

Legal Implications

Reference	Proposal Summary	Specific Legal Implications
Appendix 1	Section A – Smarter & Deeper Integration of Social Care & Health	
A11	Managing & improving transition planning	<p>The Children and families Act became law on the 1 September 2014. The new law makes it clear that children and young people with special educational needs and disabilities (SEND) should be supported on a consistent basis across Education, Health and Social Care from 0-25 years of age. Education Health and Care plans need to consider the needs of younger people in receipt of education. How those needs are met can be highly flexible. The proposal will require a separate report re commissioning services, and assessment duties are set out in the Care Act 2014 and associated guidance.</p>
A12	Reducing costs of staff management, assessment & care planning	<p>There are a number of duties regarding assessment for services for both adults and carers, which are all contained in the Care Act 2014 and associated guidance. The redesign of any services will require specific consideration as to methods of implementation and adherence to statutory duties.</p> <p>The Care Act 2014 also sets in legislation the duty of the local authority to promote integration of care and support with health services. <i>“The Local Authority must exercise its functions under this part of the act, with a view to ensuring the integration of care and support provision with health provision and health-related provision”</i></p> <p>Staffing issues may involve employment procedures, and some redesigning of services may require specific reports as changes</p>

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		are proposed
A13	Alternative Delivery Models for the provision of care & support services	Please see above for similar issues as plans are worked up, and depending on the proposals, consultation may well be needed.
A14	Achieving best value in the provision of care packages	<p>The new general duty under the Care Act 2014 of a local authority, in the case of an adult, is to promote that adult’s well-being. “Well-being”, in relation to an adult, means that adult’s well-being so far as relating to any of the following—</p> <ul style="list-style-type: none"> (a) physical and mental health and emotional well-being; (b) protection from abuse and neglect; (c) control by the adult over day-to-day life (including over the care and support provided to the adult and the way in which it is provided); (d) participation in work, education, training or recreation; (e) social and economic well-being; (f) domestic, family and personal relationships; <p>When deciding how best to meet an individual’s care needs, the Council is entitled to take into account its own resources as well as the client’s stated preferences. In planning to meet an individual’s needs, the Council may consider the most cost effective way in which this can be done and can take into account the individual’s resources and contributions. This may include considering their family and support networks, their welfare benefits and the community resources available.</p> <p>This has already been the subject of several reports. Commissioning issues and separate reports as services are re-commissioned.</p> <p>This has already been the subject of several reports. Commissioning issues and separate reports as services are re-commissioned.</p>

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<p>A15</p>	<p>New delivery models for extra care & day services – provision of contracts</p>	<p>Assessment and arranging service delivery are core activities for Adult Social Care. Redesigning services may need consultation, and individuals will remain entitled to reassessment before changes to their service package are made.</p> <p>The majority of these proposals relate to service contracts that are being re-commissioned for 2017 and which are currently in the early stages of development.</p> <p>The Care Act has clarified that people placed into supported living schemes, including people placed in extra care schemes remain ordinarily resident with the placing authority.</p>
<p>A16</p>	<p>Public Health – including: Prescribed Medication Dental Public Health Obesity/Physical Activity Health Inequalities Workforce Development Redesign Through Collaboration</p>	<p>The Council was given the Public Health function by statute in 2013. Most services are commissioned through joint commissioning Agreement with the CCG under Section 75 of the Health Act 2006. Any savings will have to be achieved through re-commissioning contracts or negotiating changes to existing contracts with providers.</p>
<p>A17</p>	<p>Sexual Health Transformation</p>	<p>The Sexual Health provision under the Council’s Public Health function is currently commissioned under a tri-partite agreement with Southwark and Lambeth and through a block contract with the Lewisham and Greenwich Hospital Trust under a S 75 Agreement. The proposed savings will be delivered in 2017-2018 after a redesign of the services and a full report with legal implications will be required.</p>
<p>Appendix 2</p>	<p>Section B: Supporting People</p>	
<p>B2</p>	<p>Reduction in budget across all client groups</p>	<p>The savings proposals are to take effect in 2017-2018 and a full report will be necessary. Consultation will be required and a full EAA .</p>

