

# **LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006. They have been prepared by the Department for Communities and Local Government, together with the Wales Office, in order to help the reader of the Bill and to assist debate. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the clauses. Therefore, where a clause or a part of a clause does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

3. The Local Government and Public Involvement in Health Bill gives effect to the Government's proposals for reform of the local government system in England and for reform of the current arrangements for patient and public involvement in the provision of health and social care services. It also gives effect to a commitment to expand the legislative competence of the National Assembly for Wales (“the Assembly”) in the field of local government.
4. In July 2004 an initial discussion document *'The future of local government - developing a 10 year vision'* was published by the Office of the Deputy Prime Minister (now known as the Department for Communities and Local Government) to launch the debate on the future of local government between central government, local government and other stakeholders under the heading *local:vision*. Between July 2004 and February 2006 numerous documents under the *local:vision* heading were published setting out ideas for discussion and consultation.

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

5. The Local Government White Paper '*Strong and Prosperous Communities*', published on 26<sup>th</sup> October 2006, was a response to the *local:vision* consultation. This Bill follows from that White Paper.

6. The Department of Health instigated a review of patient and public involvement in the provision of health services in August 2005. In January 2006 the Department published the White Paper '*Our health, our say, our care: a new direction for community services*'. Following publication of the White Paper, an Expert Panel was established in February 2006 in order to consider the evidence that had been gathered. The Expert Panel published its findings in July 2006.

7. On 13<sup>th</sup> July 2006 the Department of Health published the consultation document '*A Stronger Local Voice*' setting out the proposed changes. Since then there have been extensive discussions with stakeholders.

## **STRUCTURE OF THE BILL**

8. The Bill is set out as follows:

- **Part 1 - Structural and Boundary Change in England**

  - **Chapter 1 - Structural and Boundary Change**

  - **Chapter 2 - Control of Disposals etc**

- **Part 2 - Elections in England**

- **Part 3 - Executive Arrangements for England**

- **Part 4 - Parishes**

  - **Chapter 1 - Parishes**

  - **Chapter 2 - Power to Promote Well-Being**

  - **Chapter 3 - Reorganisation**

- **Part 5 - Co-operation of English authorities with Local Partners etc**

  - **Chapter 1 - Local Area Agreements**

  - **Chapter 2 - Overview and Scrutiny Committees**

- **Part 6 - Byelaws**

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

- **Part 7 - Best Value**
- **Part 8 - Local Services: Inspection and Audit**

**Chapter 1 - Constitution of the Audit Commission**

**Chapter 2 - Audit Commission and Auditors: Functions and Procedure**

**Chapter 3 - Audit Commission and Auditor General for Wales: disclosure of information**

- **Part 9 - Ethical Standards:**

**Chapter 1 - Conduct of Local Authority Members**

**Chapter 2 - Employees**

- **Part 10 - The Valuation Tribunal for England**
- **Part 11 - Patient and Public Involvement in Health and Social Care**
- **Part 12 - Powers of National Assembly for Wales**
- **Part 13 - Miscellaneous**
- **Part 14 - Final provisions**

**TERRITORIAL EXTENT**

9. The Bill in general extends to England and Wales only. Certain provisions of the Bill make amendments to other legislation and where appropriate these amendments have the same extent as the legislation amended; if this is the case provision is made by clause 174(3) (Extent). In addition, the power of the Secretary of State under clause 173 to make an order containing amendments, repeals or revocations for purposes connected with the Bill extends also to Scotland and Northern Ireland. The extent clause itself, and clauses 175 (Commencement) and 176 (Short Title) extend also to Scotland and Northern Ireland.

10. The Scottish Parliament's consent is not required for any of the Bill's provisions. Because the Sewell Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if amendments were introduced that related to such matters the consent of the Scottish Parliament would be sought for them.

## **TERRITORIAL APPLICATION: WALES**

11. Some provisions of the Bill apply in relation to England and Wales, but much of it applies in relation to England only. The Bill does however give the Assembly “framework powers” to make provision in relation to Wales on a range of local government matters. These powers are conferred by amendments to Schedule 5 to the Government of Wales Act 2006 (see further the Commentary on Part 12 of the Bill).

12. Parts 6 and 7 confer powers on the Welsh Ministers in respect of Best Value and Byelaws. This is explained further in the Commentary on Parts 6 and 7.

## **COMMENTARY ON SECTIONS**

### **PART 1: STRUCTURAL AND BOUNDARY CHANGE IN ENGLAND**

#### **Introduction**

13. Part 1 of the Bill provides for the process of making structural and boundary change to local government areas in England. It provides for a means by which an area where there are two-tiers of local government can be reorganised so that there is a single tier of local government. It also provides for a process by which the boundaries of local government areas can be altered. A two-tier area is an area where some local authority functions are undertaken by a county council and some by a district council. A single tier area is an area in which all local authority functions are undertaken by a single (unitary) authority.

### **CHAPTER 1: STRUCTURAL AND BOUNDARY CHANGE**

#### **Change from two tiers to single tier of local government**

##### **Clause 1 - “principal authority” and “single tier of local government”**

14. Clause 1 defines the term “principal authority” as either a district or county council in England. These are therefore the authorities which the Secretary of State may invite or direct to make proposals for structural change (under clause 2).

15. The clause also explains what is meant by “a single tier of local government for an area”.

##### **Clause 2 - Invitations and directions for proposals for single tier of local government.**

16. Clause 2 allows the Secretary of State to invite or direct a principal authority to make a proposal for a single tier of local government which includes the area

covered by that authority. A proposal can either be a Type A, B or C proposal or a combined proposal.

- A Type A proposal is one which covers the whole of a county area and is based on existing county boundaries.
- A Type B proposal is one which covers one or more districts in a county area and is based on existing district boundaries.
- A Type C proposal is one which proposes the combination of a whole county or one or more districts in that county with an adjoining county or counties, or district(s) and therefore proposes an area which crosses one or more existing county boundaries.
- A combined proposal is one which is either a combination of both Type B and Type C proposals or which combines two or more Type B proposals or two or more Type C proposals. However, a proposal is not a combined proposal if it includes any Type B and C proposals which are alternatives to each other.

17. Subsection (6) defines, for the purposes of this clause, “the county concerned” as the county area within which the county or district council submitting a proposal lies.

18. Subsection (8) sets out that an invitation or direction from the Secretary of State may either specify the type of proposal invited or required or allow the authority to choose the type of proposal it submits.

### **Clause 3 - Invitations, directions and proposals: supplementary**

19. This clause provides that the Secretary of State may only direct an authority to make a proposal for a single tier of local government where he believes that it would be in the interests of effective and convenient local government.

20. Subsection (4) sets out that a proposal recommending a single tier of local government for an area can only be made where either the whole or part of that area is currently two-tier (as defined by clause 23(2)) .

21. Subsection (5) requires an authority to have regard to any guidance issued by the Secretary of State when submitting a proposal.

22. Subsection (6) specifies that where an invitation or direction is given to more than one authority, an authority can make a proposal either on its own or jointly with another authority.

