

CABINET - 16 JANUARY 2008

PRINCIPAL SCRUTINY COMMITTEE – 21 JANUARY 2008

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

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RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

This report presents an outline of the principal provisions in the new Act, particularly as it affects district councils. The Act provides a framework and much of the detail will follow in statutory instruments or statutory guidance. Many of the provisions will be brought into force at a later date.

The main issues for implementation in the current financial year and 2008/09 will be:

- Changes to scrutiny arrangements.
- A statutory framework for Local Area Agreements.
- Changes to the Best Value and performance management regime, with significant changes to nationally set performance indicators.
- Transfer of filtering of code of conduct complaints from the Standards Board to the local Standards Committee, for the District and parishes.

Significant changes are proposed to enhance community leadership. The Council will have to decide whether to adopt an enhanced role for the Leader or opt for an Elected Mayor. It can also decide whether to go to whole elections, rather than elections by thirds, to provide time for an administration to implement proposals that have been put to the electorate. The statutory timetable provides for these changes to be put in place for the 2011 elections, so the detailed work would be undertaken from 2009 onwards.

RECOMMENDATIONS to Cabinet:

- 1 That the report, and its likely impact upon future work programmes, be noted.
- 2 That Principal Scrutiny Committee and the Standards Committee be asked to recommend appropriate changes to their procedures to take account of the Act, as further information by way of regulations and statutory guidance becomes available during 2008.
- 3 That further consideration be given to the options for council leadership and electoral cycles in 2009/10 municipal year, to ensure that appropriate arrangements are put in place in accordance with the statutory timetable for the May 2011 elections.

To Principal Scrutiny Committee:

- 1 That the Committee considers whether there are any material issues it wishes to raise with Cabinet, the Portfolio Holder, or upon the review of scrutiny procedures arising from the Act.

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DETAIL:

1 Introduction

- 1.1 The report provides an overview of the principal changes introduced by this Act, together with an outline of when further reports are likely to come before Members. The work will be incorporated into Divisional Business Plans which are approved in March each year.
- 1.2 The Act received the Royal Assent on 30 October 2007. However, many of its provisions will only come into effect when further statutory instruments are made. Some sections will also be subject of further statutory instruments or statutory guidance, to provide the detailed framework for implementation. In many cases the exact commencement dates when the provisions will come into force are not yet known.
- 1.3 The report below follows the Parts of the Act, which consider the individual topics.

2 Part 1 – Structural and Boundary Change (Unitary Authorities)

- 2.1 This Part provides the statutory basis for the process, which has been on-going for some time, for counties or districts to propose that further unitary authorities should be created. No applications have been made in Hampshire where the authorities have preferred to look at ways of improving two tiered working. This is a topic which is regularly considered by the Hampshire and Isle of Wight Local Government Association (HLOWLA). Government funding has been obtained to investigate various options for shared services, for example.
- 2.2 The time frame for applications for unitary status effectively passed before the Bill was enacted.

3 Part 2 – Power of District Councils to change Electoral Scheme

- 3.1 This Council is currently subject to elections by thirds, with the County Council election taking place in the fourth year. This has been the case since the Council was created in 1974 and was last reviewed in the Electoral Review approved by the Local Government Commission in 2000.
- 3.2 The Council may now decide to pass a resolution to change to whole Council elections, if it so wishes. A public consultation exercise has to be undertaken. The decision to implement the proposal has to be taken at a special meeting of the Council, with a majority of at least two thirds of those Members voting. The Government is encouraging a move to whole council elections to provide for

continuity of leadership over a four year period. This ties in with another important concept in the Act, to strengthen Leadership arrangements, which is set out in paragraph 4 below.