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Appendix 3	Section F: Business Support & Customer Transformation	
F2	Customer Transformation Review (Phase 1) Including: Improving our online offer Pushing customers to self-serve online where possible	There are equality implications in relation to this proposal and consideration will have to be given to the impact of the online offer and who unlikely to use it and what alternative routes for information and support can be provided.
F3	Customer Service Centre reorganisation	There are employment implications arising out of this proposal and the Council's management of change policies will have to be followed and compliance with all relevant Employment legislation.
Appendix 4	Section G: Income Generation	
G2	Various approaches to income generation. Includes: Advertising Wireless Concessions Regulatory restrictions & treasury management Sundry debt collection Parking: Review service level arrangements	Income generation through advertising will be constrained, where it relates to advertising on highways, by certain restrictions in the contract between the Council and DeCaux relating to bus shelters, street furniture and advertising on the same. Some advertising is permitted following a relaxation of the exclusivity clauses but legal advice will be required. In relation to wireless concessions, this will require negotiation with the Council's street lighting contractor under the provisions of the joint street lighting PFI contract between the Council, Croydon and The PFI Contractor, Croydon and Lewisham Lighting Services Limited. Section 122 of the 1984 Road Traffic Regulation Act 1984 , provides that a local authority is under an overriding duty to exercise the functions conferred on it so as to "secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway". Under section 45 of the 1984 Act, local authorities have the power to

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		designate parking places on the highway, charge for use of them and issue parking permits for a charge. Under section 46 of the same Act, those charges are to be prescribed in a designation order or a separate order made by the local authority. Section 55 provides for the creation of a ring fenced account into which the monies raised under sections 45 and 46 must be placed and for dealing with any surplus funds which includes expenditure for other transport purposes.
Appendix 5	Section H: Enforcement & Regulation	
H2	Further reductions in Crime, Enforcement & Regulation & Environmental Health	<p>The list of relevant statutory functions covered by this reorganisation and the service areas affected is extensive; consequently the list of statutory obligations whilst numerous, cannot be treated as being exhaustive.</p> <p>Pursuant to s.17 of the <u>Crime & Disorder Act 1988</u>, every local authority has a statutory “duty to ...exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”</p> <p>Section 6 of the <u>Food Safety Act 1990</u>, provides an obligation to carry out all necessary food enforcement inspections as a statutory ‘food authority’. The provisions of the <u>Health and Safety at Work etc Act 1974</u>, in particular, Ss. 18 & 19, provides that the local authority must enforce the necessary health and safety provisions as a statutory ‘enforcement authority’, with a necessary authorised Inspector. Further relevant statutory obligations include, but are not limited to S. 69 and Part VI of the <u>Weights and Measures Act 1985</u>, S. 3 <u>Licensing Act 2003</u>, as a Licensing Authority for the purposes of all the <u>Licensing Act</u> functions and S. 2 <u>Gambling Act 2005</u> when acting as a Licensing Authority for the purposes of all <u>Gambling Act</u> functions.</p> <p>All relevant functions pursuant to the <u>Public Health (Control of Disease) Act 1984</u>, including powers of necessary entry to</p>

