



Briefing 07/24 April 2007

Local government and public involvement in health Bill: Committee stage progress

This briefing provides an analysis of the local government and public involvement in health bill as it progresses through the parliamentary committee stage. This briefing applies to England and Wales and is copied to Scotland and Northern Ireland for information.

Key issues

In October 2006 the Department for Communities and Local Government (DCLG) issued a white paper entitled 'Strong and prosperous communities'. The white paper did not seek formalised responses other than in respect of bids for unitary status.

However the white paper was followed in December with a Bill entitled The Local Government and Public Involvement in Health Bill (the Bill). The Bill had its first and second reading on the 12 December 2006 and 22 January 2007 and has now moved into the parliamentary committee stage between the 12 December and 8 March 2007.

This briefing examines some of the key provisions within the Bill and the Bill's impact upon current local authority arrangements, and the committee debates resulting in the Bill as currently amended by committee.

The House of Commons Report and third parliamentary reading are anticipated after the Easter recess with Royal Assent anticipated by the end of July 2007.

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1. Scope and purpose of the Bill

The Bill predominately affects English local authorities. However specific provisions provide for Wales and the consent of Welsh Ministers, in particular in relation to the Best Value provisions and local elections, and electoral date changes. The Bill makes significant changes to:-

- Structural and boundary changes and elections and leadership models in England
- Reorganisation and community governance
- Co-operation of English authorities with partners and joint working with health bodies.
- Best value
- Inspection and audit of local services (including changes to the Audit Commission)
- Ethical standards and the conduct of members
- Patient and public involvement in health and social care and joint assessment
- Powers of National Assembly for Wales.

2. Structural and boundary changes, elections and leadership models

Part 1 chapter 1 of the Bill makes proposals for single tier local government through either the invitation of, or direction of, the Secretary of State for a number of types of proposals.

A 'Type A' proposal is a proposal that there should be a single tier of local government for the area that is the county concerned

A 'Type B' proposal is a proposal that there should be a single tier of local government for an area which-

- (a) is currently a district, or two or more districts, in the county concerned; and
- (b) is specified in the proposal

A 'Type C' proposal is a proposal that there should be a single tier of local government for an area specified in the proposal which currently consists of

- (a) the county concerned or one or more districts in the county concerned and
- (b) one or more relevant adjoining areas

A combined proposal is a proposal that consists of –

- (a) two or more 'Type B' proposals
- (b) two or more 'Type C' proposals or
- (c) one or more 'Type B' proposals and one or more Type C proposals but a proposal is not considered a combined proposal if it includes any Type B or C proposals that are alternatives.

There has been much debate about whether or not the proposals within the Bill contradict announcements made by the Secretary of State Ruth Kelly that authorities would have a choice on whether they should go for unitary status. However the Bill clearly provides the Secretary of State with reserve powers to intervene and states that 'The Secretary of State may give a direction [under section 2] only where he believes that it would be in the interests of effective and convenient local government to do so'.

In order to ensure that the Boundary Commission are able to advise in matters relating to proposals arising from proposals as to an authority's status, the Bill makes specific provisions which allow the Boundary Commission to advise on matters relating to proposals and further permits the Boundary Commission to make its own recommendations. However safeguards are built into the Bill which prevent the Boundary Commission [under the specific provisions of the Bill] making recommendations that would seek to alter the boundaries of an **existing** single tier area with a consequent alteration to two tier areas or alter the boundaries of a two tier area with the consequential abolition of a single tier area.

The Bill sets out the mechanism of change including the issuing of implementation orders and establishment of a number of electoral matters such as the provisions relating to a transactional executive of a new local authority and the ability for the Secretary of State to implement a number of supplementary orders to deal with, for example, the transfer of functions, property and rights and liabilities.

The Bill also provides for the establishment of residuary bodies for the purposes of taking over any rights, liabilities, and functions and so forth which would cease to exist pending establishment of the new authority.

Staff transfers arising as a result of reorganisation: The Bill also clarifies that any staff commission set up to look at the recruitment and transfer of staff to a new authority or authorities may be funded by Parliament as follows:-

'Any expenses incurred by a staff commission under this section and not recovered from a relevant authority shall be paid by the Secretary of State out of money provided by Parliament'.

The Bill also contains a number of restructure provisions to prevent authorities engaged in reorganisation from disposing of land in certain circumstances or entering into high value contracts that would by default then impact upon the new authority.

