

## Appendix 2

CONSTITUTION WORKING PARTY		
<b>Report Title</b>	<b>LEGISLATION UPDATE</b>	
<b>Key Decision</b>	N/A	<b>Item No 4</b>
<b>Ward</b>	<b>All</b>	
<b>Contributors</b>	<b>Head of Law</b>	
<b>Class</b>	<b>Part 1</b>	<b>Date 6 June 2012</b>

### **1. Summary**

This report updates members on progress of the implementation of the Localism Act 2011 and other legislation, highlights actions taken to respond to date and poses questions to be addressed by the Council in future to ensure that its Constitution reflects compliance in future.

### **2. Purpose**

The purpose of this report is to ensure that recommendations are made to Council at the appropriate time to ensure that the Constitution remains fit for purpose

### **3. Recommendations**

That CWP note the constitutional issues which need attention and ask officers to bring a further report back to a subsequent meeting of this CWP at the appropriate time but in any event prior to the next meeting of the Council in September 2012.

### **4 Background**

There has been a raft of recent legislative change which will require amendments to the Council's Constitution. These include:-

- The Localism Act 2011 (see Appendix 1 for presentation summary)
- Health and Social Care Act 2012 (see Appendix 2)
- Public Services (Social Value) Act 2012 (See Appendix 3)

## **5. The Localism Act 2011**

- 5.1 This is a lengthy Act which makes huge changes to local government, which came into law in November 2011. It has 271 sections, 25 schedules and 142 regulation making powers and is being given practical force through a series of commencement orders, regulations and statutory guidance. Some of the key features and the state of implementation are very briefly listed below:-
- A new power of general competence – in force now
  - Changes to the permissible models of political governance model – in force now
  - Clarification of the law on pre-determination – in force now
  - The introduction of a new ethical framework – to be effective from 1.7.12, some regulations still awaited.
  - Provisions relating to pay accountability – in force now.
  - Requirement for Council Tax referendum if Council Tax exceeds Secretary of State “principles”
  - Community right to challenge through which community, voluntary or employee bodies have the right to express an interest in providing a local authority service. – sections in force with regulations to make operational laid on 21<sup>st</sup> May 2012 alongside draft statutory guidance to be effective from 27<sup>th</sup> June 2012.
  - Assets of community value – a new duty to maintain a list of assets of community value, with a procedure to be implemented before a disposal may be effected – in force now but awaiting regulations to make operational.
  - Neighbourhood planning – all in force now save provisions relating to referendums, with regulations in place.
  - Housing – changes to allow local authorities to choose “qualifying persons for allocation policy; flexible tenancies; self financing – in force now.
  - London – transfer of regeneration functions etc to Mayor of London – partly in force now.
- 5.2 The Council has already made some changes to comply with the Localism Act 2011. For example in March this year, the Council approved a pay policy statement for 2012/13, as it was bound by law to do before 1<sup>st</sup> April 2012. Also, there appears elsewhere on this agenda

a report which sets out a proposal for a new ethical framework which is designed to comply with the requirement to have a new code of conduct and procedure for handling complaints of breach from 1<sup>st</sup> July 2012.

- 5.3 Other changes may require the Council to adopt new procedures but will not require major constitutional change. The new power of competence, the provisions on housing and on London exemplify this.
- 5.4 Some new provisions will need changes to the Council's Constitution, (or at least to be considered in relation to the schemes of delegation) but there are no regulations in place to allow this to happen yet. For example, the provisions relating to assets of community value require regulation and statutory guidance but at the time of writing these had not been published.
- 5.5 Included in the Council's Constitution are several provisions where the Council has anticipated the impact of the Localism Act. For example, the Act is explicit that there must be a Scrutiny Officer with functions defined by law and there are already provisions in the Council's Constitution for the councillor call for action.

## **6 Localism Act Issues**

- 6.1 Some provisions will require changes to the Constitution and/or schemes of delegation.

### *Flood management*

- 6.2 The Act requires that those authorities who are lead flood management authorities, like Lewisham, ensure that there is an overview and scrutiny body which has the function of reviewing and scrutinising the exercise by risk management authorities of flood risk management or coastal erosion risk management functions affecting the area. Council will need to decide which overview and scrutiny body is to fulfil this function and amend its terms of reference.

### *Petition scheme*

- 6.3 The Act abolishes the requirement to have a petition scheme, which is currently reflected in the Council's Constitution. Members will need to decide whether they wish to continue with that petition scheme, discontinue it or modify it in some way.

### *Co-option scheme*

- 6.4 The Localism Act 2011 allows for co-opted members to be allowed to vote on overview and scrutiny bodies if the Council has adopted a co-option scheme. The Council does not have such a scheme at present

and may wish to consider whether it wishes this to remain the case.

### *Community right to challenge*

- 6.5 The regulations and statutory guidance relating to the community right to challenge have been published as recently as 21 May and will be effective from 27<sup>th</sup> June, provided parliamentary approval is forthcoming before then as is expected. The community right to challenge allows community, voluntary and employee bodies to express an interest in providing relevant Council services. Though certain services are excluded by regulation, (mainly health services or those services provided to named persons with complex individual health or social care needs), the regulations and statutory guidance set out the criteria for rejection of an expression. These include Insufficient information to demonstrate that the organisation has:-
- Sufficient financial resources
  - Capability to provide or assist in the provision of the service.
  - Identified the service and the geographical area to which their expression of interest relates
  - Identified the outcomes to be achieved and how they will promote the social environmental or economic wellbeing of the area, and
  - How they will meet users' needs
- 6.6 An expression of interest may be made at any time unless the Council has published a period for expressions of interest outside which it may refuse to consider any expression. A decision will need to be made about whether this is appropriate and if so when, but this is not a constitutional matter.
- 6.7 The Council may only reject an expression of interest on grounds set out in the regulations or statutory guidance. This includes:-
- failure to comply with the Act or Guidance
  - failure to provide adequate information in the expression
  - unsuitability to provide the service (based on the requirements for information to be set out in the expression)
  - where a decision has been made and evidenced in writing to stop the service provision
  - the service is subject to a procurement exercise already
  - negotiations are in train with a third party to provide the service
  - the Council has published its intention to consider the provision of the service by an employee body
  - the expression is vexatious or frivolous
  - acceptance would be likely to lead to a breach of the law/statutory duty

