

LGIU Local Government Information Unit

Independent Intelligent Information

Local Government & Public Involvement in Health Act: the main elements (LGIUandSTEER)

13/11/2007

Author: Hilary Kitchin

Reference No: PB 1641/07L

This covers: England

Overview

The Local Government and Public Involvement in Health Act 2007 has now been published in final form. As yet, there are no explanatory notes available. When published, these notes should be a useful aid to grasping the intention of a substantial piece of legislation which often involves the extensive amendment of earlier Acts of parliament.

The purpose of this briefing is to summarise and outline the main provisions in the new Act and to set the scene for the extensive range of materials connected with the Act that is expected over coming months.

A timetable is attached, which incorporates timescales for elections and executive arrangements referred to in the Act, with information based on strong indications of what can be expected from DCLG on Local Area Agreements.

The DCLG intends to publish a revised White Paper implementation plan shortly, although some deadlines are already in the public domain.

Information on forthcoming LGIU seminars which are relevant to the implementation of the legislation can be found in the accompanying link and at the end of this briefing.

The topics outlined below are:

- Elections
- Executive Arrangements
- Parishes
- Local Area Agreements
- Overview and Scrutiny
- Community Call for Action
- Byelaws
- Best Value: changes in regime
- Best Value: duty to involve
- Ethical Standards
- Political Restrictions
- Patient and Public Involvement in Health
- Other Points to Note

Briefing in full

Local Government and Public Involvement in Health Act 2007

The following gives an outline of the main provisions in the new Act.

Elections (Part 2)

The LGPIH Act makes provision for councils to vary the form of elections between whole council elections and elections by halves or thirds without having to seek approval from the Secretary of State. No specific guidance is planned, as the Act replicates the existing process that councils must follow to change their scheme of elections. A timetable is included in the attached document.

The Act also makes provision:

- for single member wards: councils can request the Boundary Committee of the Electoral Commission to review their electoral area with the intent of creating single member wards
- for local authorities to change the name of electoral areas
- for the date of local authority elections to be altered to match the date of elections to the European parliament, given six months notice.

The Act provides short windows of opportunity for councils to vary their scheme of elections, although this window can be expanded by the Secretary of State. These 'windows' can be repeated every fourth year.

Executive arrangements (Part 3)

The Act will make significant changes to councils' executive arrangements, providing for the adoption of either a leader-cabinet executive or mayor-cabinet executive. A third option, of a directly elected executive, was abandoned during the passage of the Bill.

Main features of the new arrangements:

- leader and cabinet executive: council elects the leader, who selects cabinet members
- mayor and cabinet executive: elected mayor selects cabinet members
- all executive responsibilities focused on the leader or mayor, who is responsible for own scheme of delegation
- both leader and mayor hold office for four years (which will be subject to provisions to deal with intervening events in the case of leaders).

Draft regulations covering when leaders of leader-cabinet executives must be elected, their length of office and the procedure for filling vacant posts are due to be published. Although still in development, it is expected that the regulations will be in force from May 2009. Thereafter, a statutory timetable imposes a series of deadlines for the adoption of new arrangements by different types of authority.

The Act makes it significantly easier for councils to switch between forms of executive. However, mayor-cabinet executives put in place as a result of a referendum will only be able to be changed after the result of a second referendum. If a council plans to switch executive arrangements without a referendum a statutory minimum consultation period of twelve weeks will apply. A timetable is included in the attached document.

Parishes (Part 4)

The process for creating local councils will be easier under the new regime, and the Secretary of State's veto will be removed. The Act sets out detailed provisions, but in outline, principal councils will have the ability to start the review process leading to the creation of a parish council, which can also be triggered by a community petition. The review will make recommendations as to what new parish or parishes (if any) should be introduced, as well as considering the position of existing parishes. Groups of parish councils will be able to identify themselves as neighbourhood, community, or village councils. The Act will lift the current restriction on local councils in London.

Guidance on the undertaking and implementing of community reviews by principal councils, on appointed parish councillors and on the electoral arrangements for parish councils are all mentioned in the Act, however, no information about when these are due is yet available. It is expected that principal authorities will have to have regard to social cohesion in decisions about the creation of parishes.

