

## **SERIES OF ARTICLES FOR THE MUNICIPAL JOURNAL ON SHARED SERVICES**

### **Article 6 - Requiring Legislative Changes**

**By Stephen Cirell**

During the course of this series of articles on Shared Services and Joint Working, we have looked at the key legal areas, including the contractual, collaborative and corporate models, and procurement and other complications. From this analysis we can see that whilst joint working is essential in policy terms, it is far from easy. In simple terms, it is harder legally than it really should be.

So is the government part of the problem? Is it requiring local authorities to engage in joint working without properly providing the tools for the job? An allegation of insufficient support can be made out but what would help?

It might have been clear from the proposed White Paper what assistance the government would give to this and our series was timed to allow us to comment on it in this last piece. Sadly the change of minister at the Department of Communities & Local Government has meant that this will now be delayed until the autumn at least.

One way of looking at the difficulty is that policy initiatives are insufficient in such a key area. What we need is legislation. We have argued this in relation to local area agreements, another key policy area where difficulties are now emerging. The reason for this is clear: If joint working is as important an initiative as the government claims, then it should make the Parliamentary time available to pass legislation clearly setting out the necessary powers and duties or making changes to existing legislation where this is necessary. Instead the modern trend is to govern by policy and leave the existing legal framework to cope. This is like saying to local authorities you fight the fight for us and we will hold your coat!

If this were to happen, there are a number of areas that could be improved. These include:

- Delegation powers; currently under s101 of the Local Government Act 1972 a local authority may only delegate a function to a committee, officer or another local authority. One glaring omission is any other type of outside body, particularly a wholly owned company that the local authority has established. As more authorities take the corporate route, this issue needs to be resolved.
- Currently the main administrative model (a joint committee) has to act through the legal entity of a "lead authority". Giving joint committee's separate legal status (as in the case of a Joint Board) would go a long way to making shared working arrangements a real possibility.
- Part V of the Local Government & Housing Act 1989 remains in force, despite the introduction of prudential borrowing which has removed much of its purpose. . This needs to be repealed.
- Issues re governance have also been identified as problematic, such as conflicts between the duties of members and directors or those who sit on outside bodies. Those issues could be clarified by legislation.
- Legislation could also fix the dilemma arising over strings attached to funding by central government and make clear these could be over-ridden when working with other authorities.

It might also be mentioned that the procurement implications can be problematic in some circumstances. However, this is not UK law but EU law, that takes precedence over domestic legislation. Finding a fix here might be harder, although the government can lobby Europe and argue the case on behalf of local government. High on the agenda here would be the situation regarding use of the Corporate Model, particularly where a group of local authorities in the region establish a company, to provide services to each of them and how this should be treated under the regime. The other main area is to what level of competition a local authority has to resort where it is a Treaty obligation, ie Part B or below the threshold.

The obvious call in relation to all of these difficulties is for full legislation from the government. There can surely be no doubt that joint working is here to stay and this is unlikely to change even if David Cameron were to win the next election. This takes time and the government's normal retort is lack of parliamentary time. This can perhaps be more accurately characterised as lack of commitment but conveniently there is a temporary solution available now.

Powers were given under s.16 of the Local Government Act 1999 (the Best Value legislation) to permit the Secretary of State to introduce new powers where these are required to achieve Best Value or to remove legislation that is preventing Best Value from being achieved. Both of these can be done by secondary legislation under Henry VIII powers. These powers lie with the Deputy Prime Minister, John Prescott, and could be used quickly, preferably as an interim measure pending full legislation.

So if joint working is that important to the government, it is time that it put its money where its mouth is.

**Stephen Cirell is Head of Local Government with Eversheds and is author of *Best Value, Law & Practice* published in loose leaf by Sweet & Maxwell. Eversheds are running a series of seminars on Shared Services for Local Authorities around the country in May and June. E-mail [nicolaarmstrong@eversheds.com](mailto:nicolaarmstrong@eversheds.com) for more details.**

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