

CONSTITUTION WORKING PARTY		
<b>Report Title</b>	LEGISLATIVE UPDATE	
<b>Key Decision</b>	N/A	
<b>Ward</b>	All	
<b>Contributors</b>	Head of Law	
<b>Class</b>	Part 1	Date 15 November 2011

## 1. Summary

This report presents information about current proposals in the Localism Bill and in the Health and Social Care Bill for the information of the Working Party and invites comments on those matters likely to affect the Council's constitution

## 2. Purpose

The purpose of the report is to update members on the progress of the legislation on its way through the parliamentary process

## 3. Recommendation

Members are asked to note the likely contents of the Localism Bill and Health and Social Care Bill as briefly summarised in this report and to ask officers to bring back to this Working Party a further report when the Bills have been implemented setting out the implications for the Council's constitution and any recommendations for amendment.

## 4. Policy context

The Council is committed to the highest standards of good governance. This reports informs members of impending changes to enable them to give consideration to the implications for the Council's constitution.

## 5. Key features of the Localism Bill

### 5.1 Governance

As part of its plans to reform local governance, the Government proposes to give Councils a general power of competence, introduce directly elected Mayors across 12 major cities, allow local councils to return to the committee system, abolish standards committees (and replace these with a requirement for authorities to adopt a code of conduct for members), require Councils to publish pay policy

statements and give councillors greater say in chief officer pay awards. In addition, the Bill proposes to give the Secretary of State wide ranging powers including to remove barriers that might prevent councils from exercising the general power of competence and other powers to change local governance arrangements.

## 5.2 Community empowerment

Under the Government's proposals, community & voluntary groups will have the opportunity to express an interest in providing public services and to bid for assets of community value. Amongst the various new clauses that have been added to the Bill during the parliamentary debates, the Secretary of State will have the power to provide advice and assistance with regard to the rights to challenge and the right to bid.

## 5.3 Housing

The Government proposes to allow local authorities to introduce flexible (fixed term) tenancies instead of the existing lifetime offer for social housing tenants. Other proposals include allowing the homelessness duty to be discharged in the private rented sector without the tenant's consent. There will be wide ranging powers to the Secretary of State to exclude certain persons from consideration on social housing waiting lists. Local authorities are to be able to determine which groups should receive priority in the allocation of social housing. The HRA subsidy system is to be abolished and self financing introduced, with a borrowing cap for housing capital

## 5.4 Planning

The Government's proposals include devolving power to local residents to establish neighbourhood forums, develop neighbourhood plans and make planning decisions through neighbourhood development orders. Proposals in the Bill also allow for a duty to co-operate (replacing regional development strategies) which will require councils and other bodies to work together to deliver sustainable development. Other proposals will give local areas greater flexibility in the use of the community infrastructure levy.

## 5.5 Referenda

The Bill contains a number of proposals for referenda, including in relation to neighbourhood planning and Council Tax rises above a limit set by the Secretary of State

## 6. **Key developments including amendments proposed in the Lords and apparently to be accepted by the Government include the following:-**

## Part 1 Competence and Governance

- 6.1 *Pay accountability* – the requirement to produce a pay policy no longer is to relate only to Chief Officers. Instead the pay policy must also contain details of the remuneration of the lowest paid employees and the relationship between that and Chief Officer pay. The definition of remuneration is widely defined. The policy is to be in place by 31.3.12
- 6.2 *Mayor being the most senior officer.* This and proposals for the Mayor to make various management proposals has disappeared from the Bill.
- 6.3 *12 cities* – The Secretary of State is to have power only to require a referendum, not to impose shadow mayors pending that referendum
- 6.4 *Standards regime* – Since the July version of the Bill was published it appears that the Government may accept an amendment that the regime may not be totally abolished, with some elements (e.g. minimum requirements for a Code of Conduct) will be retained. DCLG confirm a government supported amendment is to be published shortly

## Part 4 Community empowerment

- 6.5 *Local referenda* – Chapter 1 of this part of the Bill initially provided for local referenda on “local issues” either of the Council’s own accord or in response to a petition. The July version of the Bill amended the proposals to allow for exemptions largely on the grounds of cost. (if the referendum would cost more than 5% of the Council Tax requirement). It also proposed referenda on London wide issues. However, in response to lobbying it appears that the Government are likely to accept a Lords amendment proposed since 20/7 edition of the Bill, to remove all provisions relating to local referenda on local issues. Other provisions for referenda, on neighbourhood planning, Council Tax, governance issues remain.
- 6.6 *Community right to challenge* -No significant changes. Government have published the outcome of consultation about how this might work in practice, but not its response yet
- 6.7 *Assets of community value* – No significant changes but the proposals have been fleshed out in consultation documents, the responses to which have been published but not yet the Government’s response. Some small amendments relating to procedure. The later version of the Bill requires local authorities to co-operate in relation to this function.

