



Briefing 07/67 December 2007

The Local Government and Public Involvement in Health Act 2007

This briefing provides an analysis of the main features of the Local Government and Public Involvement in Health Act 2007 and complements APSE briefing 07 / 24. It is provided specifically to local authority chief executives in England only and for information to APSE contacts throughout the UK. This briefing will also be of interest to local authority Directors and Heads of Service for front line services.

Key issues

1. The Local Government and Public Involvement in Health Act 2007 received Royal Assent on the 30 October 2007
2. The Act is a direct consequence of the Local Government White Paper first published in October 2006
3. Whilst deceptively the title of the Act refers to health issues the Act in fact provides a major piece of legislation governing a number of issues of strategic importance to local authorities

1. Scope and Purpose of the Act

The Act predominantly affects English local authorities. However, there are specific provisions for Wales, particularly regarding Best Value, local elections and electoral date changes. The Act makes changes to:-

- Structural and boundary changes
- Elections
- Leadership models in England
- Reorganisation and community governance
- Co-operation of English local authorities with partners and joint working with health bodies
- Best Value
- 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 (Part 1)

The Act facilitates the establishment of Single Tier local government through either the invitation or direction of the Secretary of State. Direction will only apply where the Secretary of State believes that it would be in the interests of effective and convenient local government to do so.

The Act details 4 types of proposals:

Type A - A single tier of local government for the area that is the county concerned

Type B – A single tier of local government for an area which is:

- a) Currently a district, or two or more districts, in the county concerned, and
- b) specified in the proposal

Type C – A single tier of local government for an area 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

Combined Proposal – Consists of:

- a) two or more 'Type B' proposals
- b) two or more 'Type C' proposals
- 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.

The Act enables the Boundary Commission to advise in matters relating to proposals and permits the Boundary Commission to make its own recommendations. However, safeguards within the Act prevent the Boundary Commission from making recommendations that would 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 Act sets out a mechanism of change including the issuing of implementation orders and the establishment of a number of electoral matters such as the provisions relating to a transactional executive of a new local authority and the ability of the Secretary of State to implement supplementary orders to deal with, for example, the transfer of functions, property and rights and liabilities.

The Act 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.

The Act also clarifies that any staff commission established to look at the recruitment and transfer of staff to a new authority may be funded by Parliament.

Whilst there has already been a series on announcements on reorganisation more announcements are expected by the end of January 2008.

3. Elections in England (Part 2)

The Act enables councils to vary the form of elections without having to seek approval from the Secretary of State as follows:

Single member wards: Councils can request the Boundary Committee of the Electoral Commission to review an electoral area to create single member wards
Name of electoral areas: Local Authorities can change the name of electoral areas.
Date of local authority elections: The date of local authority elections can be altered to match the dates of European Parliament elections provided that six months notice is given

4. Executive Arrangements in England (Part 3)

The Act makes significant changes to councils' executive arrangements. A local authority can adopt either a leader-cabinet executive mode or a mayor-cabinet executive model.

The main points of these models are:--

Leader/cabinet: Council elects leader – leader selects cabinet

Mayor/cabinet: Elected mayor selects cabinet

Executive responsibilities are focused on leader/mayor responsible for own scheme of delegation. Both leader and mayor will hold office for 4 years but there will be provisions to deal with intervening events in the case of the leader.

Draft regulations are due to be published and it is expected the changes will be in force from May 2009. From that date there will be a statutory timetable giving a series of deadline dates for different types of authorities.

It will be easier for councils to switch between the forms of executive, but if a mayor/cabinet executive is put in place through a referendum, a second referendum will be required to change models. There will be a statutory minimum consultation period of 12 weeks for any plans to switch without a referendum.

Parishes (Part 4)

The process for creating local councils will be easier and the Secretary of State's Veto is removed under the Act. Principal councils will be able to start the review process leading to the creation of a parish council, which can also be triggered by a community petition.

A review will consider the position of existing parishes and will recommend what new parish/parishes (if any) should be introduced. Groups of parish councils will be able to identify themselves as neighbourhood, community or village councils. Current restrictions on local councils in London are lifted by the Act. It is anticipated that principal authorities will have to consider social cohesion in decisions about the creation of parishes.

The Act mentions guidance on reviews and electoral arrangements for parish councils but there is no indication of when the guidance will be available.

Certain eligible parishes will be granted a power of well being from April 2008. The criteria to establish eligibility will be set in regulations and the Act means that Quality Parishes will no longer exist. However, it is expected that most Quality Parishes will meet the criteria to be granted the power.

The Act also states that Parish Councils and parish meetings will no longer be subject to Best Value duties.

5. Co-operation of English Authorities with partners and the operation of Local Area Agreements (LAAs) (Part 5)

The Act contains several provisions relating to LAAs which include the scope of 'responsible' local authorities and those of 'partner authorities'.

Local Authorities will have to negotiate new LAA with their respective government offices, a key feature of which will be a reduction in the number of targets and the selection of relevant targets from a set of 198 National Indicators.

All authorities with unitary responsibilities will be the 'responsible' authority and will lead partners in identifying Local Improvement Targets (LIT) to improve the economic, social and environmental well being of the area. These targets relate to the responsibilities of:-

- The local authority
- One or more partner authorities
- One or more organisations with exercisable responsibilities in the area.