The granting of a power of well being to certain eligible parishes will be welcomed by those to which it will apply. The criteria will be set in regulations, and a short consultation will be held before the provisions come into force in April 2008. Quality Parishes will disappear, but it is expected that many current Quality Parishes will meet the criteria. Guidance will be published to coincide with the power coming into effect.

In addition, parish councils and parish meetings will no longer be subject to the best value duties.

Local Area Agreements (LAAs) (Part 5 – Chapter 1)

The Act requires councils to negotiate new LAAs with their respective government offices. A key feature of these new LAAs will be the reduction of the number of targets they are required to meet and the selection of those that they are from a national indicator set. For councils this will be a pressing concern given that these new LAAs are due to be signed off in June 2008 and consequently the process is already underway.

The attached document sets out when key developments regarding new LAAs are due to happen: a briefing dealing with the first stage guidance is attached.

Outline of the statutory requirements:

Building on the priorities identified by Local Strategic Partnerships, counties and all authorities with unitary responsibilities will lead partners in identifying Local Improvement Targets (LIT). These are targets for improving the economic, social, and environmental well-being of the area which relate to the responsibilities of:

- the local authority (including districts in two-tier areas)
- one or more partner authorities
- one or more other organisations that have responsibilities that are exercisable in the area.

Partners include district councils, public sector service providers, NHS providers, and a number of key public agencies and providers of certain government roles (such as skills, highways, and traffic, as listed in the Act).

Partners will be under a statutory requirement to cooperate in determining targets, which when

agreed are submitted by the local authority to the Government Office in the form of a draft negotiated agreement. The draft is negotiated through Government Office, and individual targets may be 'designated', that is given statutory emphasis by the Secretary of State.

Once agreed, partners and local authorities must have regard to the targets. The local authority will publish a Memorandum of the LAA, which will be a public document. The LAA will be monitored and assessed through performance measures. The memorandum will:

- set out the Local Improvement Targets
- make clear which targets have been designated by the government
- make clear who is responsible for the targets.

Joint Strategic Needs Assessment (section 116)

Each local authority and primary care trust (PCT) will have a duty to prepare and publish a Joint Strategic Needs Assessment (JSNA) to identify and assess the short, medium and long-term health needs of each social care authority. In preparing the JSNA, local authorities and PCTs have a duty to cooperate and have regard to guidance issued by the Secretary of State for Health. County councils are also required to consult each district council. Draft guidance has been issued for consultation.

Overview and Scrutiny (Part 5 – Chapter 2)

The Act extends council scrutiny powers in a number of ways. These powers, to be introduced through regulations, are not yet in force. Overview and Scrutiny is expected to have a new locality focus with the increased potential for area based scrutiny reviews. The practical implications for local authorities have only just begun to be debated.

In the context of Local Area Agreements:

- County and unitary overview and scrutiny committees will be able to require information from LAA partners.
- Overview and scrutiny committees will be able to require a partner organisation to have regard to a report when carrying out its responsibilities.
- Joint committees made up of county and district representatives will also be able to exercise the same powers. These will be discretionary committees set up by agreement of the local authorities concerned.

The government is planning to consult on new scrutiny powers that would allow districts to carry out scrutiny investigations and require information from LAA partners with whom they have a direct relationship.

Overview and Scrutiny committees will also be able to call and question individual ward councillors who have exercised powers within their wards under arrangements made under section 236 (see below).

Community Call for Action (Part 5 – Chapter 2 - section 119)

The LGPIH Act enables all councillors (in England) to refer matters for overview and scrutiny. Implementation of what has become known as the Councillor Call for Action (CCfA) is expected by April 2008, following the publication of statutory guidance.

After pressure from local authorities the Government has agreed to align the previously

separate versions of Call for Action processes. The procedure under Section 19 of the Police and Justice Act 2006 which set up the "Community Call for Action", will be brought into line with the simpler "Councillor Call for Action" (CCfA) in the Local Government and Public Involvement in Health Act.