- 6.8 If an expression of interest is accepted, then the Council has no choice but to conduct a procurement exercise in accordance with existing law even if there was no previous intention to externalise the service. This does not mean that the organisation submitting the expression of interest will be successful in that exercise, merely that the Council must conduct it.
- 6.9 The statutory guidance sets out procedural matters for timescales and the procurement exercise, including consideration of social value in the decision whether to award, timing of decision notices etc.
- 6.10 These provisions and those contained in the Public Services (Social Value) Act 2012 (which is summarised at Appendix 2) mean that a new set of contract procedure rules will be required. Work has begun to revise the existing procedure now that the law is clear and the draft statutory guidance available. A report will be available for submission to the CWP in time for a detailed report to be submitted to full Council in September 2012.
- 6.11 In the meantime if an expression of interest is received it is proposed that decisions required to ensure compliance with the community right to challenge be delegated to the ED Resources and Regeneration on advice from the Head of Law. This is generally a matter for the Mayoral Scheme of Delegation.

#### *Neighbourhood planning*

- 6.12 The provisions relating to neighbourhood planning are summarised at Appendix 1. Regulations are in place save those which will relate to referenda in this context. The regulations relate to applications to become a neighbourhood area, designation as a neighbourhood forum and the procedures pertaining to both. They also relate to the procedure for the adoption of a neighbourhood development plan and orders. Officers are working up those procedures in detail but the most relevant point for members to consider at this juncture is who should be responsible for decisions in relation to neighbourhood planning.
- 6.13 There have been no new regulations relating to the responsibility for planning functions, so it appears that the responsibility for planning matters remains split between the Mayor and Council as now. Members are however asked to give consideration as to whether matters relating to neighbourhood planning should be reserved to members explicitly and not delegated to officers.

#### *Assets of community value*

- 6.14 There are very detailed provisions relating to the requirement to maintain a register of assets of community value and the procedures which must be followed before such an asset may be disposed of.

These are summarised in Appendix 1. However operational regulations and guidance are awaited and these will be dealt with in a subsequent report to CWP. They may not be available until October 2012. In the meantime, officers are making preparations for implementation of new procedures so far as is possible without the detailed regulations.

#### *Joint committees*

6.15 On 4<sup>th</sup> May 2012 regulations were published which deal with the power of Councils and their executives to form joint committees. They appear to offer more flexible arrangements for the discharge of functions by another authority and/or its executive. The implications of these regulations on the Council's current arrangements seems minimal at this stage, but a further report will deal with their impact in due course. They appear to accommodate the situation, previously not allowed, that an executive may wish to delegate the discharge of its functions to another authority which does not have executive arrangements.

## **7 Health and Social Care Act 2012**

7.1 The main provisions of the Act are summarised in Appendix 2. In respect of constitutional matters, the two most significant elements of the Act are the requirement to establish Health and Wellbeing Boards and the transfer of public health functions to the Council.

#### *Health and Wellbeing Boards (HWBs)*

7.2 There is to be a new duty on local authorities to establish a Health and Wellbeing Board for its area. It comes into effect in April 2013. The Act provides that the HWB consist of :-

1. At least one councillor of the authority who is nominated by the Mayor (and may include the Mayor)
2. The Council's director of adult services
3. The Council's director of children's services
4. The Council's director of public health
5. A representative of the Local Healthwatch organisation for the area
6. A representative of each relevant clinical commissioning group and
7. Such other persons or representatives of such other persons as the Council thinks appropriate

7.3 This means that the Mayor can nominate whichever councillors he chooses (under (1) above) and the Council must appoint them; and the Council can appoint whichever people, councillors or otherwise, it chooses under (7), subject only to the Council's own constitutional requirements, which the Council is free to specify.

- 7.4 In addition the Board can appoint such other persons as it considers appropriate and a person may represent more than one clinical commissioning group on the Board if the Board agree.
- 7.5 After the Board is established the local authority must consult the HWB before the Council may make another appointment. This does not apply to Mayoral nominations.
- 7.6 The HWB is to be a committee of the Council as if established under Section 102 Local Government Act 1972 unless there are regulations disapplying provisions that would apply to other committees.
- 7.7 There is a great deal of flexibility in these provisions, and members will need to make a decision about the constitution of the HWB.

*Functions of the HWB*

- 7.8 The HWB:-
  - Must encourage persons who arrange for the provision of any health or social services in the area to work in an integrated manner, for the purpose of advancing the health and wellbeing of the area
  - Must provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under Section 75 NHS Act 2006 in connection with the provision of such services
  - May encourage persons who arrange for the provision of health related services in its area to work closely with the HWB
  - Must prepare joint strategic needs assessments (as set out in Section 116 Local Government Public Involvement in Health Act 2007), in respect of which the Council and each partner clinical commissioning group will prepare a strategy for meeting the needs included in the assessment by the exercise of the functions of the Council, the NHS Commissioning Board or the clinical commissioning groups
  - May give its opinion to the Council on whether the Council is discharging its duty to have regard to any joint strategic needs assessment (under Section 116 Local Government Public Involvement in Health Act 2007) and any joint health and wellbeing strategy prepared (under Section 116A Local Government and Public Involvement in Health Act 2007) in the exercise of its functions
  - May exercise any functions that are exercisable by the Council, and the Council may arrange for the exercise of such functions by the HWB, save that the HWB may not exercise the Council's functions under Section 244 NHS Act 2006 (statutory consultee in relation to substantial variations in service etc)

### *NHS Commissioning Board participation in HWB*

7.9 Where the HWB is preparing a joint strategic needs assessment or a joint health and wellbeing strategy, the NHS Commissioning Board must appoint a representative to join the HWB to participate in its preparation. If the HWB is considering a matter that relates to the exercise or proposed exercise of the commissioning functions of the NHS Commissioning Board, the NHS Commissioning Board will appoint a representative to participate in consideration of that matter if the HWB so requests.