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		<p>premises (s. 61) as a ‘relevant health protection authority’ (and for the Council to be able to serve all relevant documents and notices, s. 60) also in particular, Part III of the said Act.</p> <p>All relevant functions pursuant to the <u>Health Protection (Part 2A Orders) Regulations 2010</u> (in the context of the said 1984 Act) and this includes the obligation to provide a written report to the national ‘Public Health [England]’ Office, each time a Part 2A Order is made.</p> <p>All relevant functions pursuant to the <u>Public Health Act 1961</u> including filthy or verminous premises.</p> <p>All relevant functions pursuant to the <u>Control of Pollution Act 1974</u>, which are not dealt with elsewhere within the Council’s enforcement services; namely, including but not limited to, the service of statutory notices and related enforcement action concerning controlling ‘noise’ emanating from construction sites (Ss. 60 & 61), and exercising lawful rights of entry and inspection (s. 91).</p> <p>All relevant functions pursuant to the <u>Environmental Protection Act 1990</u>, including those within <u>Part IIA of the Act</u>, where necessary. For this Part of the 1990 Act, the Council is the ‘enforcing authority’. This enables the authority to serve appropriate notices, so as to require and subsequently enforce remediation of contaminated land – and deal with alleged significant pollution of controlled waters. The Council must maintain a register containing prescribed particulars relating to ‘remediation notices’ served and action taken.</p> <p>All relevant functions pursuant to the <u>Environmental Protection Act 1990, Part III</u>, where necessary. Here the Council’s authorized officers seek to counter alleged statutory nuisances when witnessed by them, pursuant in particular sections, 79 and</p>
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		<p>80.</p> <p>All relevant functions pursuant to the <u>Clean Air Act 1993</u>, to control in particular, smoke. Part III of the said Act is relevant to the discretionary power available to a local authority; namely the declaration of a smoke control area. Local Authorities within the provisions of this Act, have the power to obtain information about the emission of pollutants and other substances into the air, and the undertaking of relevant enforcement action if deemed necessary. This works in tandem with the Government published National Air Quality Strategy which contains policies with respect to the assessment or management of the quality of air, pursuant to s. 80 of <u>Part IV Environment Act 1995</u>. The functions here are linked closely with those pursuant to the <u>Pollution Prevention and Control Act 1999</u>, s. 1 which seeks to prevent polluting activities.</p> <p>All relevant functions pursuant to the said <u>1999 Act</u> require Local Authorities to regulate certain types of industries so as to reduce pollution and in particular improve air quality. Certain industrial activities require Permits to be issued so as to set controls and emission standards to minimize pollution.</p> <p>All relevant functions pursuant to the <u>Safety of Sports Grounds Act 1975, and 1987</u>, including in particular the inspecting and issuing of safety certificates for stands at sports grounds.</p> <p>In addition to the above, it is important to note the Council's "Equalities" obligations when considering the exercise of its functions pursuant to the 2010 Equality Act.</p>
<p>Appendix 6</p>	<p>Section I: Management & Corporate Overheads</p>	
<p>I2</p>	<p>Further review of policy, governance & administration support staff. Includes:</p>	<p>There are employment implications arising out of this proposal and the Council's management of change policies will have to be</p>

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	Policy, performance, service redesign and intelligence, senior management support service, Governance	followed and compliance with all relevant Employment legislation.
I3	Reorganisation of how complaints are management across the Council	General legal implications apply
I4	Review of Strategy & Comms – includes: Review of Programmes in Strategy and Mayor & Cabinet Office, Restructure of Communications after voluntary redundancies	There are employment implications arising out of this proposal and the Council’s management of change policies will have to be followed and compliance with all relevant Employment legislation
I5	Commissioning & Procurement	There are no specific legal implications arising out of this Report
I6	Insurance recharge risk premium	General legal implications apply
I7	Further review of financial service team	General legal implications apply
I8	Legal: Streamlining procurement and legal administration	General legal implications apply
I9	HR: Reduction in Human Resources Support Includes: HR support, TU Secondments, Graduate Scheme, Social Care Training, Realign Schools HR Recharges	There are employment implications arising out of this proposal and the Council’s management of change policies will have to be followed and compliance with all relevant Employment legislation
I10	IT: Further consolidate ICT spend across the Council and digitise committee papers. Includes: Revising infrastructure support and arrangements, Contract, systems and supplies review, Committee	New contractual arrangements will have to be entered to achieve the efficiencies proposed. A fuller report will be provided to Mayor and Cabinet with specific relevant legal implications

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	papers: move to digital access only	
Appendix 8	Section K: Drugs & Alcohol Service	
K4	Public – Health – Drug & Alcohol Services	<p>The Health and Social Care Act 2012 transferred public health responsibilities to Councils as from 1st April 2013 with a duty to “take appropriate steps to improve the health of the people who live in their areas”. The Report to the Mayor and Cabinet dated 24th October 2012 noted for members that within their over overarching responsibilities, the Council, pursuant to the changes brought about by the 2012 Act, would have “...specific responsibilities for commissioning alcohol and drug misuse services...”.</p> <p>The Crime and Disorder Act 1988, s. 17 imposes a duty on local authorities and the police to exercise its functions ..."with due regard to the need to do all it can to prevent crime and disorder in its area".</p> <p>Full EAAs will be carried out once the impact on particular groups affected becomes more apparent to us from what the potential providers suggest in terms of their relevant delivery models.</p>
Appendix 9	Section L: Culture & Community Services	
L5	Main grant funding to the voluntary sector	<p>Decision is to consult</p> <p>Full report to come on voluntary sector grant funding which will have full legal implications.</p>
L6	<p>Libraries and information service</p> <p>Draft: Consultation: Proposed changes to Library and Information Service</p>	<p>Decision is to consult.</p> <p>The Public Libraries and Museums Act 1964 makes provision for regulating and improving library services. Section 7(1) sets out the duty of every library authority to provide a “comprehensive and efficient library service for all persons desiring to make use</p>

