

Director of Legal Services :
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BRIEFING

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

This is a large and comprehensive piece of legislation (246 sections and 18 schedules). This briefing is to highlight the significant elements of the Act [and potential impact for BCC].

Part 1 – Structural and Boundary change in England

This section gives the Secretary of State power to invite or direct proposals for single tier authorities and to request boundary committee advice. Additionally under this part, the boundary committee may on its own initiative conduct a review of one or more local government areas [the boundary committee has only recently conducted a review of the Birmingham area and hopefully therefore the powers within this part of the Act will not be of immediate impact for Birmingham].

Part 2 – Elections

This part of the Act allows authorities to vary the way in which elections are held within that authority's area. Currently, for example, Birmingham City Council carry out elections "by thirds" i.e. there are three years during which in each year one-third of the membership is open for election. The Act brings into place the ability for a Council to be subject to a scheme for election by halves i.e. one half of the membership being elected in each year in which it holds ordinary elections, or indeed, for whole Council elections with all Councillors being elected in each year in which the Council holds ordinary elections. Changes of this nature require publicity, notice to the electoral

commission, consultation and a resolution passed at a special meeting with two-thirds majority. There are also fixed periods when such a resolution can be passed if a Council changes its method of election, there is also power to return to election "by thirds".

Powers are also contained in the Act to change the years in which Parish elections are held, in order to better synchronise provisions for holding elections generally. Supplementary provisions are also contained in this part with regard to European elections, Parliamentary general elections etc.

This Part also removes the restriction on the City confining the number of members in a Ward to 3.

Part 3

This part of the Act sets out the new provisions for executive arrangements. Following the commencement of the Act two models of executive arrangements are possible, Mayor and Cabinet Executive and a new style Leader and Cabinet Executive. In constitutions operating the Leader and Executive model the Secretary of State retains power to regulate the terms of office of the Leader. Powers can be included in the Constitution for removal of the Leader. Additionally the Leader must be capable of remaining in office until leaving office as a member. Indeed for Council's holding whole Council elections the Leader generally will hold office for 4 years.

Part 4

This part of the Act relates to Parishes and allows for these to be grouped as “communities” “neighbourhoods” and “villages” or indeed a Parish can itself elect to have one of these styles [the City currently only has one Parish with one petition currently going through the system – as such, this part of the Act should not impact significantly upon the City at this stage]. Under this part of the Act the well-being powers can be extended to “eligible Parish Councils” and there are powers to establish community governance reviews and the right by petition to seek a community governance review.

Part 5

This part imposes a statutory duty on the Council to prepare and submit a local area agreement (having regard to the community strategy under the guidance). And introduces local improvement targets. Partner authorities must be consulted on preparation of the community strategy and the Secretary of State may by regulation require partner authorities to disclose information to Overview and Scrutiny committees.

A statutory duty is also imposed on partner authorities to have regard to Overview and Scrutiny reports.

This part also allows a group of partner authorities to appoint a joint Overview and Scrutiny committee. It also brings in the “Community Call for Action” enabling any member of the Council to refer a local government matter to Overview and Scrutiny.

Part 6 – Byelaws

The Secretary of State may by regulation prescribe an alternative procedure for making certain classes of byelaws and may allow for fixed penalty notices for each of those byelaws. Authorities are required to have regard to using fixed penalty receipts to combat any relevant nuisance.

Part 7 – Best Value

This part covers certain amendments to statutory definitions of authorities and abolishes for English authorities the use of Best Value performance indicators and Best Value performance reviews. The statutory duty to secure Best Value of course remains on the statutory books. The Act also introduces a duty in certain circumstances to involve representatives of the local community in the exercise of the City’s functions.

Parish Councils are removed from the requirement to secure best value.

Part 8 – Local Services Inspection and Audit

This section contains amendments to the constitution of the Audit Commission and provides for the merger of the Benefit Fraud Inspectorate and the Audit Commission. Powers of auditors and inspectors are expanded, particularly to cover documents in electronic form.

Part 9 – Commission for local administration in England

This part of the Act contains various provisions clarifying the process around complaints to the Ombudsman and widens the powers of the Ombudsman. Provision is now also made for all complaints to be made electronically and for the Commissioner to delegate the function.

Part 10 – Ethical Standards

These are the provisions which allow for “local filtering” of complaints to the Standards committee and modify the application of the Members Code of Conduct in so far as it applies to their private life. These provisions come into force on April 2008. Complaints to the Standards Board must now come first to the City Councils Standards committee. It is then for the Standards committee to decide whether to refer up the matter to the Standards Board or to deal with the

complaint locally. Procedures are tightened around the governance of the committee in that the committee must now have an independent chair and the Standards committee are given power to consider, to grant and supervise exemptions from political restriction.

Part 11

This allows local waste authorities to combine to create a joint waste authority.

Part 12

This is an enabling section to allow the Secretary of State to make statutory orders relating to local authority companies and “relevant trusts”. Currently, the statutory regime around local authority companies has been relaxed with the introduction of prudential accounting. This provision therefore allows the Secretary of State to react should the Secretary of State feel that local authorities are abusing that position, or indeed, generally just to regulate the sector.

Part 13

This part of the Act creates the Valuation Tribunal for England and abolishes the existing 56 Valuation Tribunals.

Part 14

This is the “public involvement in health” part of the Act. The Council must make contractual arrangements for the following:-

- Promoting and supporting the involvement of people in commissioning provision and scrutiny of care services.
- Enabling people to monitor and review care services.
- Obtaining the views of people about their needs and experiences of care services.

- Making views known and actioning improvements in care services.

“Care services” for the purposes of these provisions include health and social services.

This statutory duty must be discharged by creating a “local involvement network” and it should be noted that certain categories of organisation are prohibited from being part of the network e.g. PCTs.

Local involvement networks are to have a power of entry into facilities and are required to produce a statutory annual report.

Patients’ forums are abolished under this part and the Commission for Patient and Public Involvement in Health is abolished.

In this part of the Act relevant bodies have a duty to consult in certain cases e.g. significant changes/decisions in health services and primary care trusts must report on the consultations carried out.

Part 15

This part relates to the National Assembly for Wales.

Part 16 – Miscellaneous

This part of the Act gives an ability to delegate certain activities to members in wards and gives the Secretary of State the ability to restrict the categories of functions which can be delegated. Consequential amendments are made to various pieces of legislation including the Regulation and Contracting Out Act 1994.

Part 17 – Final Provisions

This part of the Act repeals part 5 of the Local Government and Housing Act 1989 (these are the former provisions regulating companies). Other repeals are also made by this part of the Act.

In terms of commencement of the Act, the following provisions are now largely in force (Part 1, 2, 3, 15) together with parts

of Parts 5, 7, 8,10,12, 14 and 17. Some of the remaining provisions come into force end of March/April 2008 and others await a statutory instrument.

The above is a high level overview of some of the significant provisions within the Act. For those requiring detailed advice on the Act they should contact Legal Services on the contact details below.

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