Draft Pay Policy Statement