Leadership and governance arrangements: The Bill provides for a number of possible leadership models and would amend Section 11 of the Local Government Act 2000. The new models are a directly elected mayor with a four year term, a directly elected executive with a four year term, a directly elected executive with a four year term or an indirectly elected leader with a four year term.

Such arrangements would come into place over phases from May 2008 to May 2011 depending on electoral cycles. From 2008 councils will be able to adopt a mayoral model but without the need for a referendum

Changes to allow councils to opt for all out elections every four years and for single member wards (where they are wanted locally) will also come into play but again with phasing arrangements between May 2008 and May 2011.

APSE commentary: Whilst these changes were widely anticipated the provisions within the Bill, whilst removing the requirement for a referendum, do not appear to create a balance as to how the elected mayoral model might be reversed which appears to be a fundamental flaw within the Bill. Whilst the potential for a four year term of office for a council leader will provide, for many authorities, some welcome stability there appears to be a fundamental error (one assumes in drafting rather than intention) in not

providing a mechanism for the leader to be removed by council resolution. For some authorities the models established in the Local Government Act 2000, for English authorities, appear to now provide a settled and workable arrangement, whilst for others concerns have remained about the 2000 Act models. Evidence to the Parliamentary Committee has suggested that a better approach would have been to expand the existing models providing greater choice to local authorities, and also better reflecting the need for wider power sharing arrangements in those authorities with no overall control.

3 Co-operation of English authorities and with partners and operation of local area agreements

The Bill contains several provisions relating to Local Area Agreements (LAAs) which includes the scope of 'responsible' local authorities and those of 'partner authorities'.

The purpose behind the new provisions is to ensure that local authorities comply with a new 'duty to consult' each partner authority and such other persons as appear to be appropriate and which are specified in the draft local area agreement and must have regard to the community strategy (prepared under S 4 of the Local Government Act 2000 –strategies for promoting well-being).

The reasoning behind such provisions is to allow for better co-ordination of local services to respond to the 'economic, social and environmental well-being' of the local area. A responsible local authority is

- (a) a county council
- (b) a district council for an area in England in relation to which it has the functions of a county council;
- (c) a London borough council
- (d) the Council of the Isles of Scilly
- (e) the Common Council of the City of London in its capacity as a local authority

The definition of 'partner authorities' is

'Any person who acts or is established for an area which in any part of which, coincides with or falls within the responsible local authority's area' such as a district council which is not the responsible local authority, a fire and rescue authority, a national park authority, a police authority a waste disposal authority and a primary care trust or a metropolitan county passenger transport authority. This is not an exhaustive list and the reader is advised to reference the full Bill under Part 5 Chapter 1, 79 (2) however the general thrust of these provisions is to ensure that the role of the local authority is to maximise involvement of all partners to benefit the local area.

In addition the Bill provides for the involvement of the English Sports Council, the Environment Agency and the Learning and Skills Council amongst others.

APSE commentary APSE welcomes the involvement of a range of partners in the development of the local area and anticipated simplification of performance targets to follow. However the 'list' approach within the Bill may provide for a debate around who is included in the list rather than the general policy principal in involving all those partners necessary to deliver better public services around local government and health and involving the public in the provisions of such services. The involvement of other educational establishments and NHS Trusts, Foundation Trusts and Local FE providers

may also prove to be worthwhile partners and should not therefore be restricted from inclusion by the drafting of the Bill, which appears to fetter their involvement, or, could indeed act as a barrier to ensuring the cooperation of such bodies with the local authority.

In addition the LAA partner list does not currently include trade unions or employee representatives despite the fact that any revised targets may have a workforce impact, with binding targets on a range of employers who may have, in good faith, already entered into workforce agreements, which could govern performance and outcomes.

Moreover the range of bodies covered within the specific duty, to cooperate within the framework of the LAA, needs to be married into the overview and scrutiny arrangements for there to be an effective 'joined-up government' approach to overview and scrutiny. If barriers between the sectors are to be broken down and greater co-ordination and co-operation from across the public sector is to become a reality then it is essential that overview and scrutiny provisions are transparent and supportive to the operation of effective LAAs. This means when establishing LAAs and setting agreed targets the co-operation of key partners such as RSLs, transport providers, private sector providers to the responsible local authority or their key partners are brought into the framework and are subject to the operation not only of an effective LAA but also to the local authority Overview and Scrutiny Committee (this is further examined below under section 6).