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		thereof". Section 7(2) provides that, in fulfilling its duties, a library authority should have regard to the desirability "of securingby any other appropriate means" that facilities are available for the borrowing of, or reference to, books and other printed matter, pictures, records, films and other materials in sufficient number, range and quality to meet the general requirements and any special requirements of adults and children. Section 9(1) provides that "a library authority may make contributions towards the expenses ofany person providing library facilities for members of the public".
L7	Leisure Service	<p>The contract with Fusion Lifestyle is a concession contract where the Council partially subsidises the running costs of the centres. Any reduction to the subsidy will affect the leisure offer to residents. The contract provides that there is a financial adjustment in the price/subsidy where any of the services are omitted from the contract and for the Council to provide compensation at an agreed rate. An opportunity for the Contractor to increase income from the assets will offset this obligation.</p> <p>The PFI Agreement relation to the Downham Health and Leisure Centre can be varied but this arrangement is complex.</p>
Appendix 10	Section M: Housing and non HRA funded services	
M2	Housing Services: Strategy and Development	General legal implications apply
Appendix 11	Section N: Environmental Services	
N3	Waste: Variety of changes	The Council has a duty under the Environmental Protection Act 1990 to collect household waste. The duty does not specify the

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		<p>frequency of collection but the Council must act reasonably in discharging its duty.</p> <p>The Council is also under a duty to collect commercial waste if requested to do so. However, the Council is entitled to make a reasonable charge for the collection and disposal of commercial waste.</p> <p>Lewisham Homes is the Council's ALMO and it is a matter for the Council and Lewisham Homes to agree what costs relating to the management of the Council's housing properties can be re-charged to Lewisham Homes and paid from their budget.</p>
<p>N4</p>	<p>Cease routine residential Road sweeping</p>	<p>Under Section 89(1) of the Environmental Protection Act 1990, the Council is under a statutory duty to ensure that open land under its direct control and to which the public have access is, so far as practicable, kept clear of litter and refuse. Under Section 89(2), the Council is also under a statutory duty, so far as is practicable, to ensure that public highways within its area are kept clean. In deciding what standard is required, the Council must have regard to the character and use of the land or highway, as well as the measures which are practicable in the circumstances.</p> <p>Under Section 89(10), the Council is also required to have regard to the code of practice published by the Secretary of State from time to time. In particular, the code requires the Council to allocate its land into different types or "zones" which must be publicised. The code then sets out cleanliness standards for the different types of land and maximum response times for cleaning an area which has been littered. The duty applies seven days a week. Members of the public may complain to the Magistrates Court where they consider that there is a breach of Section 89. The code of practice is admissible in evidence and the court may take into account any relevant provision in the code of practice. If</p>

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		the complaint is successful, a litter abatement order will be made, failure to comply with which is an offence. The court may also award costs if it is satisfied that there were reasonable grounds for bring the complaint, even if by the time the complaint is heard, the litter has been cleared away or the lack of cleanliness rectified. In considering any savings proposals in relation to these matters, the Mayor must therefore be satisfied that the Council will still be able to comply with its duties under Section 89 and the requirements contained in the code of practice.
N5	Review of Lewisham's Fleet & Passenger Transport Service	Once the current proposal has been more particularised, then full legal implications will be provided.
N6	Other Environment Savings & Income	General legal implications apply
Appendix 12	Section O: Public Services	
O4	Financial Assessments Review	General legal implications apply
O5	Discretionary Freedom Pass: Withdrawal of discretionary scheme. Consultation Document for O5	General legal implications apply
Appendix 13	Section P: Planning	
P2	Planning Service – Budget Savings 2016/17 and 2017/18	The proposal is to increase planning related charges generally. The power to charge for a discretionary service, is derived from S93 of the Local Government Act 2003. That power allows a best value authority, (of which Lewisham is one), to charge for the