23. Subsection (7) enables an invitation or direction to be varied or revoked by the Secretary of State.

**Clause 4 - Procedure on receipt of proposals**

24. This clause provides for the procedure to be followed by the Secretary of State upon receipt of a proposal received in response to an invitation or direction.

25. Subsection (2) establishes that unless a proposal has been submitted jointly by every authority affected by it, the Secretary of State must consult every other authority affected by the proposal, (other than the authority or authorities submitting it) and any other person the Secretary of State believes to have an interest.

26. Where a proposal is submitted jointly by every authority affected by it the Secretary of State may consult any other person he believes to have an interest.

27. Subsection (4) defines an authority “affected by” a proposal as one whose area or any part of whose area falls within the area that the proposal suggests should have a single tier of government.

28. Subsection (5) provides that the Secretary of State may request the Boundary Committee’s advice on any matter relating to the proposal no later than the date specified.

29. Subsection (6) enables the Secretary of State to substitute a later date for the receipt of such advice.

**Clause 5 - Boundary Committee for England’s powers**

30. This clause allows the Boundary Committee to provide the advice requested under clause 4(5) and also allows the Committee, where such advice is provided, to do one of the following:

- recommend that the Secretary of State implements the proposal;
- recommend that the Secretary of State does not implement the proposal;
- make an alternative proposal to the Secretary of State.

31. Subsection (5) sets out that where the Boundary Committee makes an alternative proposal, it must include the whole or part of the county which was the relevant county in relation to the proposal on which the Boundary Committee was asked for advice.

32. Subsection (7) requires the area specified in an alternative proposal not to extend into an area that is not currently a local government area. A local government area is defined in clause 23(1) as a county or district in England or a London borough. This means that the area specified in the alternative proposal may not, for example, extend into Wales or the City of London. Subject to that, the area specified can be any area, i.e. it does not have to follow existing county or district boundaries.

**Clause 6 - Boundary Committee's procedure**

33. When the Boundary Committee is asked for advice by the Secretary of State in relation to a proposal, it may request any additional information from an authority that it may require in relation to any of its functions under clause 5. The authority must provide the information if requested to do so by such date as the Boundary Committee may specify.

34. Subsection (2) requires that in making a recommendation or alternative proposal the Boundary Committee must have regard to guidance from the Secretary of State.

35. The recommendation or alternative proposal must be made on or before the relevant date. This is the date set by the Secretary of State for the receipt of advice under clause 4(5) or, if the date is later revised, under clause 4(6).

36. Subsection (4) establishes that where the Boundary Committee is minded to make an alternative proposal, it must publish a draft of the proposal and ensure that those persons that may have an interest in the proposal are informed of the proposal and of the length of time that they have to make representations on the proposal to the Committee.

37. Subsection (5) requires the Boundary Committee to take into account any representations that it receives within the specified period and where the Committee makes any proposal to the Secretary of State it must inform all persons who made representations in relation to the proposal and of the length of time that they have to make representations on the proposal to the Secretary of State. This will be four weeks beginning with the date set by the Secretary of State for the receipt of advice under clause 4(5) or, if the date is later revised, under clause 4(6).

**Clause 7 - Implementation of proposals by order.**

38. This clause allows the Secretary of State to implement proposals he receives by order. This also applies to alternative proposals made by the Boundary Committee. Proposals may be implemented with or without modification. The Secretary of State may also decide to take no action on a proposal.

39. The Secretary of State may not make a decision or an order until he has carried out any consultation on the proposal under clause 4 and where he has requested advice on a proposal from the Boundary Committee he must wait six full weeks from the date specified in the request for advice (or a later date if this date is then substituted) before making a decision or an order.

**Boundary change**

**Clause 8 - Review by Boundary Committee of local government areas**

40. Clause 8 allows the Boundary Committee to conduct a review of one or more local government areas and as a result recommend a boundary change to the Secretary

of State. The Boundary Committee may conduct this review either on its own initiative or at the request of the Secretary of State or a local authority.

41. The Boundary Committee's recommendations under subsection (2) must seem to it desirable having regard to the need to secure effective and convenient local government and the need to reflect the identities and interests of local communities.

42. Subsection (3) defines the term "boundary change" as an alteration of a local government area boundary, and/or the abolition of a local government area, and/or the constitution of a new local government area.

43. Subsection (4) specifies the type of recommendations for change that are not allowed under this clause. These are:

- alteration of a boundary of a single tier area or London borough which will result in the abolition of a two-tier area;
- alteration of a two-tier area which will result in the abolition of a single tier area or London borough;
- the constitution of a new local government area and resultant abolition of an existing local government area where the new area includes a combination of the whole or part of a single tier area, or London borough, and the whole or part of a two-tier area;
- the alteration of a local government area or creation of a new local government area that would extend into an area that is not currently a local government area. This means that the recommendation for boundary change may not extend an area into Wales, the City of London or the Temples.

44. Subsection (5) requires the Boundary Committee to have regard to any guidance issued by the Secretary of State when undertaking a review.

45. Subsection (6) requires a local authority, where requested to do so, to provide any information that the Boundary Committee may require in undertaking a review by such date as the Boundary Committee may specify.

**Clause 9 - Boundary Committee's review: consultation etc**

46. This clause sets out the procedure to be followed by the Boundary Committee when carrying out a review of a local government area.

47. Subsection (2) requires the Boundary Committee to consult the council of the local government area that is being reviewed and other local authorities, parish councils or other bodies it believes to have an interest.

48. Subsection (3) provides that where the Boundary Committee is minded to make a recommendation, it must publish a draft of the recommendation and ensure that those persons that may have an interest in the proposal are informed of the proposal and of the length of time that they have to make representations on the recommendation to the Committee.

49. Subsection (4) requires the Boundary Committee to take into account any representations that it receives within the specified period. Where the Committee makes a recommendation to the Secretary of State it must inform all persons who made representations in relation to the recommendation. It must also inform them that if they wish to make representations to the Secretary of State about the proposal they have four weeks from the date that the recommendation was sent by the Boundary Committee to the Secretary of State.

#### **Clause 10 - Implementation of recommendations by order**

50. Clause 10 provides that, following the recommendation by the Boundary Committee to the Secretary of State, he may implement the recommendation with or without modification by order. The Secretary of State may also decide to take no action or request a further review. The Secretary of State must allow 6 weeks from the date that the recommendation was sent to him before making an order, a decision to take no action or a decision to request a further review. This is to allow time for representations to be made directly to the Secretary of State and for him to consider them.

#### **Implementation of changes**

##### **Clause 11 - Implementation orders: provision that may be included**

51. This clause provides for the matters that may be included in an order when the Secretary of State implements a proposal or a recommendation under clause 7 or 10, (i.e. a proposal or recommendation for structural or boundary change).

52. Subsections (3) and (4) set out these matters which include, for example, the constitution of a new local government area and the establishment of an authority as a county council, district council or London borough council for a local government area. The Secretary of State may also make provision in relation to electoral matters as defined in clause 12.

53. Subsection (5) provides that the “establishment” of a county council or a district council includes increasing the remit of an existing authority by an existing district council becoming the county council for an area or vice versa.