Partners include district councils (partner authorities), public sector providers, NHS providers and key public agencies and providers. There is a statutory requirement for partners to co-operate in determining targets. Agreed targets are submitted to Government Office by the local authority as a draft negotiated agreement. This draft is negotiated through Government Office and individual targets may be 'designated' (given statutory emphasis by Secretary of State).

Local Authorities must have regard to the agreed target within the LAA. The local authority will produce a public document – a Memorandum of the LAA which will:-

- Set out Local Improvement Targets
- Indicate designated targets
- Identify who is responsible for the targets.

6. Joint Strategic Needs Assessment

This part of the Act places a duty on each local authority and primary care trust (PCT) to prepare and publish a Joint Strategic Needs Assessment (JSNA) which will identify and assess the health needs of each social care authority (short, medium and long-term). Local authorities and PCTs have a duty to cooperate with, and have regard to, guidance issued by the Secretary of State for Health. County councils are required to consult each district council and draft guidance has been issued for this consultation.

7. Overview and Scrutiny

This Act extends local authority scrutiny powers and these powers will be introduced through regulations. Overview and Scrutiny will have a locality focus with potential for

area based scrutiny reviews. However, regulations are not yet in force and the practical implications are currently being debated.

New scrutiny powers allowing district councils to carry out scrutiny investigations will be subject to government consultation.

8. Community Call for Action

The Act provides local councillors with the power to originate a community call for action. This means that councillors can refer matters for overview and scrutiny. It covers any local government matters relating to any function of the authority or affecting a councillor's ward or constituents. If the councillor is a member of the overview and scrutiny committee it will cover anything within the remit of the committee.

There was some concern about confusion with procedure under Section 19 of the Police and Justice Act 2006, however the Government has agreed to align these procedures within the "Councillor Call for Action".

9. Best Value

The Act places a new duty on English Best Value authorities to actively involve representatives of local people in providing services. It also removes some aspects of the best value regime in England. The requirements to carry out Best Value reviews and prepare an annual performance plan are removed. The BVPI's are replaced by a new national indicator set.

The duty to involve goes further than consultation. It details three ways of securing the involvement of representatives of local people, informing, consulting or involving them in other ways. Local authorities will need to provide support for the adopted process. The intention of the duty is to represent a change in the way that councils engage with local people in the design and delivery of services. Draft statutory guidance has already been issued to reflect this and is the subject of APSE briefing 07/ 66.

10. Authority for local councillors to exercise functions

This allows a local authority to delegate the functions of the authority to an individual councillor in relation to their electoral division or ward.

The relevant functions and conditions of use will be defined by Regulations and any executive functions will be decided by the executive/leader. In all other cases, the authority will decide.

11. Ethical Standards

The Act aims to devolve decision-making on conduct issues for local authority members to local authorities with a revised, regulatory role provided for the Standards Board. The proposals enable local standards committees to make initial assessments of misconduct allegations and also provide for review arrangements for those assessments that lead to no action being taken. The Standards Board can also suspend

the role of a standard's committee in carrying out initial assessments of allegations and can issue guidance to standards committees and ethical standards officers.

12. APSE Comment

Much of the Act is dependant on follow-up regulation and statutory guidance. Clearly many areas included within the Act such as greater co-operation between local authorities and PCTs on matters of health and public involvement are welcome. However there are many areas of future regulation and guidance that will influence the outcomes from this new piece of legislation.

Whilst the Local Government White Paper set out a vision for a new relationship between central and local government there are a host of powers reserved to the Secretary of State, including powers of intervention should this become necessary, within the Act and other areas of legislation that still subsist despite the new legislation. Moreover the new inspection framework whilst purporting to provide greater integration between public bodies in the delivery of local priorities fails to provide councils with any real powers over partner organisations. Limitations on control over the budgets of partner organisations may well frustrate the delivery of local priorities. The efficiency agenda has equally created a mechanism whereby tight fiscal control, of local authority spend, remains and is arguably further strengthened by the switch to efficiencies on a purely 'cashable' basis which most authorities would regard as 'hard' savings.

Reorganisation continues to be a major issue for some local councils and it will be of great importance to reassure both the public and local authority staff about the consequences of reform. For the public this will mean information and advice as well as ensuring continuity of service delivery during the re-organisation process. For staff transfers it will mean not just ensuring the legal mechanisms are in place to facilitate the transfer process but also the practical administration of the transfer itself, including pay and rations, pensions and local terms and conditions of service.

APSE has previously called for a moratorium on inspection during reorganisation to ensure that councils are assessed fairly and not during a turbulent process. APSE would reiterate this call. However the importance of maintaining good performance management information should remain. Post transfer those local authorities affected need to seek to obtain the best levels of performance previously reached by all former partners, thus maximising performance in the new authority.

The revision of Best Value in its legislative form is the subject of a separate APSE briefing. (See APSE Briefing 07/66). However in the context of the Act this cannot be read in isolation to the much broader challenges to delivery of value for money for council tax payers, the delivery of competitiveness as opposed to competition and agreement under the CAA proposals.

Further details on the above areas are available on the APSE website at www.apse.org.uk and through APSE's principal advisors.

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