4. Best Value

The Local Government Act 1999 introduced Best Value to local authorities setting a number of procedural requirements. The 1999 Act was essentially an enabling Act providing for further statutory guidance to be issued on the operation of the Best Value provisions.

The Government has recognised that local authority performance has improved dramatically since the introduction of Best Value by an overall rating of 15.1% (local government research unit Analysis 2006) using a basket of Best Value performance indicators. However the rationale behind changes to the Best Value regime is that whilst there has been rapid improvement amongst the poorest performing councils the adequately performing authorities have not had the same levels of improvements.

The Bill amends the 1999 Act removing the provisions that relate to the existing Best Value requirements to prepare an annual performance plan, and to conduct Best Value reviews as well as the exemptions that applied to Parish councils. The Bill also removes the Best Value Performance Indicators, all in respect of English authorities. Best Value provisions remain for Wales.

The Bill introduces instead some new provisions and specifically in relation to Best Value a new duty is conferred by amending section 3 of the 1999 Act to introduce within the 1999 Act a new section 3A 'Involvement of local representatives' which states:-

S 3A (local government Act 1999 (1) *where a best value authority considers it appropriate for representatives of local persons (or if local persons or a particular description) to be involved in the exercise of its functions by being:-*

- (a) *Provided with information about the exercise of the function*
- (b) *Consulted about the exercise of the function, or*

(c) involved in another way it must take such steps as it considers appropriate to secure that such representatives are involved in the exercise of the function in that way.

A further major change is the introduction of Best Value grants. The provision for the payment of Best Value grants is made by inserting a further clause into the Local Government Act 2003 as a new provision to insert after S 36 in the Local Government Act 2003:-

S 36A (Local Government Act 2003) Grants by Ministers of the Crown in respect of Best Value authorities etc. *(1) A Minister of the Crown may pay a grant to a person for use in, or in connection with, promoting or facilitating the economic, efficient and effective exercise of functions by a Best Value authority or Best Value Authorities.*

However, this new provision, the rationale for which is that the cycle of payments under revenue support grant mechanisms would not facilitate the timely payments of specific grants to support the development of Best Value, and continuous improvement in performance, is that they would not be payable to Best Value authorities. This specific exclusion of the payment of the grant to the Best Value authority seems rather at odds given the new duties to involve representatives of local persons, which would often be facilitated directly by the local authority. An amendment seeking to make the payment of such grants more transparent was withdrawn following lack of support from the parliamentary committee.

A new performance indicator set is introduced to provide greater clarity about what local authorities and their partners are expected to deliver with national targets being measured as well as local circumstances. The new arrangements, which include Comprehensive Area Assessment (CAA) will be put into place by 2008/09 but in the interim there will be short-term updating of the CPA framework as it applies to single tier and county councils for reporting in February 2008

DCLG argues that whilst CPA has achieved higher levels of visibility amongst councils the individual citizen does not have recognition of what CPA means to them or their council services. DCLG also argues that the current framework of Best Value performance indicators against individual services does not assist in delivering better outcomes for citizens, particularly in areas where there are complex supply chains and multiple service providers.

APSE commentary: The procedural changes to Best Value reflect the current position in many authorities whereby changes to service structures has meant a mis-match between the old BVPIs and service reviews which are increasingly cross-cutting in approach. However the Secretary of State will issue further statutory guidance as to how the new Best Value regime will operate.

Many issues relating to Best Value have so far been enshrined within guidance rather than within the body of the primary legislation and that remains the case with this Bill. Much of the revised guidance is likely to examine the circumstances under which an authority 'considers it appropriate to involve local persons' [in exercising its functions] and in addition on how to demonstrate that 'local persons' have been effectively involved.

Further detailed guidance is needed on the issue of consultation with local representatives to ensure that the new provisions mean all members of the community

are provided with an equitable chance for involvement, in service development and improvement. The duty as currently drafted provides for a first stage consideration of user involvement rather than a simple requirement to consult and thus could work to exclude citizen engagement in service delivery unless subject to effective guidance.

