

## The Localism Act

### - Impact on the council

There are four main measures of the Localism Act:

- New freedoms and flexibilities for local government
- New rights and powers for communities and individuals
- Reform to make the planning system more democratic and effective
- Reform to ensure decisions about housing are taken locally

The Act and its explanatory notes can be downloaded from the parliament website at: <http://services.parliament.uk/Acts/2010-11/localism.html>. Different parts of the Act come into effect at different times and in many cases, the Government will set out further details, such as the exact rules on how different community rights will work. The Government cannot give a 'cast-iron' guarantee about timing, but it is estimated that many major measures will come into effect in April 2012. Where Government have indicated an estimated implementation date, this is shown below.

Element of the Act	Lead Officer(s)	Potential impact on the council and any identified actions required	Timetable (if known)
<p><b>New freedoms and flexibility for local government</b></p> <p>The Government is committed to passing new powers and freedoms to town halls. The Localism Act contains a number of proposals to give local authorities new freedoms and flexibility.</p>			
<p><b>General power of competence</b></p>	<p><b>Adrian Stanfield</b></p>	<p>The Act gives the authority power to do anything an individual may do. Only expressly forbidden actions will be ultra vires.</p> <p>This is regarded by the government as being one of the single most important measures in the Act. The power may be exercised in any way:</p> <ul style="list-style-type: none"> <li>-anywhere in United Kingdom or abroad</li> <li>-for a commercial purpose or otherwise, for a charge or without charge</li> <li>-for the benefit of the authority and its area or persons resident/present or otherwise</li> </ul> <p>but there are certain restrictions on the use of the power e.g. in relation to charging, and where it is used for commercial purposes. The Secretary of State may amend, repeal or revoke legislation which restricts the exercise of the general power, and may also constrain the use of the power by regulations.</p>	<p>To come into effect April 2012 (estimate)</p>

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<p><b>Abolition of the Standards Board</b></p>	<p><b>Adrian Stanfield</b></p>	<p>The Act abolishes Standards for England, and the requirement for local authorities to set up Standards Committees.</p> <p>The Council will however be required to adopt a Code of Conduct, and establish procedures for dealing with breaches of the Code by both District and Parish Members. There will remain a general duty to promote and maintain high standards of conduct for Members (and co-opted Members).</p> <p>The detailed requirements of the new provisions relating to standards will be reported to the Standards Committee by March 2012.</p>	<p>To come into effect July 2012 (estimate).</p> <p>Standards for England to be abolished on 31 March 2012.</p>
<p><b>Clarifying the rules on predetermination</b></p>	<p><b>Adrian Stanfield</b></p>	<p>The new provisions are intended to allow Members to vote and take part in matters of Council business when they have previously expressed a view on the same issue elsewhere. The new rules provide that a decision maker is not to be taken to have a closed mind just because he/she has previously done anything that directly or indirectly indicated what view he or she had or would or might take.</p> <p>Member training will be provided shortly.</p>	<p>Effective from 15 Jan 2012</p>
<p><b>Greater local control over business rates</b></p>	<p><b>Sharon Shelton</b></p>	<p>Gives councils more freedom to offer business rate discounts to help attract firms, investment and jobs. If offered, Councils would need to meet the cost of any discount from local resources.</p> <p><b>Ballot for imposition and certain variations of a business rate supplement</b>  Clause 68 requires that a ballot be held for both any future Business Rate Supplement project and all variations not set out in the relevant prospectus to a Business Rate Supplement.</p> <p><b>Local discounts</b>  Clause 69 amends section 47 of the Local Government Finance Act 1988 to allow local authorities to reduce the business rates of any local</p>	<p><b>Effective from April 2012</b></p>

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		<p>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. Authorities would need to meet the cost of any discount granted from their own budget.</p> <p><b>Small business rate relief</b></p> <p>Clause 70 removes the legal requirement for ratepayers to submit an application in order to claim Small Business Rate Relief. Authorities can grant relief without an application.</p> <p><b>Cancellation of liability to backdated non-domestic rates</b></p> <p>Clause 71 provides the Secretary of State with a limited power to cancel certain backdated business rate liabilities. The power can only be exercised in relation to the 2005 rating list, between the periods 1 April 2005 and 31 March 2010; and extends only as far as properties which were added to the rating lists after the list was originally compiled.</p>	
<p><b>Empowering cities and other local areas</b></p>	<p><b>Steve Humphrey</b></p>	<p>This enabling provision of the Act allows the transfer of functions from Central Government and Government Organisations to local authorities and local economic boards in order to promote local economic development. Authorities will be encouraged to come forward with innovative proposals which can also be linked to the transfer of property and rights. These empowerment provisions were sought mainly by the larger city authorities to boost local economic growth. They cannot be imposed, although potentially either the County Council or the LEP could seek such local empowerment provisions.</p>	
<p><b>Other freedoms to councils</b></p>	<p><b>Adrian Stanfield</b></p>	<p>Other freedoms open to councils as a result of the Localism Act include:</p> <ul style="list-style-type: none"> <li>• The Act gives councils greater choice in governance arrangements. Councils may move away from an executive form of governance to a committee system. Such a change can be made at any time as best suits the needs of the council – there is no longer a time constraint tying such changes in with election</li> </ul>	