### *Joint arrangements*

7.10 Two or more HWBs may make arrangements to exercise any of their functions jointly, or by a joint sub-committee, or may appoint a joint sub committee to advise them on any matter.

### *Supply of information to HWB*

7.11 For the purposes of assisting it in the performance of its functions, a HWB may request such information as may be specified in the request from the following people who must comply with the request:-

- The Council
- Any representative of the Local Healthwatch organisation on the HWB
- Any representative of a clinical commissioning group on the HWB
- Any person appointed by the Council other than by Mayoral nomination
- Any other person appointed to the Board by the Board

7.12 Such information may only be used by the HWB to enable or assist it to perform its functions and must relate to a function of the person of whom the request is made, or a person in respect of whom that person exercises a function.

### *A Shadow Health and Wellbeing Board*

7.13 The Council already operates a shadow health and wellbeing board on which sit those people set out in Appendix 2. This accords with best practice in preparations for the implementation of the Act. The Council will have to decide whether to formalise these arrangements in its constitution, both in the interim until implementation of the Health and Social Care Act, and after. The Healthier Communities Select Committee is considering a report on the work of the Shadow Health

and Wellbeing Board on 30<sup>th</sup> May and any views will be available for the meeting of CWP.

### *The transfer of public health functions*

- 7.14 Public health functions which were previously the responsibility of Primary Care Trusts will transfer to the local authority in April 2013. The Act provides that a local authority, acting jointly with the Secretary of State must appoint an officer to be known as the director of public health. Among the responsibilities of the director of public health will be a requirement to produce an annual report on the health of the people in the area. The report must be published by the Council. There is likely to be guidance to which the Council must have regard in relation to the appointment of the director and the discharge of their public health functions.
- 7.15 Constitutional arrangements will need to be drafted dealing with such matters as:-
- (1) the composition, terms of reference and rules of procedure for the HWB
  - (2) the appointment and dismissal procedures for the director of public health recognising him/her as a statutory officer with statutory functions
  - (3) schemes of delegation in relation to public health matters
  - (4) arrangements for the scrutiny of health functions, and the relationship of scrutiny bodies with the HWB

## **8 Effecting changes**

- 8.1 This report brings together some strands of constitutional change which will need to be made over the next few months. Some, like those relating to the community right to challenge and the new ethical framework, are more imminent than others. Given the scale and pace of change, this report is not exhaustive. It simply sets out some of the key areas that are known now and urges members to give consideration to them. Officers propose that a report be submitted to full Council in June to effect changes to the ethical framework and to facilitate decision making in respect of the community right to challenge on a temporary basis from 27<sup>th</sup> June
- 8.2 Thereafter it is proposed that a much fuller report be prepared for the September meeting of Council to move constitutional changes on to reflect the changing legislative landscape. At that point new contract procedure rules to implement the community right to challenge should

have been finalised for submission to Council and other matters referred to in this report may be dealt with.

- 8.3 It may also be that the regulations and guidance about other elements requiring constitutional change will be available in time for that meeting, but if not, it may be that there will need to be a series of reports to CWP and full Council over the coming year requesting piecemeal amendment to the Council's constitutional arrangements as regulations and statutory guidance come into effect.

## 9 **Legal implications**

- 9.1 Changes to the Council's constitution are a matter for full Council through the role of the CWP is to advise the Council on any amendments.
- 9.2 The main legal implications are contained in the body of the report.
- 9.3 The Constitution must comply with the provisions of the Local Government Act 2000 as amended by the Localism Act and contain statutory elements set out in primary and secondary legislation. The report is designed to ensure compliance.
- 9.4 Where changes are necessary to schemes of delegation to reflect new law, the responsibility for amending them will rest either with the Mayor or the Council depending on whether the matter is an executive or non-executive function. Save for regulations dealing with joint arrangements between Councils, there are no new functions regulations amending executive and non-executive responsibilities, and the procedures for amending schemes of delegation set out in the constitution currently will apply unless and until any further regulations are made..

## 10 **Financial implications**

There are no specific financial implications arising from this report

## 11 **Equalities implications**

- 11.1 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 11.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 11.3 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 11.4 The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty, However, that Code is not due to be published until April 2012. The guides can be found at:  
<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>
- 11.5 Members must be mindful of this duty in considering any proposed amendments to the Constitution.

## 12     **Crime and Disorder and Environmental implications**

There are no specific crime and disorder or environmental implications, save that the Constitution will still retain overview and scrutiny bodies with responsibility for these functions.

Background Papers

None reported

If there are any queries on this report please contact Kath Nicholson: tel 020 8314 7648.