54. Subsections (6) and (7) enable the Secretary of State to implement a proposal with such modifications as to provide a single tier of local government for an area which includes all or part of an area in the proposal but which is not an area which itself could have been specified. This gives the Secretary of State for example the ability to modify a proposal for a single tier of local government by changing the area

so as to take account of recommendations which might be made for boundary change by the Boundary Committee for the same area.

**Clause 12 - Provision relating to membership etc of authorities**

55. This clause defines what is meant by “electoral matters” in clause 11(4). The Secretary of State may appoint existing councillors as councillors to the new authorities for a transitional period until the first elections for those councils are held. He may also make provision for elections to the new authority. This is in case the Electoral Commission is not able to carry out a review and put in place electoral arrangements for the new authority, under Part 2 of the Local Government Act 1992, before the authority takes on its full range of functions.

56. Subsection (2) defines “a new local authority” as referred to under clause 12 (1)(j) to (l) as one established by order under clause 7 or 10. This includes an existing authority taking on different functions, that is a county council taking on district functions or vice versa. It also defines “a transitional period” as the time before members elected at the first election of the new authority come into office.

57. Subsection (4) enables a non metropolitan county to return more than one councillor for an electoral division and as a result disapplies section 6(2)(a) of the Local Government Act 1972 (c.70) which provides that one councillor shall be returned per electoral division in a county area.

58. Subsection (5) requires the Electoral Commission, as soon as practicable following an order being made under clause 7 or 10, to decide whether to use its power to direct the Boundary Committee to conduct an electoral review.

59. Subsection (6) allows an order made by the Electoral Commission under section 17 of the Local Government Act 1992 to revoke an order made under clause 7 or 10 of this Act. The Electoral Commission may make an order under section 17 of the Local Government Act 1992 to provide for the electoral arrangements in that area.

**Clause 13 - Implementation Orders: further provision**

60. This clause allows an order under clause 7 or 10 to also make any other incidental, consequential, transitional or supplementary provision. Examples of these are set out in clause 15.

61. Subsection (3) provides that such incidental, transitional or supplementary provision included in an order may relate either to provisions in that order or to provisions of a previous order under clause 7 or 10. This means that the Secretary of State may establish a new authority and appoint councillors to it to make decisions during the shadow period of that authority and in a separate order make provision for the first election of councillors to that authority.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

62. Subsection (4) establishes that under clause 11(4)(g), (the exercise of the Secretary of State's power to alter police areas) he must not divide a single tier county, or district, or London Borough between two or more police areas.

**Clause 14 - Regulations for supplementing orders**

63. This clause allows the Secretary of State by regulation to make any other incidental, consequential, transitional or supplementary provision in consequence of an order under clause 7 or 10 or to give full effect to such an order. Clause 15 gives examples of the kind of provision which can be made.

**Clause 15 - Incidental etc provision in orders or regulations**

64. This clause gives examples of the incidental, consequential, transitional or supplementary provision which may be made including provision for the transfer of staff and with respect to charter trustees.

65. Subsection (2) enables that an order under clause 7 or 10 or regulations under clause 14 may for incidental, consequential, transitional or supplementary purposes modify, exclude, apply, repeal or revoke an enactment.

66. Subsection (3) defines an "enactment" and makes it clear that it includes a charter, and an enactment in the present Bill or in an Act passed after the Bill receives Royal Assent, and any instrument made under such an Act.

**Clause 16 - Agreements about incidental matters**

67. This clause provides for the agreements that a public body affected by an order made under clause 7 or 10 can make/enter into. These agreements may relate to: property, income, rights, liabilities and expenses and any financial relations between the parties to the agreement.

68. Subsections (3) and (4) set out that should the parties not reach agreement as to any disputed matter, it shall be referred to an arbitrator for him to decide.

**Clause 17 - Residuary bodies**

69. This clause enables the Secretary of State by order to establish one or more corporate bodies to take over any property, rights, liabilities or functions of local authorities which cease to exist as a result of clause 7 or 10.

70. Subsection (2) outlines other provisions that the Secretary of State may make under subsection (1).

71. Subsection (3) allows the Secretary of State to transfer to any body or bodies the property, rights, liabilities and any related functions of the residuary bodies and to give effect to any scheme submitted to him for the dissolution of the residuary body.

72. Subsection (4) establishes that the order may include incidental, consequential, transitional or supplementary provision and subsection (5) allows an order dealing

with residuary bodies to contain provision which applies, modifies or amends enactments.

**Clause 18 - Staff Commissions**

73. This clause enables the Secretary of State to establish one or more staff commissions for the purpose of considering staffing arrangements, transfers and problems that may arise as a result of orders under this Chapter. Staff commissions may also be established to advise the Secretary of State on the steps necessary to safeguard the interests of staff affected by such an order.

74. Subsection (3) allows the Secretary of State to direct the staff commission(s) with respect to their procedure.

75. Subsection (4) enables the Secretary of State to give directions to a relevant authority with respect to the provision of any information requested by the staff commission, the implementation of any advice given by the staff commission and the payment by such an authority of any expenses incurred by a staff commission in undertaking requests of the authority.

76. Subsection (6) allows the Secretary of State, by order, to wind up any staff commission established under this clause.

77. Subsection (8) defines “relevant authority” as a local authority or a residuary body established under clause 17.

**Clause 19 - Certain county councils to be billing authorities**

78. This clause establishes that where the functions of a district council transfer to a county council for that area as a result of an order under this Chapter, the county council shall be the billing authority for the purposes of Part 1 of the Local Government Finance Act 1992 (c.14) for that area; it shall not be a major precepting authority.

**Supplementary**

**Clause 20 - Correction of orders**

79. This clause allows the Secretary of State to rectify a mistake in an order under Chapter 1, ie a restructuring or boundary change order or an order containing incidental or consequential provision, where he is satisfied that there is a mistake in the order which can not be rectified by a subsequent order by virtue of section 14 of the Interpretation Act 1978. This relates to orders which may not otherwise be capable of amendment as their provisions may be spent soon after commencement.

80. Subsection (2) sets out that a “mistake” includes a provision contained in or omitted from the order in reliance on inaccurate or incomplete information supplied by any public body.

**Clause 21 - Pre-commencement invitations etc**

81. This clause provides that it does not matter if the Secretary of State issues invitations or guidance prior to commencement of the Bill and that he may consult on any proposals received prior to commencement. This means that the Secretary of State will be able to implement, after Royal Assent, proposals received before Royal Assent.

**Clause 22 - Consequential Amendments**

82. This clause provides that Schedule 1 has effect.

**Clause 23 - Definitions for the purposes of Chapter 1**

83. This clause defines various terms for the purposes of Chapter 1. In particular:

- a “single tier” area is firstly where there is a single tier of local government for an area, ie where there is a county council and no district councils for that area or where there is a district council and no county council for that area. Secondly, an area is “single tier” if it is a London Borough;
- a “two-tier” area is either a district area where there is a district council and a county council undertaking functions which apply to the area or it is a county area where there is a county council and district areas all of which have district councils;
- a proposal is only made “in response to” an invitation or direction if it is a type of proposal which is permitted, is in response to an invitation or direction, is in accordance with that invitation or direction and includes a local government area of which at least part is currently two-tier;
- a “body affected by an order” includes a body whose area or functions are affected by an order; which will cease to exist following an order; or which is established pursuant by or in consequence of an order.