## Part 5 – Planning

- 6.8 *Business areas* – there is provision in the newer version of the Bill for neighbourhood areas to be designated also as business area, if they meet criteria.

- 6.9 *The planning neighbourhood framework* has been published for consultation
- 6.10 *Draft regulations* were published on 13<sup>th</sup> October for consultation on the implementation of neighbourhood planning and the community right to build
- 6.11 *CIL use consultation* paper published

## **7. Implementation of the Localism Bill**

Because of the size and scope of the Bill it is likely to be brought into effect at different times about which there is no certainty. DCLG indicate that the implementation timetable is to be published very shortly after Royal Assent. The Government has said that they intend implementation to be from the start of the new financial year. Further more definitive report(s) will be available for members when the Bill becomes law. There will clearly need to be constitutional and process changes to give effect to the new legislation, and there are a number of officer groups working on this at present. ACSES are producing a model constitution and a model code of conduct which the Council may choose to use (modified to fit local circumstances if necessary) as a starting point for its own amendments. They are likely to be available shortly after Royal Assent.

## **8. Health & Social Care Bill**

### **8.1 Key features of the Health and Social Care Bill**

The main components of the Health and Social Care Bill are measures to

- Increase diversity of supply, promote competition and increase choice for patients by establishing Monitor as an economic regulator to oversee access and competition, by extending choice of provider to a wider range of services and by allowing providers from all sectors to compete on an equal footing;
- Extend choice into other areas of care, including community services, mental health and diagnostics, 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;
- Establish an independent NHS Commissioning Board to operationally manage the NHS, allocate resources, provide commissioning guidance and commission Primary Care Services and those services that are more appropriately commissioned at a national level. The intention is that the establishment of the NHS

Commissioning Board will place operational management of the NHS at arm's length from ministers;

- Allow GPs to commission services on behalf of their patients by establishing GP consortia to take on local health commissioning functions in April 2013, at which point PCTs will be abolished;
- Give local authorities responsibility for Public Health, and for creating Health and Wellbeing Boards. Health and Wellbeing Boards will be responsible for producing Joint Strategic Needs Assessments and developing a joint Health and Wellbeing Strategy for the local area;
- Impose a duty on the NHS Commissioning Board and Health and Wellbeing Boards to promote integration and by making provisions to enable the Board or consortia to establish pooled funds;
- Strengthen the role of the Care Quality Commission and establish a national patient voice organisation, HealthWatch England, and local HealthWatch organisations;
- Grant services more autonomy. All NHS providers must become Foundation Trusts by April 2014 and lift the cap on what foundation Trusts can borrow from commercial organisations
- Cut the number of health bodies to help meet the Government's commitment to reduce NHS administration costs by a third, including abolishing Primary Care Trusts and Strategic Health Authorities.

## **9. Likely implications of the Health and Social Care Bill for the Council**

- 9.1 At a local level, the Bill, if enacted as drafted currently, will impose specific duties and responsibilities in respect of Health and Wellbeing Boards, Commissioning Consortia, Local Healthwatch and Overview and Scrutiny arrangements.

## **10. Health and Wellbeing Boards**

- 10.1 Once passed, the Bill will require local authorities to establish a Health and Wellbeing Board. The Bill specifies its membership (at least one councillor of the local authority, the director of adult social services, the director of children's services, the director of public health, a representative of the Local Healthwatch organisation, a representative of each relevant commissioning consortium and such other persons as the local authority thinks appropriate).

- 10.2 The Bill if enacted, will require the responsible local authority and its partner commissioning consortia, through the Health and Wellbeing Board, to:
- Prepare an assessment of relevant needs;
  - Prepare and publish a strategy for meeting the needs identified in the joint strategic needs assessment; and
  - Have regard to the assessment of need and the joint health and wellbeing strategy in the exercise of their relevant functions
- 10.3 A Health and Wellbeing Board must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner.
- 10.4 Where an issue relates to services commissioned by the NHS Commissioning Board, Health and Wellbeing Boards will request, and the NHS Commissioning Board will appoint, a representative to join the board to discuss this issue.
- 10.5 Two or more health and wellbeing boards may make arrangements for any of their functions to be exercisable jointly, by a joint sub-committee of the boards, and for this sub-committee to advise them on any matter related to the exercise of their functions.