## **APPENDIX 1**

## Localism Act 2011

Kath Nicholson  
April 2012

### Fundamental change

- 271 sections
- 25 schedules
- 142 regulation making powers
- Assent 15<sup>th</sup> November 2011
- Implementation through to July 2012

### Localism Act 2011

- COMPETENCE
- GOVERNANCE
- PRE-DETERMINATION
- STANDARDS
- PAY ACCOUNTABILITY
- EU FINES
- NNDR
- COUNCIL TAX
- COMMUNITY RIGHT TO CHALLENGE
- ASSETS OF COMMUNITY VALUE
- NEIGHBOURHOOD PLANNING
- HOUSING
- LONDON

### Competence

- Power of general competence
- Replaces S2 LGA 2000
- Breaks the link with functions, etc
- LA to be able to do what an individual could
- Change of language
- Impact?
- In force now

### Governance

- 3 Governance models:
  - Mayor & Cabinet
  - Strong executive leader & cabinet
  - Committee system
- Binding referendum to move away from Mayoral model.
- 10 year gap
- Cities – referendum this November
- Lols dropped
- Effective now

### Pre-determination

*"An elected or co-opted member is not to be taken to have had, or to appear to have had, a closed mind when making a decision, just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would take or might take, in relation to a matter, and the matter was relevant to the decision" (KN underlining)*

In force now – since 15.01.12

#### Standards

- The old regime goes
- Duty to promote high standards
- Local Code of Conduct – 7 principles
- 'Disclosable pecuniary interests'
- Complaints procedure locally determined
- No compulsory Standards Committee
- Non-disclosure of pecuniary interest = crime (DPP)

Fully effective July 2012

#### Pay accountability

- Duty to publish a Pay Policy Statement to set out policy re remuneration of COs & DCOs.
- Relationship between COs & non COs must be explicit
- By 31/03 and annually
- Can't pay outside the Pay Policy
- Publish on web
- Drafted policy – Remuneration Panel – went to Council in March

#### Council tax

- Secretary of State 'principles'
- If LA sets Council Tax in excess of 'principles' then LA must hold binding referendum.
- LA must prepare alternative compliant budget.
- Refunds if referendum result is No.
- In force now but referendum regulations currently before parliament.
- 'Principles' for LBL this year – 3.5% increase  
4% GLA

#### Community right to challenge

- Community, voluntary or employee bodies have the right to express an interest (EOI) in providing LA service.
- If accepted, LA must conduct procurement exercise.
- LA can determine period for EOI.
- Relevant Service – regulations to come.
- Reject EOI only on grounds in regs to come.
- LA must consider whether acceptance promotes economic, social or environmental wellbeing.
- Procurement law applies.
- No prohibition on DSO bid.

Sections partly in force with regs awaited by April 2012

#### Assets of Community Value (ACV)

- LA must keep 2 lists 'PASS' and 'FAIL'
- Community nomination (parish or voluntary/community body with local connection)
- Notification to landowner
- Local land charge
- Review of decision to list – appeal process.

#### Definition - ACV

In the Council's opinion

EITHER the actual main current use furthers the social wellbeing, or social interests of the local community and it is reasonable to think that such use can continue and will further such interests;

OR in the recent past, such main use furthered the social wellbeing or social interests and it is reasonable to think that within the next 5 years the main use continues to further such wellbeing or interests.

#### Impact of ACV

- No relevant disposal unless process followed
  - Interim moratorium (6 weeks) – full moratorium (6 months)
  - 18 months to complete disposal
  - Sale in breach can be set aside by the courts.
  - Compensation by the LA

#### ACV criteria

- Secretary of State can prescribe the criteria for an ACV
- Proposed exclusions
  - Residential/operational
- Exemptions proposed
  - Gifts/PRs/family/part site, etc

#### Planning

- Regional Strategies gone
- Duty to co-operate
- CIL – Regs can require LA to give to another

#### Neighbourhood Areas

LA may designate a neighbourhood area on application of qualifying body (QB)

QB = parish or organisation that could be a neighbourhood forum

#### Neighbourhood Forums

##### Organisation

- established to further economic, social, environmental wellbeing of individuals living/wanting to live in neighbourhood area, or promotes trades, etc., in the area.
- 21 members
- Written constitution
- Open to all living or working in the neighbourhood and councillors
- Other prescribed by regs
- 5 years

#### Neighbourhood Plan

- Proposed by QB
- Becomes part of LDF
- Must be consistent with our Development documents
- Referendum
- We adopt
- Regs

### NDO

- Forum initiates process
  - if proposal is 'compliant' → examiner
- Examiner decides whether the proposal meets 'basic conditions'
  - National policy
  - Listed buildings
  - Conservation
  - EU
  - Etc
- Written reps
- Draft report -- referendum/refused
- LA must hold referendum if compliant/procedurally correct/no breach of EU obligation

### Community Right to Build Order (CRBO)

NDO – an order that grants planning permission for specific site

### Housing

- Allocation policy
  - LA can choose "qualifying persons"
  - Council determines priorities re finances, behaviour, local connection
- Discharge homelessness duty in private sector without applicant's agreement
- Tenancy strategy
  - Flexible tenancies
  - Secure – minimum 2 years
- Succession to non-spouses, non-partners goes

### Housing

- Self-financing
- End to HRA subsidy
- 28/3 this year "Settlement payments"

Effective this financial year 2012/13

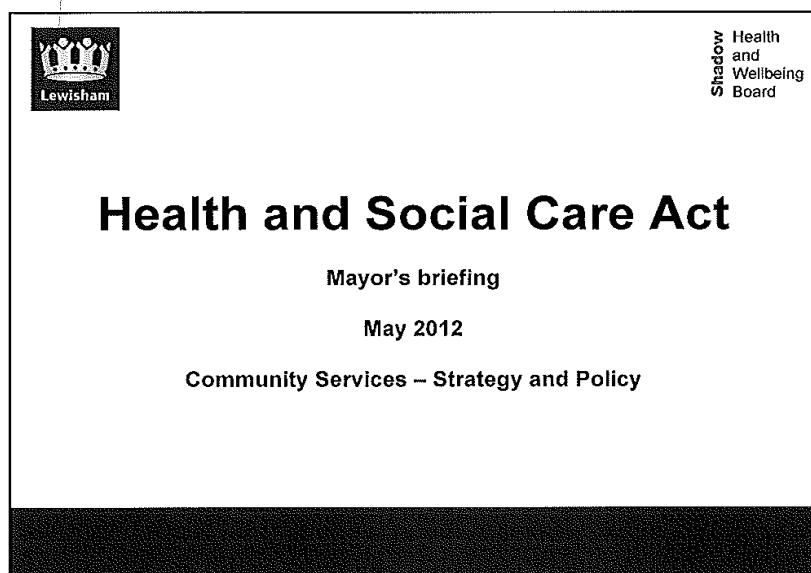
### London

- LDA goes
- MDCs
- HCA functions to Mayor
- Power to delegate ministerial powers to Mayor
- Trading powers
- Economic Development Strategy for London