**CHAPTER 2: CONTROL OF DISPOSALS ETC**

**Clause 24 - Authorities dissolved by orders: control of disposals, contracts and reserves**

84. This clause provides that the Secretary of State may make a direction requiring relevant authorities to obtain consent, with effect from a date specified by the Secretary of State, from the person(s) specified in the direction before they can:

- dispose of land if the consideration for it exceeds £100,000;

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

- enter into a capital contract where the authority concerned would be required to pay consideration of more than £1,000,000 or where the contract includes a term allowing the consideration to be varied;
- enter into any non-capital contract where the consideration exceeds £100,000 and the contract extends beyond a date specified in the direction, or under the terms of the contract, the period of the contract may be extended beyond that date;
- include an amount of reserves in the calculation of its budget requirement for council tax purposes.

85. Subsection (2) defines a “relevant authority” as one which is to be dissolved by order made under clause 7 or 10 and which is specified or falls within a description of authority specified in the direction.

86. Subsection (3) defines “capital contract” and “non-capital contract”. A capital contract means a contract in relation to which the consideration payable by the authority would be capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003.

87. Subsection (4) provides that the person(s) whose consent is required as specified in the direction, may be the Secretary of State or such authority or other person as he thinks appropriate. He may identify a different person for different matters that require consent or in relation to different authorities or types of authorities.

**Clause 25 - Directions: further provisions about reserves**

88. This clause provides that the Secretary of State, in making a direction under clause 24, may specify that in relation to reserves of a specified description, or reserves below a certain amount, relevant authorities should not be subject to the requirement to seek consent before applying such reserves to reduce their budget requirement for council tax purposes.

**Clause 26 - Directions: supplementary**

89. Subsection (2) of clause 26 enables consent to be given for a particular disposal or contract, or for disposals or contracts of any description. Consent may be given either unconditionally or subject to conditions.

90. Subsection (3) provides that certain enactments will have effect subject to direction, that is, that the direction will take precedence. The enactments are: (a) section 123(1) of the Local Government Act 1972 which provides that a local authority must obtain the Secretary of State’s consent where it proposes to dispose of land at less than best consideration and (b) any other enactment relating to the disposal of land by a local authority.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

91. Subsection (4) provides that any consent required by this direction is additional to any consent required by other legislation in relation to the disposal of land by local authorities.

92. Subsections (5) and (6) set out that where the consideration under the contract is not in money, the value of the consideration shall apply for the purposes of the financial limits in clause 24. Where there is a question over the value of such consideration and the relevant authority and the person who is required to give consent can not reach agreement as to the value, it will be determined by the Secretary of State.

93. Subsection (7) provides that a direction may be varied or revoked by a subsequent direction.

**Clause 27 - Consideration to be taken into account for the purposes of direction**

94. This clause provides that for the purpose of deciding whether the financial limits in clause 24 have been exceeded, the consideration with respect to certain disposals and contracts shall be taken into account.

95. The consideration in relation to other disposals of land made after the 31 December 2006 (ie before the direction was issued) shall be taken into account.

96. The consideration that shall be taken into account is that in respect of contracts entered into by the authority after the 31 December 2006 (ie before the direction was issued) which are either with the same contractor as the contract in question, or which relate to the same or a similar description of subject matter as the contract in question.

**Clause 28 - Contraventions of direction**

97. Subsections (1) and (2) provide that any disposal made in the absence of consent in contravention of clause 24 will be void. Any contract similarly entered into without consent, will not be enforceable against the successor authority.

98. Subsection (3) defines a “successor” authority as an authority which is established by order under clause 7 or 10 and whose area covers whole or part of the area of an old authority.

99. Subsection (4) provides that a contract entered into in contravention of a direction under clause 24 will not be a certified contract for the purpose of the Local Government (Contracts) Act 1997. This means that the contractor will not be afforded the protection provided by that Act, that is, the contract will be open to a challenge in private law and that there will not be terms which survive any setting aside of the main contract.

100. Subsections (5) and (6) provide that if an authority applies reserves to reduce its budget requirement for council tax purposes without consent, the authority will be

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

treated as though it has not made its council tax calculations as required by the Local Government Finance Act 1992 and accordingly will not be able to collect council tax.

#### **Clause 29 - Power to amend**

101. This clause allows the Secretary of State to amend the amounts identified in clause 24(1) and to amend the date specified in clause 27(1) and (3) so that he will be able to make appropriate directions in the future, after the first wave of restructuring.

## **PART 2: ELECTIONS IN ENGLAND**

### **Introduction**

102. Part 2 of the Bill enables district councils holding elections by halves or thirds to hold whole council elections (i.e. electing all councillors at the same time once every four years) where they wish to do so. It provides for a means by which the local authority concerned can take the decision and for the years that that decision can be taken and the change can occur. A decision to move to whole council elections must be taken in a specified period and any such decision must be publicised and notified to the Electoral Commission. This Part also removes the requirement for the number of councillors in a metropolitan district ward to be divisible by 3 and allows local authorities to change the names of their electoral areas.

### **Change to whole-council elections**

#### **Clause 31 - Eligible councils**

103. Clause 31 defines the term “eligible council” as a district council in England that currently holds election by halves or elections by thirds. The term therefore covers all metropolitan district councils and over 100 shire (non-metropolitan) district councils including some single tier local authorities. It is these local authorities that may change the method (scheme) of holding elections in their area under clause 32.

#### **Clause 32 - Changing scheme for ordinary elections**

104. Clause 32 enables an eligible council to change to a scheme of whole council elections by resolution. The resolution can only be passed during a specified period, “the permitted resolution period.” This period differs according to whether the council is a metropolitan district council or a non-metropolitan one. Clause 32(8) enables the Secretary of State to extend the period during which the decision must be taken. Once the council has resolved to move to whole council elections, clause 32(6) prevents it from changing to a different scheme of elections, such as elections by thirds.

#### **Clause 33 - Scheme for whole-council elections**

105. This clause is concerned with how a scheme for whole council elections will operate. It requires whole council elections to be held in particular years. For metropolitan district councils, these are 2008, 2012 and every four years after. For

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

non metropolitan district councils, the whole council election years continue to be 2011, 2015, and every four years after.

106. Subsection (6) provides that where the permitted resolution period is to be extended beyond 31 December elections will be in the same year as the end of the resolution period.

**Clauses 34 and 35 - Publicising change of scheme for ordinary elections and Notice to the Electoral Commission**

107. As soon as possible after the resolution has been made the local authority must, in a manner it sees fit, publicise the decision to move to whole council elections and explain when the change is to be made. It must then notify the Electoral Commission of its decision.