## **11. Commissioning Consortia**

- 11.1 The Bill specifies that each commissioning consortium must prepare a plan setting out how it proposes to exercise its functions. In preparing the plan, the commissioning consortium must consult the relevant Health and Wellbeing Board about its views on whether the plan takes proper account of the most recent joint health and wellbeing strategy published by the Health and Wellbeing Board.
- 11.2 Commissioning consortia will be required to involve patients in the planning of the commissioning arrangements and in the development of commissioning proposals that might result in major changes in the way that services are delivered or the range of services available.
- 11.3 A commissioning consortium will be required to prepare an annual report which shows how it has discharged its functions in the previous financial year.
- 11.4 Following much public pressure, the government agreed to institute a period when it would conduct a “Listening Exercise” and as a result, amendments to the Bill were published which strengthen the links between Health and Wellbeing Boards and the Commissioning Consortia, and each consortium will have a duty to involve the Board in preparation of its plans, and to consult the Board in preparing its strategy.

## **12. Local HealthWatch and advocacy**

The Bill establishes the existence of Local HealthWatch organisations in place of Local Involvement Networks (LINKs). Local authorities will have a duty to commission the support for Local HealthWatch organisations as well as a duty to make such arrangements as it considers appropriate for the provision of independent advocacy services.

## **13. Overview and Scrutiny**

13.1 Once enacted, the Bill will amend section 244 of the NHS Act 2006. Section 244 of the NHS Act (and regulations under it) currently give the power to overview and scrutiny committees to scrutinise and make recommendations and reports on health matters, as well as to be formally consulted on significant changes in health provision, with a power to refer to the Secretary of State in certain circumstances. If the Bill is enacted, those powers will apply to the local authority, rather than specifically to an overview and scrutiny committee. It will be for the local authority to decide how it wishes to discharge those duties.

13.2 In addition, the powers of overview and scrutiny have been extended to cover GP consortia and other NHS funded services. Further in setting up its HWB, the Council must give consideration to its arrangements for scrutinising its work.

## **14. Lewisham's preparations in relation to Health and Wellbeing Board**

14.1 Lewisham Council has always enjoyed strong partnership arrangements with health colleagues. Both the Adult Strategic Partnership Board and the Children and Young People's Strategic Partnership Board brought together different organisations to help improve local health and wellbeing. Similarly, the Healthier Communities Select Committee and the Children and Young People's Select Committee have a history of effectively challenging, scrutinising and driving activity across local health and social care agencies.

14.2 Under the auspices of the LSP, a shadow health and wellbeing board was established to make preparation for the impending changes,. This accords with Government Guidance to convene a shadow board. It is currently working on a model for the established Health and Wellbeing Board once the legislation is in place.

14.3 Meetings of the Shadow Health and Wellbeing Board are public. The schedule of meetings has yet to be formalised. Once it has been agreed by the Board, it will be publicised on the Lewisham Strategic Partnership website.

14.4 The Shadow Board should be a very useful tool in managing the transition to a new statutorily established Board.

**15. Membership**

15.1 The membership of the Shadow Health and Wellbeing Board currently reflects the membership proposed in the Bill. Membership will be reviewed in response to changing legislation or further guidance. It is noteworthy that the Bill provides for the Mayor to make the councillor nominations to the Board, and provides for him to be such a nominee should he wish to do so.

15.2 The matter has been considered by the Healthier Communities Select Committee and a referral made to the Mayor. Broadly the Select Committee favours retention of the current scrutiny arrangements in relation to all health matters. In deciding in due course about the constitutional arrangements, the views of that Select Committee will be reported back.

**16. Parliamentary progress**

The Bill is currently at Committee Stage before the House of Lords, which will continue until 22.11.11. This will be followed by a 3<sup>rd</sup> reading of the Bill by the House of Lords before consideration of any amendments and reversion to the Commons. The Bill will then be ready for Royal Assent.

**17. Financial implications**

There are none arising from this report.

**18. Legal Implications**

These are contained in the body of the report. Unless and until the law changes, the Council is required to comply with existing legal provisions.

**19. Equalities/Environmental and Crime and Disorder implications**

There are no specific implications arising.

**20. Background papers**

None

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