### What else is current?

- Open Services White Paper
- Local Government Finance Bill (NNDR and TIF)
- Continuing challenges re equalities and consultation
- Health restructuring
- Welfare reform

## APPENDIX 2



**Executive summary**

On 27 March 2012, the Health and Social Care Bill received Royal Assent to become the Health and Social Care Act.

The Bill spent over a year in Parliament and had more than 1,000 amendments in the House of Commons and the House of Lords.

The Act will result in significant structural change for the NHS and local authorities.

Substantial local activity has already taken place to ensure that the Council and its partners are prepared for these changes including the establishment of the Shadow Health and Wellbeing Board and the location of the Public Health team within the Council.

The majority of the Act's major changes will come into effect in April 2013:

**Activity for 2012/13**

- Transition of public health functions and staff to the Council
- Commissioning a local Healthwatch organisation
- Establishing a statutory Health and Wellbeing Board and producing its Health and Wellbeing Strategy
- Submission of Lewisham Healthcare Trust's Foundation Trust application
- Authorisation of Lewisham's Clinical Commissioning Group

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**Government's intentions**

*'Putting patients and the public first'*

**Key aspects of the Act**

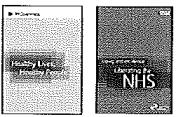


1. Increase diversity of supply, competition and choice for patients by establishing Monitor as an economic regulator; by extending choice of provider to a wider range of services and by allowing providers from all sectors to compete on an equal footing under the principle of 'any qualified provider'.
2. Extend choice into other areas of care, including community services and mental health, with the aim of implementing choice for most NHS-funded services by 2013/14. Patients will be able to register with any GP practice, regardless of where they live.
3. Improve accountability and patient voice by strengthening the role of the Care Quality Commission and by establishing a national patient voice organisation, HealthWatch England, and local HealthWatch organisations

**Government's intentions**

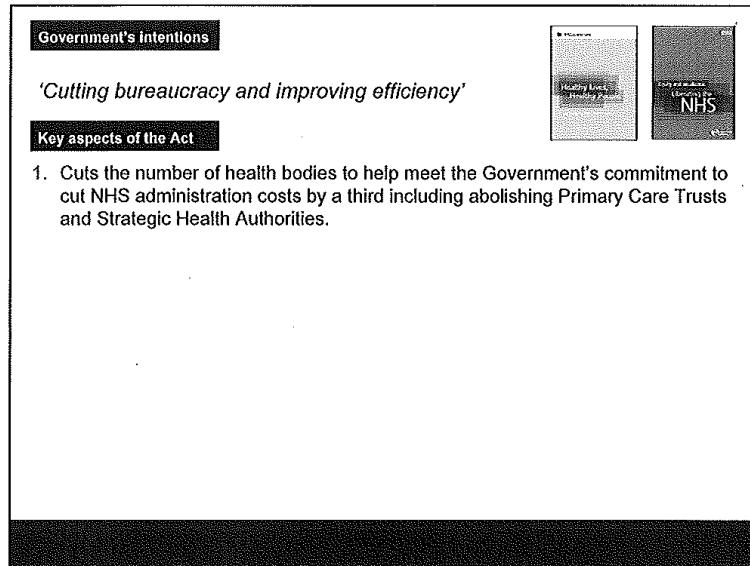
*'Increasing autonomy, accountability and democratic legitimacy'*

**Key aspects of the Act**



1. Establishes an independent NHS Commissioning Board to operationally manage the NHS, allocate resources and commission Primary Care Services and those services that are more appropriately commissioned at a national level.
2. Allows GPs to commission services on behalf of their patients by establishing Clinical Commissioning Groups to take on local health commissioning functions in April 2013, at which point PCTs will be abolished.
3. Expands the role of local authorities in the health system, giving them responsibility for Public Health and creating Health and Wellbeing Boards.
4. Promote integration by making it a duty on the NHS Commissioning Board and Health and Wellbeing Boards and by making provisions to enable the Board or consortia to establish pooled funds.
5. All NHS providers must become Foundation Trusts by April 2014.

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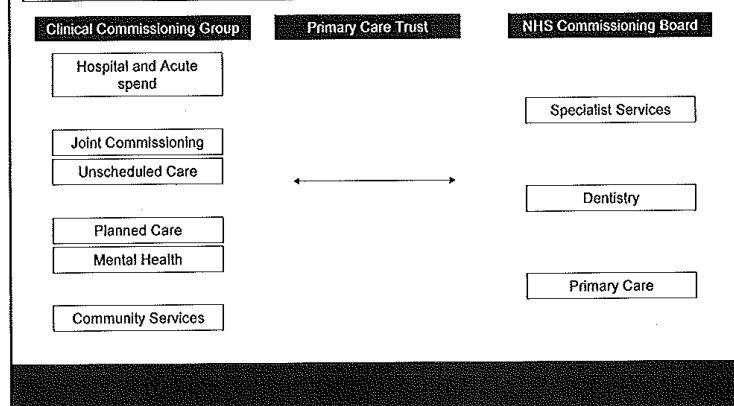