The Code of Practice on Workforce Matters is currently enshrined within existing Best Value Guidance (Circular 03/03) and therefore any changes need to ensure that the workforce protection measures are not lost as a result of new guidance, though in discussions at Committee stage the Local Government Minister, Phil Woolas, has indicated that any revised Best Value Guidance would not undermine the operation of the Code of Practice on Workforce Matters

5. Community call for action

The Bill contains specific measures to place on a statutory footing the community call for action advocated within the Local Government White Paper; Strong and Prosperous Communities. Within the Bill the power to originate a community call for action rests with local councillors. If the call is made by a ward councillor then it covers any local government matters relating to any function of the authority and affecting the councillor's ward or constituents. If the matter is referred by a member of the local authority overview and scrutiny committee then it will cover anything within the remit of the overview and scrutiny committee.

However, there is some confusion as the Police and Justice Act 2006 (PJA) which contains similar provisions in relation to a community call for action. The PJA provisions impact on matters relating to crime and disorder and anti-social behavior, including environmental anti-social behavior and misuse of drugs and alcohol in the councillors own ward but which does not apply to County Councils.

APSE commentary: The provisions within the Bill are welcome as a further means by which local councillors and local communities can have their specific matters taken to a basis upon which quicker action can be taken; this will lead potentially to greater citizen engagement and more responsive local government at a community level. However it is likely that there will need to be a greater degree of co-operation on guidance in relation to the powers through the Home Office (as the lead department for the PJA 2006) and the Department for Communities and Local Government as the lead department for the Local Government and Public Involvement in Health Bill. With both sets of powers in place, but with only the Local Government Bill proposals applying to all councils, it is likely that citizens will be left in a state of confusion. Indeed councils may be left with the added burden of considering both sets of legislation in dealing with matters appropriate where there may be significant cross-over of the powers.

6. Overview and scrutiny

Effective scrutiny is regarded in the White Paper to be essential to good governance. The Bill expands the scope of the overview and scrutiny function beyond that of the local authority and encompasses within it the list of those designated as 'partners' under the revised LAA framework. There have been extensive memorandums submitted to the parliamentary committee which examine the provisions of the overview and scrutiny functions. However, as with the community call for action, there is a degree of

complexity as the powers relating to overview and scrutiny cut across some of the powers already in place through the PJA 2006 and the Health and Social Care Act 2001. Unlike the PJA and the Health and Social Care Act the new powers proposed in the Bill do not require an officer of the partners to attend to answer questions to the committee.

APSE commentary: Whilst the expansion of overview and scrutiny powers is very welcome they do not fully reflect the changing environment under which councils now operate. Many key partners would be excluded from the attention of the overview and scrutiny committee under the Bills' proposals but would nevertheless be key contributors to the success of the LAA. This includes local transport companies, FE providers, and utility companies.

Moreover where there are specific relationships with private contractors that could impact on the authority's ability to deliver on the LAA or where a partner engages a contractor, the expansion of overview and scrutiny to those organisations or contractors would help to provide a meaningful and reassuringly public route to more transparent and open local government.

Interface with housing and regeneration: APSE has recently argued in an expansive policy paper for better integration of the decent homes standard into a much broader 'decent neighbourhoods standard' to ensure that there is better local co-ordination and co-operation of services; including environmental issues and access to green open spaces. For such broader and more ambitious plans to work it is necessary for the local authority to have a broader remit to target and address a range of partners, which would impact upon a 'whole neighbourhood' approach. Aside from the obvious key partners providing local transport routes and local health services the fragmentation of social housing into RSLs has meant that one of the key factors in a successful neighbourhood, being the supply of decent affordable homes and social rented housing is beyond the remit of the overview and scrutiny function. Whilst RSLs may have a legitimate role in developing and co-operating on LAAs it is, APSE believes, desirable to have within the Councils' overview and scrutiny function the ability to examine such a crucial local partner.

7. Conclusions

APSE is disappointed that in many areas the reality of making councils 'place shapers' as advocated by the White Paper has not been followed through into the legislative process. Many councils have good working relationships with other partners and agencies and this has fostered a greater degree of co-ordination and co-operation at a local level. For many authorities however there has been frustration at the lack of localised co-ordination, particularly when the degree of public spend from a range of agencies is extrapolated from the different agencies, the need for joined up government is increasingly evident.

Whilst there is a balance between increasing burdens on the public sector and those providing services to the public sector greater responsibility on local authorities to co-ordinate and co-operate with partner authorities needs to be matched with increasing effective use of scrutiny processes.

Mo Baines
Principal Advisor