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		<p>years only. However if such a resolution for change is made, then councils are unable to take any further such resolutions for a period of 5 years.</p> <ul style="list-style-type: none"> <li>• The Act also gives greater freedoms over the setting up of Area Committees as suitable to the wants and needs of local people.</li> <li>• Councils will have greater flexibility with their role in scrutinising the work of other local public bodies.</li> </ul> <p>Further guidance is awaited regarding these freedoms and the process to be followed.</p>	

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<p><b>New rights and powers for communities</b></p> <p>This Act passes significant new rights direct to communities and individuals, making it easier for them to get things done and achieve their ambitions for the place where they live.</p>			
<p><b>Community right to challenge</b></p>	<p><b>Adrian Stanfield</b></p>	<p>Under the community right to challenge the Council will have to consider expressions of interest from specified bodies wishing to take over any of the Council's services. The bodies that may bid are voluntary bodies, community bodies, parish councils and 2 or more employees of the same authority in respect of which the expression of interest is made.</p> <p>Upon receipt of such a challenge the Council will be required to consider it and set a timetable for deciding whether to accept or reject the expression of interest. If the challenge is successful the Council will need to go through an appropriate procurement process.</p> <p>The grounds for rejecting an expression of interest will be set out in Regulations (yet to be made).</p>	<p>To come into effect October 2012 (estimate)</p>
<p><b>Community right to bid (assets of community value)</b></p>	<p><b>Steve Humphrey Julie Beilby</b></p>	<p>This provision is designed to enable local communities the opportunity to make a bid for "assets of community value". It is based on the premise that very often important local community assets (such as shops, pubs etc) are lost without the opportunity for purchase by local communities. However, the provisions do not ultimately affect property or planning matters and therefore may not alter market value or long term economic sustainability of the community asset in question.</p> <p>The system will involve the Borough Council in maintaining a register of community assets nominated by local communities. Such assets are not currently defined but the LA will be required to accept nominations on a register unless reasons are given not to do so. Owners must be notified of the register entry and are then required to give notice of intention to market the asset where upon a prescribed timeframe applies in order to give time for the local community to raise funds and make a bid. The Act provides rights of appeal on listing and for compensation to be paid to owners for any losses incurred as a result of the listing.</p>	<p>To come into effect October 2012 (estimate)</p>

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		<p>Whilst this mechanism will provide opportunities for local communities it will not provide any substantive assistance in financial or other means of maintaining a local community asset. The risk is that local expectations may rise without great prospect of fulfilment. The scheme will place an administrative duty on the Council.</p>	
<p><b>Right to approve or veto excessive council tax rises</b></p>	<p><b>Sharon Shelton</b></p>	<p>The provisional local government finance settlement for 2012/13 was announced on 8 December 2011 along with the levels of council tax increase above which local authorities will have to seek approval of their electorate via a local referendum. Local authorities will be required to hold a referendum if Council tax increases exceed:</p> <ul style="list-style-type: none"> <li>• 3.5 per cent for most principal authorities (for 2012/13)</li> <li>• 3.75 per cent for the City of London</li> <li>• 4 per cent for the Greater London Authority, police authorities, and single purpose fire and rescue authorities</li> </ul> <p>If an authority proposes a council tax increase that exceeds that allowed, it will be required to produce a substitute set of figures, which will then apply if the main proposal is not approved in a referendum.</p> <p>TMBC would also be required to conduct referendums on behalf of precepting authorities, but be able to recover their costs. The Act provides for the timing of referendums. Publicity, limits on expenditure, conduct of members and staff of the authority will be covered in regulations, broadly modelled on the existing rules, published in 2007. Those entitled to vote in local elections will be entitled to vote in a referendum.</p>	<p><b>Effective from the 2012/13 budget setting process.</b></p>