Organisation	Main responsibilities	Replaces
NHS Commissioning Board	<ul style="list-style-type: none"> <li>•Oversee the overall NHS commissioning</li> <li>•Support, develop and hold, to account a comprehensive system of clinical commissioning groups.</li> <li>•Commission those services that make most sense to be commissioned at a national level</li> </ul>	Strategic Health Authorities
Public Health England	<ul style="list-style-type: none"> <li>•Provide the national lead on public health</li> <li>•Support the development of the public health workforce</li> <li>•Deliver public health services most appropriately commissioned at a national level</li> </ul>	N/A – new executive agency within the Department of Health
HealthWatch England	<ul style="list-style-type: none"> <li>•Act as the independent consumer champion for health and social care services</li> <li>•Support local HealthWatch organisations</li> </ul>	N/A – new committee within the Care Quality Commission
Monitor	<ul style="list-style-type: none"> <li>•Promote provision of healthcare which is economic, efficient and effective</li> <li>•Prevent anti-competitive behaviour in the provision of healthcare services</li> </ul>	Independent Regulator of NHS Foundation Trusts
Clinical Commissioning Groups	<ul style="list-style-type: none"> <li>•Commission the majority of NHS services for their local populations</li> <li>•Encourage integration between Health and Social Care services</li> </ul>	Primary Care Trusts
Local HealthWatch	<ul style="list-style-type: none"> <li>•Provide community intelligence to influence commissioning and the delivery of health and care services.</li> <li>•Support people to make choices about the health and social care services they receive.</li> </ul>	Local Involvement Networks
Health and Wellbeing Boards	<ul style="list-style-type: none"> <li>•Produce the Joint Strategic Needs Assessment and the Joint Health and Wellbeing Strategy to address the identified local needs</li> <li>•Encourage integration between health and social care services</li> </ul>	N/A – new statutory committee of the Local Authority

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**Clinical Commissioning Groups (CCGs) will sit at the heart of the new NHS configuration. They bring together GPs and other clinicians to determine and direct which health services will be commissioned.**

CCGs will be responsible for almost all the services previously commissioned by Primary Care Trusts. Services more appropriately commissioned at a national level will the responsibility of the NHS Commissioning Board



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#### Governance

CCGs will be required to have governing body, which will meet in public, as well as a published constitution. In addition to local GPs, and in order to obtain appropriate clinical advice, CCGs will need to involve representatives of hospital clinicians, nurses and other health and social care professionals.

#### Relationship with the Council and the community

Each Commissioning group must prepare a plan setting out how it proposes to exercise its functions, in consultation with the Health and Wellbeing Board

Commissioning group must involve patients in the planning and development of commissioning proposals.

Commissioning group must prepare an annual report which will need to review how they have contributed to the delivery of the Health and Wellbeing Strategy.

The CCG will have a duty to involve the Health and Wellbeing Board in preparing their plans.

The CCG will have a legal duty to encourage integrated working between health and social care services.

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**As of April 2012, Lewisham's Clinical Commissioning Group took on delegated responsibility for all relevant commissioned health services in Lewisham.**

Lewisham's Clinical Commissioning Group is currently a sub-committee of the PCT (Lewisham Clinical Commissioning Committee)

<ul style="list-style-type: none"><li>•Dr Helen Tattersfield (Chair) – Chair of Lewisham GP Federation</li><li>•Dr David Abraham – Deputy Chair, Lewisham GP Federation</li><li>•Dr Faruk Majid – Deputy Chair, Lewisham GP Federation</li><li>•Dr Arun Gupta – Clinical Executive, Lewisham GP Federation</li><li>•Dr Marc Rowland – Clinical Executive, Lewisham GP Federation</li><li>•Dr Judy Chen – Clinical Executive, Lewisham GP Federation</li><li>•Dr Hilary Entwistle – Clinical Executive, Lewisham GP Federation</li><li>•Dr Alan Thompson – Chair of Lewisham Local Medical Committee</li></ul>	<ul style="list-style-type: none"><li>•Dr Danny Ruta – Director of Public Health</li><li>•David Whiling – Vice Chair (Lewisham), NHS South East London</li><li>•Rona Nicholson – Non-Executive Director (Lewisham), NHS South East London</li><li>•Martin Wilkinson – Managing Director, Lewisham Business Support Unit</li><li>•Aileen Buckton – Executive Director for Community Services, London Borough of Lewisham</li><li>•Jen Gillard – Lay representative, Lewisham Local Involvement Network</li><li>•Jane Cook -- Lay representative</li></ul>
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- Over the course of 2012/13 all CCGs will seek authorisation from the Department of Health.
- Lewisham's CCG will be part of the second wave of authorisation, with a stakeholder assessment conducted in July and written evidence submitted in September.
- Following authorisation, the LCCC will become a formal CCG with some changes to membership.

**The Act requires local authorities to establish Health and Wellbeing Boards which will bring together elected members and strategic partners to identify local health challenges and lead on the activity necessary to address them.**

#### Responsibilities

- The Health and Wellbeing Board will be responsible for:
- Preparing an assessment of relevant needs (the Joint Strategic Needs Assessment)
  - Preparing and publish a strategy to meet the needs identified in the JSNA
  - Encouraging integrated working between health and social care services.