The power to originate a CCfA rests with individual ward councillors, who will determine which issues to take forward. The CCfA may cover any local government matter relating to any function of the authority and affecting the councillor's ward or constituents (excludes quasi-judicial issues such as planning and licensing). In two-tier areas county councillors will be able to raise CCfAs in relation to crime and disorder matters.

Note too, in connection with the CCfA, that the Act provides for arrangements to be made for an individual councillor to exercise functions of the authority in relation to their electoral division or ward (see note on section 236 below).

Byelaws (Part 6)

The Act makes provision that councils will be given new powers to create byelaws and enforce them through the issuing of fixed penalty notices. These powers will come into force by Order, along with regulations as to their use. There has not yet been a decision as to whether statutory guidance will be issued to accompany these regulations.

The time table for the implementation of byelaws is as follows:

End of 2007 Consultation on the draft regulations surrounding byelaws and the issuing of fixed penalty notices.

April 2008 Regulations are scheduled to be issued.

Although the scope of byelaws will be more limited than the initial government consultation envisaged, this will be an important provision. It can be expected that the scope will expand as government gains more confidence in the process.

Best value: changes in the regime (Part 7)

The Act removes certain aspects of the best value regime in England, in particular the requirement on best value authorities to carry out best value reviews, and the framework of performance plans and indicators. It places a new duty on English best value authorities to actively involve representatives of local people in the provision of local services. It provides the Secretary of State with a new power to issue guidance to best value authorities on the general duty of best value. It gives Ministers the power to issue grants to promote or facilitate the economic, efficient and effective provision of services by best value authorities: a fuller explanation is needed of where this is likely to be exercised.

Best value: the duty to involve (Part 7)

Best value authorities (apart from police authorities and Welsh best value authorities) will be required to involve representatives of local people in the exercise of their functions, where they consider it is appropriate to do so. Authorities will be able to determine if and how representatives should be involved, taking account of guidance issued by the Secretary of State.

The duty to involve goes further than consultation, setting out three ways of securing the involvement of representatives of local people, informing them, consulting them or involving them in other ways. Authorities will need to provide support for the process that is adopted.

The duty is intended to represent a step change in the way in which councils, as best value authorities, engage with local people in the design and delivery of services, and the guidance can be expected to reflect this.

Ethical standards (Part 10 – Chapter 1)

These clauses give effect to the Government's proposal for the reform of the regime relating to standards of conduct for local government. Proposals for amendments to the regime were included in the Government's discussion paper Standards of Conduct in English Local Government: The Future, issued in December 2005. Decisions on action to be taken were then announced in the Local Government White Paper.

The proposals are aimed at devolving most decision-making on the conduct regime for local authority members to local authorities, with a revised, regulatory role provided for the Standards Board. The measures provide for local standards committees to make initial assessments of misconduct allegations and for review arrangements for those assessments which lead to no action being taken. The provisions also give powers for the Standards Board to suspend a standards committee's role in making initial assessments of allegations, and for the Board to issue guidance to standards committees and ethical standards officers.

Political restrictions (Part 10 – Chapter 2)

In addition, provision is made for decisions in respect of local authority posts subject to political restrictions to be undertaken by standards committees rather than, as now, by the Independent Adjudicator, and to enable the Secretary of State to issue an order to allow the maximum pay of political assistants to be linked to a point on a relevant pay scale specified by the order.

Patient and Public Involvement in Health and Social Care (Part 14)

The Act creates a new framework for consultation with patients and the public, with immediate effect. It requires social services authorities to recruit a local organisation to host a Local Involvement Network by 31 March 2008. The Act abolishes the CPPIH and all Patients' Forums with effect from 1 April 2008.

The main elements of the LINKs framework are:

Host organisations (section 221): each social services authority procures an organisation or "host" to establish and support a Local Involvement Network (LINK) in each local authority area. The aim is for the host organisation to support the LINK which will:

- promote and support the involvement of people in commissioning, provision and scrutiny of local care services ("care services" refers to both health and social care)
- enable local people to monitor and review the standard of local care services and report on how they could be improved
- obtain the views of local people about their experience of local care services and their care needs.