- 3.3 The process can be undertaken every four years, so it would be possible to change to whole Council elections and to revert to election by thirds at a later date. Election by halves, which is currently used by a small number of councils, is not available to those councils who are not currently on that system.
- 3.4 The resolution for change must be made before 31 December 2010. The Act provides that it would be implemented in the May 2011 elections.
- 3.5 Parish Council elections are timed to take place when a District Council election is taking place in that ward. The Council may make an Order to change Parish election time-tables to coincide with the District Council election timetable.
- 3.6 Currently, Winchester City Council has 1, 2 or three member wards. This variety enabled some flexibility in linking Members to individual communities, given that the ratio of Members to electors has to be as close as possible across the District. The current arrangements were approved by the then Local Government Commission in 2000. The ratio adopted on that occasion was 1 councillor:1,536 electorate. This was based on a council size of 57 Members.
- 3.7 The Act allows councils who opt for whole elections to request the Electoral Commission to initiate a review for single member electoral wards. The Corporate Director (Governance) points out that previous experience with reviews suggests that it is likely to be impracticable to produce a single member ward scheme for this District, having regard to the requirement to use parishes as the building blocks for District wards. The additional requirement to achieve similar Member:elector ratios across the District would create significant difficulties in achieving this.
- 3.8 The Act gives the Secretary of State the power by Order to change the May local election date to June in the year of European Parliamentary Elections. Previously a special act was needed when this was done in 2004.
- 3.9 Further guidance is anticipated in 2008. The legislation envisages that the detailed implementation work on this Part of the Act would be undertaken in 2009 to 2010, to fit in with the 2011 date which the statutory time-table designates as the year when district council whole council elections can take place.

4 Part 3 – Executive Arrangements

- 4.1 The Local Government Act 2000 introduced the concept of executive government where the majority of decisions to be made were to be the responsibility of a clearly identifiable group of Members. This Council adopted the Leader with Cabinet model.
- 4.2 The Act abolishes the Elected Mayor with Council Manager option – but still provides for an Elected Mayor with Cabinet as an alternative to the Leader with Cabinet model.
- 4.3 The Act requires the Council to consider the whether to adopt one of two options for future executive arrangements:
 - (a) Directly Elected Mayor with Cabinet or

- (b) Indirectly elected Leader with Cabinet

4.4 Option (b) strengthens the role of the Leader in the following ways:

- (a) The current Constitution follows an option in the Local Government Act 2000 to allocate the executive functions to Cabinet meeting collectively rather than to the Leader or other portfolio holders. Any scheme of delegation to individual portfolio holders also required Council approval.

The 2007 Act states that all executive decisions will be the responsibility of the Leader – who can delegate to Cabinet, other portfolio holders, or to officers.

- (b) The Leader will appoint Cabinet; rather than the Council.
- (c) The Leader will allocate portfolios; rather than Cabinet.
- (d) The Leader will be appointed by Council for his/her remaining period of office as a councillor up to a maximum of 4 years – i.e. to when the Leader next stands for re-election as a councillor. This changes the current position where the Council has to re-elect the Leader annually. The Council Procedure Rules may still provide a procedure for the removal of the Leader e.g. vote of no confidence.

4.5 The Act requires the Council to undertake appropriate public consultation on whether its future executive arrangements should be based upon the Elected Mayor or Indirectly elected Leader Models. There is no longer an obligation to hold a referendum on the issue, but the Council may still do so. The public can still separately petition for a referendum for an Elected Mayor.

4.6 The Government views the two options as providing enhanced leadership to councils, with clearer accountability to the public. The Council's approach to the issue would need to be considered in conjunction with any other changes to its electoral arrangements referred to in paragraph 3 above. Further guidance is anticipated in 2008. Detailed implementation work on this Part of the Act would be undertaken in 2009 to 2010, to fit in with the 2011 date which the statutory time-table designates as the year when district council whole council elections can take place. Consequential changes to the Constitution would be subject to reports to Council in 2010.

4.7 Once the guidance is available in 2008, the Council may wish to consider whether any changes are made to the current executive system on an experimental basis e.g. further enhancements to the individual portfolio holder decision making system.

5 Part 4 – Parishes

5.1 A parish council may chose to use an alternative style in addition to the current option of town council. The new alternatives are community, neighbourhood or village council.

5.2 The chairman and vice-chairman will have to come from elected councillors – not co-optees.

5.3 The District Council will have wider powers to determine reviews of parishes – to create new parishes or to change existing ones. The power to make the final decision

will be with the Council, rather than it making a recommendation to the Secretary of State. Implementation will take place from February 2008.