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		<p>discretionary element of its services, if the recipient has agreed to receive that service. This does not apply where the Council has another specific power to charge or where it is expressly prohibited from doing so. However, under Section 93 any charge must be on a not-for-profit basis (year-by-year) and, taking one year with another, the income from charges for such services must not exceed the cost for providing them. The Council is prohibited by law from planning for such a surplus and therefore the Council must ensure that the proposed level of fees are a reasonable estimate of what it will actually cost it to provide the proposed services.</p> <p>Planning fees in England are set nationally by the Government. Details of the level of planning fees and any exclusions are set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012/2920</p> <p>Local planning authorities are required to undertake a formal period of public consultation, prior to deciding a planning application. This is prescribed in Article 15 of the Development Management Procedure Order. There are separate arrangements for listed buildings which are set out in Regulation 5 and Regulation 5A of the Listed Buildings and Conservation Area Regulations 1990 (as amended).</p> <p>Local Authorities have discretion about how they inform communities and other interested parties about planning applications subject to the minimum statutory requirements specified above.</p> <p>In addition, local authorities may set out more detail on how they will consult the community on planning applications in their Statement of Community Involvement,</p>
<p>Appendix 14</p>	<p>Section Q: Early Intervention & Safeguarding</p>	

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<p>Q3</p>	<p>Targeted Services Savings: includes:</p> <ul style="list-style-type: none"> Sensory Teachers Educational Psychologists Occupational Therapy – management reorganisation Reduce Carers funding Review of MAPP portage with increased health contribution Joint commissioning 	<p>Section 175 of the Education Act 2002 imposes a duty on local authorities (amongst others) to make arrangements in regard to the welfare of children. Local authorities must make arrangements to ensure that their education functions are exercised with a view to safeguarding and promoting the welfare of children.</p> <p>Section 321 of the Education Act 1996 sets out the basic duty on local authorities to identify and determine the special educational provision which should be made available for children for whom they are responsible. The proposals have to be consistent with the local authorities ability to meet its statutory responsibilities.</p> <p>There is a statutory framework for joint commissioning of social care and health services and each year the Council and the CCG agree their respective financial contribution towards the budget required to deliver the services and make decisions as to the letting of contracts to providers. Each partner can delegate its function to the other, if this is considered to be in the interests of stakeholders and the efficient delivery of the services. Any reductions in budget will involve negotiation and agreement with the CCG. Where the Council holds the budget it must ensure this is managed to avoid any overspend.</p> <p>As these services are provided to vulnerable young people, to the extent that there is a change to the provision, then consultation will be required and a report setting out the outcome of such consultation placed before the decision maker. The recipients of the service have protected characteristics under the Equality Act 2010 and the Council must comply with its statutory duty under this Act when making decisions of a strategic nature about how to exercise its functions, to have due regard to the desirability of exercising them in a way that is designed to</p>
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		reduce the inequalities of outcome which result from socio-economic disadvantage
<p>Q4</p> <p>Q5</p>	<p>Safeguarding Services: Includes:</p> <p>Social care supplies and services reduced spend</p> <p>Social care financial management through continued cost control</p> <p>Placements: continuing strategy</p> <p>Youth Service</p>	<p>A full report will go to Mayor and Cabinet setting out the proposals for the development of a mutual to deliver the youth services. This report will contain detailed legal and financial implications. If the formation of a mutual is agreed, then the Lewisham mutual would have to compete in the market for a contract for the youth service for a period of up to three years although only mutuals will be permitted to tender. The Council will have to specify the nature of the services it requires the mutual to deliver although this can be in the form of an output specification to allow the bidders to come forward with their own proposals as to how to deliver the services and to offer, if they so wish, any innovative proposals. It is lawful to offer Initial financial or other support to the mutuals provided that it is fair to all bidders and not discriminatory. There will be employment implications which will be set out in the Report.</p> <p>General legal implications apply.</p>