#### Membership

- The Act states that the Board's membership must include:
- At least one councillor of the local authority
  - The Director of Adult Services
  - The Director of Children's Services
  - The Director of Public Health
  - A representative from the local HealthWatch organisation
  - A representative of each relevant clinical commissioning consortium

#### Relationship with other organisations

It is the responsibility of the local authority and its partner Clinical Commissioning Group(s) to involve local Healthwatch and local citizens in the preparation of the Health and Wellbeing Strategy. Clinical Commissioning Groups have a duty to involve the Health and Wellbeing Board in preparing their plans

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**Lewisham has established a Shadow Health and Wellbeing Board to manage the transitional arrangement in advance of the Board becoming a statutory committee.**

<ul style="list-style-type: none"><li>•Sir Steve Bullock (Chair) – Mayor of Lewisham</li><li>•Helen Tattersfield (Vice-Chair) – Chair of Lewisham Clinical Commissioning Group</li><li>•Cllr. Chris Best – Cabinet Member for Community Services</li><li>•David Abraham – Deputy Chair of Lewisham Clinical Commissioning Group</li><li>•Aileen Buckton – Executive Director for Community Services</li><li>•Frankie Sulke – Executive Director for Children and Young People</li><li>•Danny Ruta – Director of Public Health</li><li>•Martin Wilkinson – Managing Director, Lewisham Business Support Unit</li></ul>	<ul style="list-style-type: none"><li>•Simon Parton – Representative, Lewisham Local Medical Committee</li><li>•Tim Higginson – Chief Executive, Lewisham Healthcare Trust</li><li>•Steve Davidson – Service Director, South London and Maudsley NHS Trust</li><li>•Martin Howle – Director, Voluntary Action Lewisham</li><li>•Val Fulcher – Chair, Lewisham Local Involvement Network</li><li>•Dee Carlin – Head of Joint Commissioning - Adults, London Borough of Lewisham</li><li>•Warwick Tomsett – Head of Joint Commissioning – Children, London Borough of Lewisham</li></ul>
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**Responsibilities during 2012/13**

- Lead on the development of Lewisham Joint Strategic Needs Assessment
- Lead on the development of Lewisham's joint Health and Wellbeing Strategy
- Support the development and authorisation of Lewisham's Clinical Commissioning Group
- Support the development of an effective local HealthWatch
- Oversee the transition of public health functions, funding and responsibilities to the local authority

**Healthwatch England and Local Healthwatch organisations will act as independent consumer champions for people accessing and receiving health and social care services.**

**Local authorities will fund and commission an organisation to carry out specific statutory functions of a local Healthwatch. A local Healthwatch's remit will cover both adult and children's health and care services.**

**Local Involvement Networks**

Obtaining the views of people about their need for and experience of local care services and making these views known to commissioners

Promoting and supporting the involvement of people in the commissioning, provision and scrutiny of local care services and in monitoring the quality of provision

Making relevant issues and views known to Healthwatch England and supporting Healthwatch England so that it can carry out its functions efficiently, effectively and economically

Providing advice and information about access to local care services and about choices that may be made with respect to those services

**Local Healthwatch will have the same powers at their disposal as Local Involvement Networks**

Enter and view all publicly funded health and social care services either as unannounced spot checks or at agreed monitoring visits

Request information and receive a response in a specified timescale

Make reports and recommendations and receive a response in a specified timescale

Refer matters to a Health and Social Care overview and scrutiny committees and receive a response.

These functions must be carried out by a 'body corporate' which operates as a social enterprise.

**Over the course of 2012/13, Lewisham Council will develop a clear specification so that a Lewisham HealthWatch can effectively represent citizens and support improved health outcomes.**

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**The Act creates a new public health system and devolves the majority of the existing public functions, funding and resources to local authorities.**

**Public Health  
England**

At a national level Public Health England (as an executive agency of the Department of Health) will have a new protected health budget and will support local action through funding and the provision of evidence, data and professional leadership. Its three main functions will be to:

- Deliver services to national and local government, the NHS and the public
- Lead for public health
- Support the development of the specialist and wider public health workforce

Nationwide communications and interventions

Publish information on national and local health and wellbeing outcomes

Build and provide evidence and advice on the best operational means to achieve strategic goals

Deliver an information and intelligence service to support effective action nationally

**Local  
Authorities**

Local Government will have a new statutory duty to take steps as it considers appropriate to improving the health of people in its area. It will also carry out duties under the Public Health (Control of Disease) Act 1984. Responsibility and (ring-fenced) resources for commissioning public health services have been devolved to local government.

**The Act creates a new public health system and devolves the majority of the existing public functions, funding and resources to local authorities.**

Tobacco control and smoking cessation services  
Alcohol and drug misuse services  
Public health services for children and young people aged 5-19 (and in the longer term all public health services for children and young people)  
The National Child Measurement Programme  
Interventions to tackle obesity such as community Lifestyle and weight management services  
Locally-led nutrition initiatives  
Increasing levels of physical activity in the local population  
NHS Health Check assessments  
Public mental health services  
Dental public health services  
Accidental Injury prevention  
Local initiatives on workplace health  
Local initiatives to reduce excess deaths as a result of seasonal mortality  
Population level interventions to reduce and prevent Birth defects  
Behavioural and lifestyle campaigns to prevent cancer and long-term conditions

Supporting, reviewing and challenging delivery of key public health funded and NHS delivered services such as immunisation and screening programmes  
Comprehensive sexual health services (including testing and treatment for sexually transmitted infections, contraception outside of the GP contract and sexual health promotion and disease prevention)  
Dealing with health protection incidents, outbreaks and emergencies  
Public health aspects of promotion of community safety, violence prevention and response  
Public health aspects of local initiatives to tackle social exclusion  
Local initiatives that reduce public health impacts of environmental risks

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**A programme of transition activity is underway so that as of 1 April 2013 the staff, resources, operating model and information are in place to enable Lewisham Council to fulfil its new public health responsibilities.**

• <b>Operating Model</b>	To determine the organisational and operating model that needs to be in place to enable the Council to deliver its public health responsibilities with the relevant governance and constitutional amendments completed.
• <b>Finance</b>	To identify and agree the budget required to deliver the Council's new public health functions and its allocation for the shadow year and subsequent year. To agree the budget accountability and monitoring arrangements during transition and post transfer.
• <b>Commissioning</b>	To produce a 'contract register' and agree commissioning and procurement arrangements during transition and post transfer.
• <b>Information &amp; Intelligence</b>	To establish robust systems and data management, to support public health commissioning and delivery and to satisfy information governance requirements.
• <b>Human resources</b>	To ensure correct and legal transfer of staff on required terms and conditions.
• <b>Accommodation</b>	To provide suitable accommodation and infrastructure to enable staff to carry out public health functions.
• <b>Communications &amp; engagement</b>	To inform and engage with all relevant stakeholders (including staff) of the transition process, the public health functions and their roles and responsibilities.
• <b>Governance &amp; assurance</b>	To ensure that transfer of public health functions follows the required governance process and obtains the necessary level of quality assurance.