- 5.4 Parishes which meet certain criteria will be able to use the well-being power in the Local Government Act 2000. This will give them more general discretion than in the past, potentially widening the range of functions on which they can incur expenditure. Implementation will be after April 2008.
- 6 Part 5 – Chapter 1 Co-operation with Local Partners etc: Local Area Agreements and Community Strategies
- 6.1 The Act provides the legal framework for Local Area Agreements, including local improvement targets.
- 6.2 The Act requires ‘responsible authorities’ (County Councils in two tier areas) to prepare a draft Local Area Agreement, setting out local improvement targets, for approval by the Government. In drawing up the Local Area Agreement, ‘responsible authorities’ are required to work with a range of partners and to have regard to their own community strategy. Partners include District Councils in two tier areas as well as a range of other public bodies including the Police, Fire and Health Authorities. Partners have to consent to improvement targets which they will help to deliver.
- 6.3 The Act also amends the legislation regarding the preparation of community strategies by placing a requirement on ‘responsible authorities’ to consult with partner authorities when preparing their community strategy. It does not change the statutory duty on District Councils to produce community strategies for their own areas.
- 6.4 The Local Area Agreement is approved by Government and the Secretary of State has the power to ‘designate’ particular improvement targets that can then not be changed without his specific consent. All partner authorities have a duty to have regard to every local improvement target specified in the Local Area Agreement which relates to it. Where local improvement targets have not been designated the responsible authority is able to amend or delete them in line with a set procedure that involves consultation with relevant partner authorities. The Act also requires the ‘responsible authority’ to publish information about the Local Area Agreement and improvement targets that it contains.
- 6.5 This part of the Act is being introduced at present. The Government has set a timetable that will see Local Area Agreements in place throughout England by June 2008. At a local level Hampshire County Council is already in discussion with partner authorities on targets to be set in the Local Area Agreement. New arrangements have been introduced that will see every District Leader directly involved in the running of the Hampshire LAA. A further report on the detail of the work taking place at present will be brought to Cabinet in February.
- 6.6 This section of the Act also requires the responsible authority to work with each of its partner Primary Care Trusts to prepare a health and social care joint strategic needs assessment, if required by the Secretary of State or if they wish to do so. District Councils within the area covered by the joint strategic needs assessment would be consulted as part of the process.

7 Part 5 Chapter 2 – Co-operation with Local Partners etc:– Overview and Scrutiny Committees

- 7.1 This provides local councillors with a new legal right to raise issues with the relevant scrutiny committees if they have not been able to resolve an issue elsewhere. This has been called the “Councillor call for action”.
- 7.2 In effect, this right already exists under this Council’s Constitution in respect of this Council’s functions. However, a more formal framework is provided under the Act and the Cabinet or portfolio holder or other body are required to provide a formal response to any recommendations from the scrutiny committee, within two months.
- 7.3 In due course, said to be 2009, this right would extend to scrutiny of some partner authorities, who would have some duties to co-operate with the scrutiny exercise in relation to Local Area Agreement Improvement targets. Guidance will be issued by the Secretary of State on how this should be undertaken. The local crime and disorder committees, established under the Police and Justice Act 2006, will also be subject to similar arrangements.
- 7.4 Initial changes to the Constitution in respect of the Council’s own functions will be prepared in conjunction with the work of the Informal Scrutiny Group set up by Principal Scrutiny Committee. The issues arising will be considered in February to April 2008.
- 7.5 Further changes to the Constitution in respect of the proposed extension of scrutiny to the work of other partners, and to crime and disorder committees, will be considered in 2008 when further Government Guidance is available.
- 7.6 The Secretary of State is also given powers to allow joint overview and scrutiny Committees to be established by the County Council with one or more partner District Councils to scrutinise improvement targets set in the Local Area Agreement and to allow District Council overview and scrutiny committees to refer issues relating to improvement targets in the Local Area Agreement to the relevant County Council Executive or scrutiny bodies.

8 Part 6 – Byelaws

- 8.1 Currently byelaws have to be submitted to the Secretary of State for approval. The Act gives the Secretary of State power to determine classes of byelaw where the local authority will be able to make the decision itself. The power will also be given to include provision for fixed penalty notices for the breach of some byelaws, enforceable by community support officers. Further details will be included in statutory instruments which have yet to be made.
- 8.2 The use of the powers can be considered if a need arises. Implementation will be after April 2008.