The host must be independent of councils and health bodies. Local authorities, NHS trusts, NHS foundation trusts, primary care trusts and strategic health authorities are not permitted to provide support or become a LINK.

LINK structures: LINKs will be required to have a clear governance structure that includes the process for decision-making and defines how members are authorised to act on behalf of the

LINK. Financial arrangements must be covered, as must how to deal with breaches of authority.

Responding to LINKs: Health and social care providers will be required to respond to requests for information from LINKs. Providers must also consider and respond to any reports and recommendations. Authorised representatives of LINKs must be allowed to enter and view premises on which care is delivered (but representatives will not be permitted to enter and view private rooms of individuals).

LINKs must produce an annual report giving details of their activities, their membership and their financial arrangements.

Relationship between LINKs and overview and scrutiny committees: LINKs are able to refer “social care matters” to the appropriate overview and scrutiny committee. Committees need not act on every referral, but they must acknowledge receipt and “keep the referrer informed of the committee’s actions in relation to the matter”.

Transitional arrangements: Where it has not been possible to set up by LINKs by 31 March 2008, local authorities will be subject to “temporary duty”, prior to 30 September 2008, to ensure that there are means to support LINKs activities. Temporary arrangements could include the local authority providing support itself, or agreeing an interim contract with another organisation to provide support.

Duty to involve service users (Section 233) – All NHS bodies, including strategic health authorities, must make arrangements to involve service users and/or their representatives in the planning, delivery, development and decision-making in relation to health services. All health bodies must publish a report (expected to be annual) giving details of consultations it has carried out or proposes to carry out before making commissioning decisions. It must also report on “the influence the results of any relevant consultation had had on such matters”.

Authority for local councillors to exercise functions (section 236)

This is an important provision that allows a local authority to make arrangements for an individual councillor to exercise functions of the authority in relation to their electoral division or ward. Regulations will define what can be covered by excluding certain functions, and placing conditions on how such a function is exercised. This form of delegation will be decided upon by the executive in relation to executive functions (the leader under the new executive arrangements). In all other cases, it will be for the authority itself to decide.

The regulations will also require records of decisions or actions taken by ward members to be made available to the public (section 237). Note also that Overview and Scrutiny Committees will be able to require such members to appear before the Committee to answer questions in relation to any functions that they exercise in their wards (section 120).

Other provisions to note

Joint waste authorities (Part 11)

This part of the Act will allow groups of local authorities that currently fulfil partial responsibilities to propose a joint waste authority. Applications will be made to the Secretary of State in accordance with a new regulatory framework.

Controlled entities (Part 12)

Regulations are planned that will introduce requirements, prohibitions or other regulatory measures covering local authorities' relationships with 'entities' with which they are closely connected. These provisions can be expected to cover bodies such as trusts.

Support from the LGIU

LGIU will be maintaining its briefing service informing and providing analysis on the implementation of the Act through policy initiatives, regulations and introduction of guidance. Implementation of the new Act will be a core theme of our seminar series in 2008.

The current seminar programme includes:

"Implementing the duty to involve" is a seminar to be held on 7 December at which we expect to examine the newly published draft guidance on the new duty with speakers from the DCLG and local authorities.

"New Local Area Agreements: an opportunity to deliver local sustainability" is a best practice seminar to be held on 13 December. Negotiating the new Local Area Agreements (LAA) is an ideal opportunity for local areas to mainstream sustainable development.

Our seminar on the Community Call for Action on 4 December is full, but you can look out for a repeat early in 2008.

Details of all seminars can be found through this link. You can also register to receive electronic alerts of forthcoming seminars through our website.

Additional Information

Covers

- Trade Union and Workforce issues
- Skills, Training, Economy, Environment, Regeneration (STEER)
- Democracy, Governance, Councillor issues, Standards board, Neighbourhood governance, Regional governance, Local government information
- Corporate management, Audit and Inspection, Evaluation, Targets, Procurement
- Community planning and well-being
- Community involvement, Partnerships and LSPs, Voluntary sector

Question

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