**Clause 36 - Amendment of existing provisions about schemes for ordinary elections**

108. This Clause makes consequential amendments to those parts of the Local Government Acts 1972, 1992 and 2000 which are concerned with schemes for council elections; in particular it removes the provision in the Local Government Act 1972 that allows non-metropolitan district councils to request that the Secretary of State change their scheme of elections by order.

**Electoral Areas**

**Clause 37 - Metropolitan districts: councillors per ward.**

109. This clause removes the requirement in the Local Government Act 1972 that the number of councillors returned for a ward in a metropolitan district be divisible by three. Instead, the number of councillors returned for such a ward can be whatever is provided by order by either the Electoral Commission following an electoral review or the Secretary of State when implementing a structural or boundary change under Part 1 of this Bill. This will bring metropolitan district councils into line with shire district councils where there is no restriction on the number of councillors for a ward.

**Clause 38 - Change of name of electoral area**

110. This clause enables a county council or a district council to change the name of an electoral division or district ward, as the case may be, in its area by passing a resolution at a special meeting held for the purpose. The council must then inform certain bodies, including the Electoral Commission, of the change. The Electoral Commission's power to amend the names of local authority electoral area remains unaffected. It should be noted that if a change in the name of an electoral area is proposed within 5 years of a change made by the Electoral Commission, the local authority must first seek the approval of the Electoral Commission.

### **PART 3: EXECUTIVE ARRANGEMENTS FOR ENGLAND**

#### **Introduction**

111. Part 3 and Schedules 2-4 of the Act introduce new executive models and build on local authority governance arrangements for England which were first introduced by the Local Government Act 2000.

112. The Local Government Act 2000 put in place a new decision-making framework in which there is a separation of the decision-making and scrutiny roles of local authorities. It required the majority of local authorities to put in place, following consultation, executive arrangements involving the creation and operation of one of three different forms of executive. For certain small district councils a further option, alternative arrangements, which did not involve a separate executive, was made available.

113. These clauses offer local authorities a different choice of executive governance models.

#### **Executive Arrangements for England**

##### **Clause 39 - Executive arrangements for England**

114. This clause modifies the provisions in the Local Government Act 2000 in respect of the forms of executive which local authorities may operate.

115. It requires any council in England which operates executive arrangements to operate one of the following models:

- Leader and Cabinet executive (England);
- Mayor and Cabinet executive;
- Elected executive.

116. The key features of each executive model are as follows.

- Leader and cabinet executive (England) – a councillor elected as leader for either a 4 year term, in the case of a local authority operating whole council elections, or until his or her term of office as councillor expires, where the local authority instead operates elections by halves or thirds, and two or more councillors of the authority appointed to the executive by the executive leader;
- Mayor and cabinet executive – a directly elected mayor who appoints two or more councillors to the executive;

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

- Elected executive – A leader and cabinet who are all directly elected to the council's executive.

#### **Clause 40 - Discharge of functions**

117. This clause amends the provisions of the Local Government Act 2000 to provide for the leader in a Leader and Cabinet executive (England) and in an elected executive to make arrangements for the discharge of functions in the same way as a Mayor and Cabinet executive

#### **Clause 41 - Changing governance arrangements**

118. This clause allows a local authority to change its executive arrangements, including the replacement of their existing form of executive with a different form of executive as permitted under Section 11 of the Local Government Act 2000, or where they are operating alternative arrangements, their alternative arrangements, including the replacement of those arrangements with executive arrangements in accordance with this clause.

119. The clause inserts new section 33A to 33Q into the Local Government Act 2000. Sections 33A to 33I set out the way local authorities in England can vary their executive arrangements; move from alternative arrangements to executive arrangements; draw up proposals for changing their governance arrangements; resolve and publicise their decision to vary or change their governance arrangements; and set out the timetable for implementing new or varied governance arrangements.

120. Where local authorities are proposing to adopt a new form of executive or are moving to executive arrangements, sections 33J to 33N make certain provisions regarding what details must be provided in the proposals; the need to hold a further referendum if the current governance arrangements were originally approved in a referendum; and the consultation requirements for proposals which aim to move from a governance model involving direct election to the executive which was originally adopted without the need for a prior referendum.

121. Sections 33O to 33Q make provision regarding pre-commencement consultation; the procedures that will apply should a council operating alternative arrangements fail to adopt executive arrangements within the permitted time allowed for by the legislation; the meaning of certain terms used within this clause; and the permitted periods in which local authorities can resolve to change their governance arrangements.

#### **Clause 42 - Referendum following petition**

122. This clause amends the provisions in section 34 of the Local Government Act 2000 to extend the ability of local people to petition their local authority to hold referendum on a directly elected mayor so as to enable them to petition for a referendum on a directly elected executive.

**Clause 43 - Elected mayors**

123. This clause amends section 39 of the Local Government Act 2000 by omitting the provisions and references to directly elected executives, provisions for which are consolidated into clause 43.

**Clauses 44 to 48 - Elected executives; other elected executive members; meaning of “elected executive member”; Time of elections etc; and Voting at elections of elected executives.**

124. Clauses 44, 45, 46, 47 and 48 make provision with respect to elected executives. Elected executive members are elected by the local government electors for the local authority area. For this model, there will be an election of a single “slate” consisting of a team of between 2-9 candidates to be members of the proposed executive, plus one candidate to be leader of the proposed executive if the “slate” is elected.

125. Clause 44 allows members of the elected executive to be treated as councillors for the purposes of some enactments, such as those relating to voting rights, conduct and remuneration of councillors. This mirrors the existing provision for elected mayors in the Local Government Act 2000.

126. This clause permits a person to stand as both a councillor and on a “slate” as an elected executive member and also makes provision as to what should happen in the event of a councillor of the authority being returned as a member of a directly elected executive. In such a case, a vacancy will arise in the office of councillor. Where the “slate” of candidates is formed of 9 or 10 existing councillors, a consequence of this could be a large number of by-elections immediately after the election should that “slate” be comprised of existing councillors.

127. Clause 45 makes provision with respect to the term of office of a member of an elected executive who is not an elected mayor or a member of an elected executive; section 11(5) of the Local Government Act 2000 allows the Secretary of State to prescribe forms of executive which are additional to those set out in section 11.

128. Clause 46 provides that “elected executive member” means an individual elected to an authority’s executive by the electors of the area.

129. Clause 47 and 48 and Schedule 2 amend the Local Government Act 2000 so as to extend the supplementary vote (SV) system used for election of elected mayors to the election of elected executives.

130. In relation to the election of an elected executive, under the supplementary vote system, the elector has two votes – a first preference vote cast for the elector’s preferred “slate”, and a second vote cast for the elector’s second preference from among the remaining “slates”. Schedule 2 specifies the procedure for returning a directly elected executive where there are three or more slates. Ordinarily, the “slate” which receives more than half of the first preference votes cast will be elected. If

none of the candidates receive more than half of all of the first preference votes the election remains in contest. It is at this point that the second preference votes are counted for those candidates that remain in the contest. The executive returned is the one with the greatest total number of preference votes (both first and second). Schedule 2 also provides procedures for dealing with an equality of votes at any stage of the process.