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<p><b>New rights and powers for communities</b>            This Act passes significant new rights direct to communities and individuals, making it easier for them to get things done and achieve their ambitions for the place where they live.</p>			
<p><b>Transparency over senior council officials' pay</b></p>	<p><b>Sharon Shelton Julie Beilby</b></p>	<p>Councillors will need to vote on and publish a statement of their policies on pay. To include the salaries of senior officials, but also the lowest paid employees.            Full report will be submitted to General Purposes Committee on 30 January 2012 and then on to Council</p>	<p><b>Effective from April 2012</b></p>
<p><b>Getting rid of fines and charges for rubbish collection</b></p>	<p>John Batty</p>	<p>The Climate Change Act 2008 gave councils powers to charge for the collection of domestic waste. TMBC is committed to recycling and to reduce the amount of domestic rubbish collected in the borough. We believe that the best way of doing better is by encouraging residents and not fining them. Consequently we have never used the powers which have now been taken away in the Localism Act.</p>	

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<p><b>Reform to make the planning system clearer, more democratic and more effective</b></p> <p>The Localism Act contains provisions to make the planning system clearer, more democratic, and more effective.</p>			
<p><b>Abolition of regional strategies</b></p>	<p><b>Steve Humphrey</b></p>	<p>The Council has welcomed the abolition of Regional Spatial Strategies which in our case was the South East Plan. The new Act now enables local planning authorities to set their own parameters for housing and other development, although this approach must be based upon sound evidence that is subject to examination. The extent of flexibility will in large part depend on the outcome of the National Planning Policy Framework (NPPF) and the extent to which Planning Authorities will be <i>expected</i> to meet all identified needs and demands.</p>	
<p><b>Duty to cooperate</b></p>	<p><b>Steve Humphrey</b></p>	<p>At a practical level support for joint working on technical aspects of the planning process is welcomed and could bring efficiencies. In the world of development control significant cooperation between organisations already takes place.</p> <p>However, the Act, supported by the NPPF, brings a duty which could have significant implications for strategic planning. For example, in terms of housing development, a policy of restraint or poor practical delivery in one area may place increased pressure, indeed an onus, on an adjoining area to provide land to address wider development needs. It is thought that this device has been introduced to support growth in places where it can occur with greater ease and to provide a more comprehensive and coordinated approach amongst Planning Authorities. The practical and political application of such an approach has obvious difficulties and we will need to watch closely the final NPPF and how it will bear on a new local plan for Tonbridge and Malling and, importantly, those of neighbouring areas.</p>	
<p><b>Neighbourhood Planning</b></p>	<p><b>Steve Humphrey</b></p>	<p>The ability of local organisations, especially Parish Councils, to prepare a neighbourhood plan is introduced by the Act. The purpose of neighbourhood plans is to promote local growth and development in local communities. The Borough Council as Local Planning Authority (LPA) will</p>	<p>To come into effect October 2012 (estimate)</p>



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		<p>have a duty to cooperate in assisting in various ways by providing technical advice. The LPA will have a specific duty to arrange for a public examination of the plan and to hold a subsequent referendum to determine whether or not the plan should be adopted. The primary responsibility for preparing and funding the plan falls on the Parish Council whose area the plan covers. Any neighbourhood plan must be in accordance with the LPA's own development strategy and not be used as a device for preventing development.</p> <p>There are considerable questions still to be addressed about exactly how these plans are to be drawn up. The appetite for them is unknown and may be less than expected, given the parameters that are set. Some initial dialogue has occurred through the Parish Partnership Panel and a further session is to be planned. The staff and financial resource considerations for both Parish Councils and the Borough Council could be significant.</p>	
<p><b>Community right to build</b></p>	<p><b>Steve Humphrey</b></p>	<p>This is a provision to be introduced to enable locally supported development proposals to proceed without the need for express planning permission from the LPA. It would require a Parish Council or qualifying local organisation to prepare a Development Order, effectively granting permission for a specified form and nature of development on specified land. This would be subject to examination and a referendum, but once in place development could proceed, subject to any conditions or limitations set out in the approved Order.</p>	<p>To come into effect April 2012 (estimate)</p>
<p><b>Requirement to consult communities before submitting certain planning applications</b></p>	<p><b>Steve Humphrey</b></p>	<p>This provision makes a requirement of a process that has been developing as good practice in any event in respect of major and significant planning applications. It is a positive step in increasing awareness in communities and places a burden on the developer to articulate proposals and respond to feedback prior to submitting an application. For certain types of development the applicant will be required to demonstrate how the process has been carried out. It does</p>	<p>To come into effect April 2012 (estimate)</p>