9 Part 7 – Best Value

- 9.1 A new duty is introduced for the Council to consult or otherwise involve “representatives of local persons” in the exercise of its functions, if the Council considers it appropriate to do so. The Council will have to have regard to any Government Guidance in considering how to respond to this duty. The intention is to

encourage greater public consultation/participation/involvement in the provision of services. The duty will be introduced after April 2009.

- 9.2 The Act abolishes the former requirement to undertake best value reviews. It also removes the right for the Secretary of State to set performance indicators and targets for authorities outside Wales and the need for authorities outside Wales to produce 'Best Value Performance Plans'. These changes take effect from 1 April 2008.
- 9.3 In place of the current Best Value Performance Indicators, the Government has introduced a new National Performance Framework. This sets out 198 indicators that the Government will be monitoring, some of which require information to be provided from local authorities. Performance against this indicator set will be monitored for each Local Area Agreement as part of the new Comprehensive Area Assessment (see paragraph 10 of this report) and the Government is expecting that most of the local improvement targets identified in Local Area Agreements (see paragraph 6 of this report) will be drawn from this set.
- 9.4 Changes in this Act do not affect the designation of the City Council as a 'best value authority' or the statutory duty this places on it to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness.
- 9.5 The City Council will need to collect Best Value Performance Indicators for the 2007/08 financial year and understands that these will still need to be submitted to the Audit Commission. Beyond this, the Council will need to consider which elements required under Best Value, it wishes to retain as part of the good management of the authority and to demonstrate that it is fulfilling its statutory duty to secure continuous improvement. Some form of performance measurement, review of services and performance reporting will be required, although the Council will have more freedom to determine their nature. Proposals will be brought forward before April 2008. There will also be ongoing development work thereafter.

10 Part 8 – Inspection and Audit

- 10.1 The Benefit Fraud Inspectorate becomes a part of the Audit Commission. The Act also gives the Audit Commission the ability to co-ordinate the work of other authorities charged with inspecting public services. It also provides the statutory framework for Comprehensive Area Assessment. The ability of the Commission to carry out an inspection of a Best Value authority's performance and produce comparative and other reports on the performance of English local authorities is strengthened.
- 10.2 The Audit Commission is currently consulting on the framework for Comprehensive Area Assessment which will be introduced in 2009. It is using an 'action learning' approach to develop the detailed methodology, with Hampshire being involved as a practical example in this work. Further information on the development of Comprehensive Area Assessment will be brought to Cabinet in February.

11 Part 9 – Local Ombudsman

- 11.1 This Part updates the procedural legislation under which the Local Ombudsman operates. There are no specific matters which would require the Council to make any significant changes to its processes.

12 Part 10 – Ethical Standards

- 12.1 Current legislation only permits the Model Code of Conduct for Councillors to apply to conduct in an official capacity. The Act allows the Secretary of State to make an Order to extend this to other conduct which would constitute a criminal offence. Regulations are awaited and will be considered by the Standards Committee in due course.
- 12.2 Under the Local Government Act 2000 any complaint about a breach of the Code had to be made to the Standards Board at national level. The Board decided whether further investigation was required by either one of its Ethical Standards Officers, or for more routine cases, by the Monitoring Officer at local level. It could also reject complaints at the initial stage.
- 12.3 The 2007 Act radically changes this procedure to require this filtering to be done by local standards committees. The committee will have the option of referring the complaint for investigation by the Monitoring Officer or in more serious cases to the Board. It can also decide that no action should be taken, but has to give reasons. The complainant can ask the committee to review such a decision.
- 12.4 The Board can refer a case back to a local standards committee or deal with it through an ethical standards officer. It can also determine that there is no case to answer.
- 12.5 The Standards Board has a supervisory role and can require periodic returns upon cases dealt with locally. It can suspend the powers of a local standards committee and give directions.
- 12.6 Standards committees in future will have to be chaired by one of the Independent Members. This is already the practice in Winchester.
- 12.7 There is provision for joint committees to be established with other authorities to assist with standards committee work.
- 12.8 The Council has to consider whether a post is politically restricted when appointments are made – Local Government and Housing Act 1989. There is a procedure for appeals or applications for exemption to a person appointed by the Secretary of State. In future this role will be undertaken by standards committees – and statutory guidance will be produced in due course.
- 12.9 It is envisaged that this part of the Act will come into force some time after April 2008. However, much of the detail will be contained in further regulations. Reports will be brought to the Standards Committee when this detail is available.