**Clause 49 - Leader and cabinet executives (England)**

131. This clause inserts new sections 44A to 44H, into the Local Government Act 2000 with respect to the new style of leader and cabinet executive which replaces the previous such model in relation to England only.

132. The provision made for the election of the leader in a leader and cabinet executive (England) varies depending on whether the local authority holds whole council elections or elections by halves or by thirds. In the case of the former, the leader is elected at the annual meeting following a whole council election or at a subsequent meeting. In the case of the latter, the leader is elected at the relevant annual meeting. Thereafter, the leader is elected at the annual meeting held shortly after the day on which he would normally be required to retire as councillor.

133. New section 44C provides that the leader can be removed by the local authority if its executive arrangements so provide.

134. Generally, however, the leader remains in office until shortly after the date on which they would normally have retired as councillor and will continue to be a councillor during that period. The term of office of the leader will be four years where the local authority holds whole council elections. Where the local authority holds elections by halves or thirds, the leader's term of office will vary, depending on the length of the remainder of the leader's term of office as councillor.

135. New section 44H provides powers for the Secretary of State to make regulations with regard to the term of office of executive leaders and the filling of casual vacancies in the office of the executive leader.

**Clause 50 - Time limit for holding further referendum**

136. This clause amends section 45(1) of the Local Government Act 2000 to extend the period within which more than one referendum can be held from 5 years to 10 years. This provision applies to referendums held both before and after this section comes into force.

**Clause 51 - Interpretation**

137. This clause amends Section 48 of the Local Government Act 2000 regarding definitions for elected leader, ordinary day of elections and proposed executive.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

**Clause 52 - Further amendments and transitional provision**

138. This clause provides that schedules 3 and 4 have effect.

**Clause 53 - Supplementary provision**

139. This clause allows the Secretary of State, by regulations, to make provision regarding the dates and years of elections for the return of an elected mayor or elected executive members to be varied, and for the terms of office of elected mayors and their executives, and for elected executive members to be varied.

**PART 4: PARISHES**

**Introduction**

140. Part 4 and Schedule 5 devolve power from central government to local government and communities, enabling principal councils (London boroughs, district councils or county councils in unitary county areas) to put in place appropriate arrangements for the governance of their areas at community level. Local people are also able to initiate a review of community governance by petitioning their principal council.

141. Parish councils and parish meetings will be able to change the style by which they are known. In this part all references to parish meetings are those where there is no parish council for that parish. Eligible parish councils will also be given a power to promote the economic, social or environmental well-being of their area.

**CHAPTER 1: PARISHES**

**Clause 54 - Parishes: alternative styles**

142. This clause amends the Local Government Act 1972 inserting three new sections and making other amendments to existing sections.

143. Section 11A provides that all parishes that are grouped together under section 11(1) of the Local Government Act 1972 must be termed by the same style, i.e. groups of communities, parishes, villages or neighbourhoods. A grouping containing a mixture of styles will not be permitted.

144. Section 12A allows a parish council or a parish meeting to change the name of its area from parish to one of a menu of styles: community, neighbourhood or village. The new style will be used in the titles of councils, meetings, trustees, chairman, vice-chairman and councillors e.g. parish council or parish meeting becomes a community council or community meeting. Parish councils and parish meetings will be able to resolve to adopt an alternative style.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

145. Section 17A details the styles that are alternatives to parishes: community, neighbourhood or village and maintains the existing options for a parish to have the status of a town and change its parish council to a “town” council.

**Clause 55 - Appointed councillors**

146. This clause amends the Local Government Act 1972 amending sections 15 and 16 to ensure chairman and vice-chairman of parish councils are elected councillors rather than appointed. The clause also inserts a new section 16A into that Act.

147. Section 16A allows for the appointment to a parish council of people who hold a specific position in the local community, such as representatives of key community groups, as unelected members. The new section allows the Secretary of State to issue regulations about appointment and provides a power to issue guidance to parish councils on appointing councillors. Parish councils are under a duty to have regard to any such guidance when exercising any function that the guidance relates to.

**CHAPTER 2 – POWER TO PROMOTE WELL-BEING**

**Clause 56 - Extension of power to certain parish councils**

148. This clause adds an eligible parish council to the list of bodies in Part 1 of the Local Government Act 2000 which have the power to promote the economic, social or environmental well-being of their area. The Secretary of State has a power to prescribe by order the conditions which must be met by a parish council in order for it to be an eligible parish council for the purposes of this provision.

**Clause 57 - Community strategies**

149. Under the Local Government Act 2000, councils which have the power of well-being are also required to produce community strategies, to which they must have regard when using that power. This section exempts parish councils from the need to produce their own community strategies. Instead it requires them to have regard to the strategies of the relevant principal authorities when exercising the power of well-being.

**CHAPTER 3 – REORGANISATION**

**Community governance reviews**

**Clause 58 - Community governance reviews**

150. This clause specifies when a principal council must or may undertake a community governance review, over what geographical area a review can be undertaken and the terms by which the review must comply.

151. Subsection (1) requires a principal council to undertake a community governance review if it receives a valid petition from local government electors (provided for under clause 59).

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

152. Subsection (2) empowers a principal council to undertake a community governance review at any other time.

153. Subsection (3) provides that a community governance review is a review of the whole or part of the principal council's area for the purpose of making recommendations as set out in clauses 62 to 67.

154. Subsection (4) requires the district council to comply with Chapter 3 of the Bill and the terms of reference of the review.

155. Subsection (5) requires the principal council to notify the county council (in two-tier areas) that a community governance review is being conducted and the terms of reference of the review.

#### **Clause 59 - Community governance petitions**

156. This clause provides for local government electors to petition their principal council to conduct a community governance review.

157. To be valid, a community governance petition must meet the conditions in clause 59 (3) to (6) as far as they are applicable. These include conditions about the number of local government electors who must sign the petition, the area that petitioners wish to see considered as part of a review and the specifying of recommendations which the petitioners wish a community governance review to consider making.

158. Subsection (7) provides for a principal council to consider a community governance petition invalid if an earlier valid petition has been made for the whole or a significant part of the area proposed within the previous two years.

#### **Clause 60 - Terms of reference of review**

159. This clause allows for principal councils to determine the terms of reference under which a community governance review must be undertaken and requires the principal council to determine the area under review.

#### **Reorganisation of community governance**

##### **Clause 61 - Reorganisation of community governance**

160. This clause provides for principal councils to implement by order the outcome of a community governance review, with the exception of related alterations to district ward or county division boundaries which are implemented by the Electoral Commission. The clause also stipulates that the agreement of the Electoral Commission must be obtained before an order can be made, changing protected electoral arrangements.

161. Electoral arrangements are considered “protected” where:

- the electoral arrangements were made or altered under section 17 of the Local Government Act 1992 or section 14 of the Local Government Rating Act 1997; and
- the order was made within a five year period ending with the start of the review.

### **Recommendations of review**

#### **Clause 62 - Constitution of new parish**

162. This clause requires a community governance review to recommend either to create a new parish or not, and sets out the different ways that such an area can be created.