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		not affect the consultation duties or practices of LPAs	
<p><b>Strengthening enforcement rules</b></p>	<p><b>Steve Humphrey</b></p>	<p>Disappointingly the Act has not made any significant changes to the overall impact of the planning enforcement system, despite widespread calls for change. One key step is to introduce penalties for purposeful concealment of unauthorised development following some celebrated cases of new dwellings being constructed in rural areas without permission. There are no changes in respect of powers for more effective or immediate action on the unauthorised use of land and no new mechanism to tackle development not being undertaken in accordance with a planning permission.</p>	<p>To come into effect April 2012 (estimate)</p>
<p><b>Reforming the community infrastructure levy (CIL)</b></p>	<p><b>Steve Humphrey</b></p>	<p>Local Authorities will be able to set and collect a Community Infrastructure Levy (CIL) in respect of most forms of development in their areas. A levy will apply on a floor-space basis and will be set having regard to both the infrastructure needs of an area in supporting development and the general viability of development. Funds collected may, in part, need to be passed to other infrastructure providers (such as KCC, the Environment Agency) and an amount passed to local councils. A CIL charging schedule will be subject to a public examination and consequently must be based on robust evidence.</p> <p>A report to the Community Infrastructure Levy Panel recently set out the way in which the new mechanism is intended to work and highlighted the various systems and processes that the Borough Council would need to put in place, which in turn will have a resource implication.</p>	
<p><b>Reform the way local plans are made</b></p>	<p><b>Steve Humphrey</b></p>	<p>The changes proposed are relatively minor although improve the flexibility of LPAs in preparing their forward planning policies. In future it seems these will be titled "Local Plans" rather than Local Development Frameworks!</p>	<p>To come into effect April 2012 (estimate)</p>

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<p><b>Reform to ensure that decisions about housing are taken locally</b>            The Localism Act reforms mean more decisions about housing are taken locally, and make the system fairer and more effective.</p>			
<p><b>Social housing allocations reform</b></p>	<p><b>John Batty</b></p>	<p>The Housing Allocations Scheme will be reviewed to take account of this increased flexibility, which gives local authorities greater freedom to set their own policies about who should go on the housing list for social housing in their area. It will be submitted to the Board as a draft for approval to consult; and it will be subject to three months public consultation prior to further submission to the Board for final approval.</p>	<p>To be commenced by order of the Secretary of State</p>
<p><b>Social housing tenure reform</b></p>	<p><b>John Batty</b></p>	<p>Social landlords will now be able to grant fixed term (flexible) tenancies rather than tenancies for life. A period of less than five years can only be offered in exceptional circumstances. This amendment is an improvement to the original two year minimum period proposals. We will need to work closely with social landlords to ensure that the quality and timing of advice to tenants who are approaching the end of their tenancy is appropriate and that suitable options are made available to such tenants including remaining in situ, alternative accommodation or shared ownership. Otherwise it will potentially impact demand on the Housing Needs Service and levels of homelessness and could run counter to maintaining stable communities. Housing Associations will be encouraged to still also offer tenancies for life.</p> <p>The Council will need to develop a strategic tenancy policy to give a preferred direction to the policies of local housing associations.</p>	<p>April 2012 (estimate)</p>
<p><b>Reform of homelessness legislation</b></p>	<p><b>John Batty</b></p>	<p>The reforms will permit housing authorities to discharge their duties to homeless households by the offer of a (one year) tenancy within the private rental sector. However, private landlords are increasingly reluctant to offer tenancies to benefit-dependant households, and a considerable amount of effort is made to develop and maintain relationships with local landlords and lettings agents. This is an ongoing priority along with the need to be flexible in terms of the assistance we can offer i.e. bonds, deposits and rent in advance.</p>	<p>To be commenced by order of the Secretary of State</p>

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<b>Reform of council housing finance</b>	<b>John Batty</b>	None – N/A to T & M as a non-stock holding authority.	
<b>National home swap scheme</b>	<b>John Batty</b>	<i>Homeswap Direct</i> was launched in October and will go live in April 2012. No direct impact on the Council, however it will be accessible to customers of Kent Homechoice via the internet and also digital TV.	To be commenced by order of the Secretary of State
<b>Reform of social housing regulation</b>	<b>John Batty</b>	None – N/A to T & M as a non-stock holding authority.	To be commenced by order of the Secretary of State