Lewisham's public health team is already located within the Council complex and there is a long history of joint-working between the Council and Public Health, most notably in the production of the Joint Strategic Needs Assessment and the development of Lewisham's Shadow Health and Wellbeing Board.

**The majority of the Act's key changes come into effect in April 2013. There remain key activities and decisions that will need to be made over the course of 2012/13.**

Reform	Activity in 2012/13	Governance
Local Healthwatch	Lewisham Council along with its health partners are working to develop a specification for a local Healthwatch organisation. This will involve consultation with the community, specifically some of the harder to reach groups.	Scrutiny from the Healthier Communities and CYP Select Committees
Public Health	Transition process currently underway. Final Public Health budget will be confirmed in December 2012.	Constitutional Working Party
Shadow Health and Wellbeing Board	Over the course of 2012/13 the Shadow Health and Wellbeing Board will close and the new statutory Board will be established.	Public Accounts Committee
Joint Health and Wellbeing Strategy	Over the course of 2012/13 the Shadow Health and Wellbeing Board will lead on the production of Lewisham's Health and Wellbeing Strategy and Joint Strategic Needs Assessment.	Decisions to be made by Mayor and Cabinet or Full Council
Lewisham CCG	Complete authorisation process.	Decision on authorisation made by Department of Health

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## **APPENDIX 3**

### **Public Services (Social Value) Act 2012 Briefing Note**

The Public Services (Social Value) Act 2012 has received Royal Assent

The Act is intended to bring the concept of social value into the commissioning and procurement of services by public authorities. Local authorities are already required to award contracts/framework agreements using the principles of '*Best Value*' which include social, economic and environmental value. The idea behind the Act is to ensure that public authorities consider the collective benefit of the procurement (the social value) when evaluating tenders and it is anticipated that this will increase the number of community organisations, charities and social enterprises delivering public service contracts.

The Act applies to all contracts or framework agreements entered into by public authorities, where the Public Contracts Regulations 2006 ("the Regulations") would apply. The Regulations only apply to services contracts or framework agreements where the value is above £173,934.

It places a requirement on the procuring authority to consider how the service being procured might improve the ***economic, social and environmental wellbeing of the area*** and how, through the procurement process, the authority might act to secure that improvement. The idea is to change the way that contracts are awarded and to shift focus from factors such as cost, to other considerations which may benefit a local area, such as a commitment to using local labour, creating jobs for locally disadvantaged groups or reducing landfill waste or carbon emissions.

The Council is obliged to consider only matters which are **relevant** to the service which is being procured and in taking them into account, must consider them only to the extent to which it is **proportionate** to do so.

A public authority must also consider whether to undertake any consultation of the matters which should be considered by the authority in determining how the service being procured might improve the economic, social and environmental wellbeing of the area.

Prior to the Act, local authorities are unable to take into account non-commercial considerations when entering into public service contracts (section 17 LGA 1998). This Act allows the Council to consider a non-commercial matter to the extent that the authority considers it *necessary or expedient* to do so to enable or facilitate compliance with the Act. This broadens the ability of the Council to determine which matters to take into account when procuring a contract.

## When Does the Act Apply

The Act will apply to all **service** contracts and framework agreements entered into by the Council above the EU threshold. This includes contracts which solely relate to the provision of services as well as contracts for the provision of services together with the purchase/hire of goods or the carrying out of works.

The Act includes an exemption which means that if there is an urgent need to arrange the procurement in question which makes it impractical to comply with the requirements outlined above, then the Council may disregard the requirements to the extent that it is not practical to comply with them. No guidance has yet been published in relation to the Act and therefore it is unclear if this exemption will be interpreted widely or not.

The Act is clear that failure to comply with it does not affect the validity of anything done in order to comply with the Regulations. However in circumstances where a local authority fails to comply with the legislation, they may leave themselves open to challenge by way of judicial review.

## Impact on the Council

Any commissioning procurement exercise for services undertaken by the Council which is in excess of £173,934 will fall under this Act. The Council will need to consider how the service being procured might improve the economic, social and environmental wellbeing of Lewisham and how we might act to secure this improvement. This may mean a change in how the Council procures its services contracts and will require that all participants in the tender process ensure that social value is considered at all stages, but particularly prior to commencement of the procurement.

Consideration may need to be given to the criteria used in the evaluation of tenders and any specific social, economic or environmental requirements should be outlined in the contract documentation. The weighting to be attached to any specific criteria should be balanced so as to determine the most advantageous tender.

The Council needs to ensure that any social requirements are drafted and defined in such a way that bidders from the EU are not discriminated against, as this could give rise to challenge.

Consideration may need to be given to holding consultation with the public and suppliers when looking to procure services such as early years centres, libraries etc, to find out what residents deem to be matters which might improve the economic, social and environmental wellbeing of Lewisham. These can then be reflected in the procurement process and will ensure that the maximum social value is realised from the winning bid.

Although this Act applies to contracts above the threshold, it would be good practice for the Council to adopt social value considerations in all procurements, to ensure maximum community benefits.

### Summary

This Bill is intended to supplement existing legislation and it is likely that the Council is already undertaking procurements in accordance with this new law. The Act is intended to focus consideration by public authorities on all aspect of value for money when awarding its contracts. It is likely that procuring for social value will help support the strategic aims of the Council in seeking to improve the economic and social wellbeing of the borough for our residents.