163. A community governance review which recommends the constitution of a new parish must also make recommendations as to the geographical name of that area, whether the parish should be known by an alternative style and recommendations as to whether or not there should be a parish council.

#### **Clause 63 - Existing parishes under review**

164. This clause provides for a community governance review to recommend the abolition or alteration of an existing parish as a result of a community governance review. The area of abolished parishes does not have to be redistributed to other parishes.

165. Subsections (3) and (4) specify that a principal council conducting a community governance review must include a recommendation as to whether or not the geographical name of the existing parish should be changed and whether or not parishes should have a parish council.

166. Subsection (5) prevents principal councils from making a recommendation to change the style of an existing parish.

#### **Clauses 64 and 65 - New or retained councils: consequential recommendations**

167. These clauses require a community governance review which recommends the establishment or continuation of a parish council to also make recommendations as to the electoral arrangements for that council.

#### **Clause 66 - Grouping or de-grouping parishes**

168. This clause provides for a community governance review to recommend the grouping or de-grouping of parishes following a community governance review. The clause also requires a review to consider the electoral arrangements of a grouped parish council or of a parish council established after a parish is de-grouped.

**Clause 67 - County, district or London borough: consequential recommendations**

169. The clause requires a principal council to consider related alterations to the electoral arrangements of county and/or district councils when conducting a community governance review. It provides for the principal council to make recommendations to the Electoral Commission for changes to the boundaries of any division of a county, or ward of a district or London borough in connection with a recommendation to create, alter or abolish a parish as part of a community governance review.

**Undertaking reviews**

**Clause 68 - Duties when undertaking a review**

170. This clause specifies duties which a principal council must comply with when conducting a community governance review.

171. Subsections (7) and (8) require principal councils to complete the review on receipt of a valid community governance petition or, in any other case, within 12 months of the start of the community governance review.

**Clause 69 - Recommendations to create parish councils**

172. This clause directs principal councils to create parish councils in parishes which have 1000 electors or more. In parishes with 151 to 999 electors the principal council may recommend the creation of either a parish council or a parish meeting. In parishes with 150 or fewer electors principal councils are unable to create a parish council and therefore parish meetings must be created. The aim of this clause is to extend the more direct participatory form of governance provided by parish meetings to a larger numbers of electors.

**Clause 70 - Electoral recommendations: general considerations**

173. This clause is concerned with the considerations that the principal council must have regard to when making recommendations about electoral arrangements for a parish council. These considerations include whether a parish should be divided into wards.

**Publicising Outcome of Review**

**Clause 71 - Publicising outcome**

174. This clause details the steps that a principal council must take to publicise the outcome of any review of community governance it has conducted and the bodies it must notify following any reorganisation order it makes.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

## **Miscellaneous**

### **Clause 72 - Supplementary regulations**

175. This clause allows the Secretary of State, by regulation, to make any supplementary incidental, consequential, transitional or supplementary provisions that may be needed to give effect to the new arrangements.

### **Clause 73 - Orders and regulations under this Chapter**

176. This clause allows principal councils, by order, to make any supplementary incidental, consequential, transitional or supplementary provisions that may be needed to give effect to the new arrangements. Including provision with respect to the transfer of functions, property, rights and liabilities.

177. Subsection (6) provides for orders to include provision for the exclusion or modification of section 16 (3) or 90 of the Local Government Act 1972 and section 36 of the Representation of the People Act 1983.

### **Clause 74 - Agreements about incidental matters**

178. This clause provides for public bodies affected by reorganisation following a community governance review to make agreements about incidental matters and what those agreements may provide for.

### **Clause 75 - Guidance**

179. This clause provides for the Secretary of State and the Electoral Commission to issue guidance relating to community governance reviews and requires principal councils to have regard to this guidance.

### **Clause 77 - Interpretation**

180. This clause defines terms used within this chapter and includes a list of the electoral arrangements of parish councils that principal councils can make recommendations on as part of a community governance review.

## **PART 5: CO-OPERATION OF ENGLISH AUTHORITIES WITH LOCAL PARTNERS, ETC**

### **Introduction**

181. This Part provides for a local area agreement (“LAA”), which will be an agreement between a local authority and certain partner authorities, approved by the Secretary of State. It will be prepared by the local authority which will consult partner authorities and others (this will include persons from the voluntary and community sector and local businesses). The local authority and partner authorities will co-operate with each other in determining local improvement targets for the area to be included in the LAA. It also amends section 4 of the Local Government Act

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

2000 to provide that the local authorities which prepare LAAs must consult partner authorities when preparing their community strategy.

182. This Part also amends the provisions of the Local Government Act 2000 in respect of local authority overview and scrutiny committees. It seeks to strengthen the role of the overview and scrutiny committees to improve accountability. It enables committees to review specific actions of those public bodies specified in clause 95 operating in their area and to require them to provide information or appear before them. It also requires the local authority or the authority's executive to respond to its reports or recommendations

## **CHAPTER 1: LOCAL AREA AGREEMENTS**

### **Clause 78 - Application of Chapter: responsible local authorities**

183. This clause sets out which local authorities will be responsible local authorities for the purposes of Chapter 1, that is those which will be required to prepare LAAs. They are upper tier authorities or those with upper tier responsibilities as well as London boroughs, the City of the London and the Council of the Isles of Scilly.

### **Clause 79 - Application of Chapter: partner authorities**

184. This clause sets out a list of public bodies and persons which will be "partner authorities." In some cases the statutory reference does not make it immediately clear what the nature of the body or person is.

185. *Subsection (3)(a)* refers to the English Sports Council which is known as Sports England. *Subsection (3)(d)* refers to the Historic Buildings and Monuments Commission which is known as English Heritage. *Subsection (3)(g)(i)* refers to the Secretary of State in relation to his functions under section 2 of the Employment and Training Act 1973. These functions are exercised by Jobcentre Plus. Similarly the functions described in *subsection 3(g)(ii)* and *(iii)* are exercised by the Highways Agency.

186. *Subsection (6)* provides that the Secretary of State may amend the list of bodies and persons, by order, from time to time by adding any person with functions of a public nature, deleting any person, or by adding or deleting references to the Secretary of State's functions. Before making such an order, the Secretary of State must consult such representatives of local government as he considers appropriate.

### **Clause 80 - "Local improvement targets": interpretation**

187. This clause introduces the term "local improvement target" to describe any target that has the aim of improving the economic, social or environmental well being of a responsible authority's geographical area. Each target must relate to that authority and/or one or more partner authorities and/or one or more other persons.

188. It is envisaged that the targets will include approximately 35 targets relating to the national indicator set for local government (as determined through Public Service Agreements). The LAA will also include local priority targets. These are targets which do not necessarily relate to the national indicator set but which the responsible authority and/or partner authorities and/or others believe would be beneficial for their area.