13 Part 11 – Joint Waste Authorities

- 13.1 This Part would allow all the local waste authorities (counties and districts) to ask the Secretary of State to establish a joint waste authority to undertake their functions. This would be a legal entity in its own right and take responsibility away from the individual authorities. However, the costs would still be borne by the authorities on the basis set out in the order.
- 13.2 This legislation will assist the work currently being undertaken across Hampshire looking at possible future options for clustering of local authorities for waste collection

arrangements. The conclusions of this work are likely to be available in the first half of 2008 and the outcomes reported to Cabinet shortly afterwards.

14 Part 12 – Entities controlled etc by local authorities

14.1 The Secretary of State may make regulations to require, prohibit or regulate actions by local authorities, their members or officers in relation to any outside body in which they are involved.

14.2 The implications will have to be considered when the regulations are available.

15 Part 13 – The Valuation Tribunal for England

15.1 Existing regional valuation tribunals (for determining appeals against council tax banding or rateable values for business premises) are replaced by a national organisation.

16 Part 14 – Patient and Public Involvement in Health Care

16.1 This Part is relevant to health services and social services authorities. It makes provision for local involvement networks to ensure that local communities have a stronger voice in the process of commissioning health and social care. The aim is to enable local communities to influence key decisions about services they use. It also enables the network to refer matters to the county's scrutiny committee.

16.2 Existing NHS Patients Forums are to be abolished.

17 Part 15 – Only relevant to Wales

18 Part 16 – Miscellaneous

18.1 Currently delegation is not allowed to individual councillors, other than to portfolio holders. The Act now allows delegation to a councillor to make a decision which only relates to the particular ward, subject to regulations to be made by the Secretary of State. Records would have to be kept through the officers, in a similar manner to that which applies to the portfolio holder decision-making system.

18.2 The Leader would have to approve delegation in relation to executive matters, and the Council in respect of any function that came under a regulatory committee.

18.3 The purpose of the section is to follow experiments in some other authorities where individual members have been given a limited budget to approve expenditure on e.g. grants or environmental improvements.

18.4 Given the Council's current financial constraints it is not proposed to bring forward any specific proposals at this stage. The commencement date for the proposals has yet to be finalised.

OTHER CONSIDERATIONS:19 CORPORATE STRATEGY (RELEVANCE TO):

19.1 Relevant to the Strategic priority to be an efficient and effective Council. This includes the aim to be recognised as a Council which provides community leadership; is efficient and works well with others. It is linked with the stated outcomes of supporting and developing the role of Councillors to lead and serve their communities; working with local communities to understand their needs and aspirations; ensuring we are efficient and offer value for money to local taxpayers; and work with partner organisations to deliver improvements in quality of life across the District.

20 RESOURCE IMPLICATIONS:

20.1 Work on the implementation of the Act during 2008/09 is to be undertaken within existing staffing resources.

20.2 Filtering complaints that used to go the Standards Board may create an additional demand for further resources, depending on the number and timing – which is outside local control. The current budget available for outsourcing Standards Board cases is £10,000 and has been committed on existing workloads in 2006/07 and 2007/08. This was identified in CAB1556 (14 November 2007) as a budget risk and will be kept under review.

20.3 Any additional budget requirements after 2008/09 will be identified in future budget rounds. Some of the additional public consultation arrangements may require additional funding, as would any referendum on leadership arrangements if this option was taken. If the Council opts to change from elections by thirds to whole Council elections there is likely to be a budget saving of £50,000 approx. in each of the two years when elections are no longer held. This would be offset in part by an additional cost in the order of £20,000 approx. in the whole election year.

BACKGROUND DOCUMENTS:

Strong and Prosperous Communities – Implementation Plan: One Year On (DCLG)

Electoral Commission Circular EC37/2007

APPENDICES:

None