189. *Subsection (2)* provides that a target relates to the responsible local authority where any function of the local authority or any thing done by it could contribute to achieving the target. *Subsection (3)* provides that a target will relate to another body or person where that person when exercising his functions or anything done by that person could contribute to the attainment of the target and that person has consented to the target being specified in the LAA. For example, in relation to a target to reduce childhood obesity the primary responsibility would lie with the Primary Care Trust but the local authority would have a role to play in relation to its function as an education authority and also through social services and youth services. The target could only be included in the LAA by the responsible authority with the agreement of the Primary Care Trust.

**Clause 81 - Duty to prepare and submit draft of a local area agreement**

190. *Subsection (1)* provides that where the Secretary of State so directs, a responsible local authority must prepare a draft LAA. The direction can also specify the date by which the authority must submit the draft LAA to the Secretary of State (see *subsection (5)*). The draft LAA will specify local improvement targets, the persons to whom the target relates (ie those bodies which will contribute to the attainment of the target) and the period for which the agreement is to have effect.

191. *Subsection (2)* provides that, in preparing the draft LAA, the responsible local authority must seek the views of each partner authority and of other appropriate persons. The other persons are likely to be from the voluntary and community sectors, private businesses, and other public sector agencies that are not included on the list of named bodies. It also provides that the local authority must co-operate with each partner authority in agreeing the targets for inclusion in the draft LAA, relating to that partner authority. Lastly, in preparing the draft LAA, the local authority must have regard to its community strategy prepared under section 4 of the Local Government Act 2000 and to any guidance issued by the Secretary of State. This means that the LAA will be developed on the basis of a detailed analysis of the local authority area and the priorities for public services contained in the community strategy.

192. *Subsection (3)* requires each partner authority to co-operate with the local authority when it is agreeing targets for inclusion in the draft LAA and to have regard to any guidance issued by the Secretary of State.

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

193. *Subsection (4)* requires the Secretary of State to consult representatives of local government, representatives of partner authorities and others he considers appropriate before issuing guidance.

**Clause 82 - Approval of local area agreement by the Secretary of State**

194. *Subsection (1)* provides where a local authority has submitted a draft local area agreement to the Secretary of State, the Secretary of State may, by notice in writing to the local authority, either approve the draft local area agreement or require that it be modified.

195. *Subsection (2)* provides that where the Secretary of State approves a draft LAA, this will become the LAA for the area of the responsible local authority. It will have the effect for the length of time specified in the LAA.

196. *Subsection (3)* provides that where the Secretary of State requires a draft local area agreement to be modified, this must be treated by the responsible local authority in the same way as the preparation of a new draft local area agreement, that is, that the same duties of consultation and co-operation apply.

**Clause 83 - Duty to have regard to local improvement targets**

197. This clause provides that once the Secretary of State has approved a local area agreement and it therefore has effect, the responsible local authority and each partner authority must, when exercising their functions, have regard to the local improvement targets within the LAA that relate to it.

**Clause 84 - Designated targets**

198. *Subsection (1)* provides that once the Secretary of State has approved a LAA he may, by notice in writing to the responsible local authority, designate any local improvement target. This must be done within 1 month of the date of approval of the draft LAA. It is envisaged that the designated targets will be those which have been identified as priorities by the Secretary of State and which relate to the national indicator set for local government, as determined through Public Service Agreements. The effect of a designation is that the target may not be amended or removed except with the approval of the Secretary of State, following the submission of a revision proposal by the responsible authority.

199. *Subsection (2)* provides that where the Secretary of State has approved a revision proposal to the LAA he may designate any local improvement target that has been added by the revision proposal. This must be done within one month of the date the revision proposal was approved. (Targets may also be added to LAAs by agreement between the responsible authority and each person to whom the target in question is to relate, under clause 85(6). But such targets, once added, may not be designated.)

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

**Clause 85 - Revision and addition of targets**

200. *Subsection (1)* provides that a designated target can only be amended or removed through a revision proposal which is then sent to the Secretary of State for his approval in accordance with clauses 86 and 87.

201. *Subsections (2) and (4)* provide that any other target may be amended or removed from the LAA by agreement with partner authorities to whom the target relates and having consulted every other person to whom the target relates (ie any charity or voluntary sector bodies or local private sector bodies which agreed to the target at the outset). This means that local priority targets can be changed without the involvement of the Secretary of State.

202. However, *subsection (3)* provides that the responsible authority and such partner authorities to whom the targets relate may not amend or remove them during the month after the LAA has been approved and may not amend a target added by a revision proposal for the month after the revision proposal has been approved. This is to ensure that targets are not amended or removed by agreement between the authority and partner authorities during the period in which the targets are capable of being designated by the Secretary of State.

203. *Subsection (5)* makes it clear that local improvement targets can only be added to a LAA either by agreement between the persons to whom the target is to relate, in accordance with *subsection (6)* or in accordance with a revision proposal under clauses 86 and 87.

**Clause 86 - Designated targets: revision proposals**

204. It is envisaged that an LAA will last for a number of years. Within this time the responsible local authority may want to alter the designated targets in the LAA. This will be done through a revision proposal. The revision proposal may seek to add a target or delete or alter designated targets.

205. *Subsection (1)* provides that a responsible authority may, whilst the LAA has effect, prepare and submit to the Secretary of State a “revision proposal”. This is a document that proposes changes to designated targets within an approved local area agreement. The Secretary of State may also direct a local authority to prepare a “revision proposal”. Where such a direction has been made, the responsible authority must prepare a revision proposal.

206. *Subsection (2)* sets out what may be included in a “revision proposal”. The revision proposal may include changes to, or removal of, designated targets from the local area agreement. It may propose additional targets.

207. *Subsection (3)* provides that where a revision proposal proposes changes to a target or an additional target, it must also specify the persons to whom the target is to relate.

208. *Subsection (4)* establishes the steps the responsible local authority must take in preparing the revision proposal. The responsible local authority must:

- Consult each partner authority and other persons as appear to it to be appropriate. It is expected that this will include the voluntary and community sector and local businesses.
- Co-operate with each partner authority in determining changes to designated targets, removal of designated targets or additional local improvement targets where these are relevant to the partner authority
- Have regard to its community strategy and to any guidance issued by the Secretary of State

209. *Subsection (5)* provides that each partner authority must co-operate with the responsible local authority, and have regard to any guidance issued by the Secretary of State, in determining changes to designated targets, the removal of designated targets or additional local improvement targets, that are to be included in a “revision proposal”.

210. *Subsection (6)* requires the Secretary of State to consult representatives of local government, (this includes representatives of partner authorities) and others he considers appropriate before issuing guidance on the revision proposal process.

211. *Subsection (7)* provides that where the Secretary of State directs a responsible local authority to prepare and submit a “revision proposal”, a date by which this revision proposal must be submitted can be set.

#### **Clause 87 - Approval of revision proposal**

212. *Subsection (1)* sets out the options for the Secretary of State in considering a revision proposal that has been submitted. If the revision proposal was prepared in response to a direction by the Secretary of State (under clause 86 (1)(b)), he may approve the revision proposal or require the responsible authority to modify it or reject it. Alternatively, if the responsible local authority has chosen to prepare and submit a revision proposal, the Secretary of State may either approve or reject the proposal. In this case he may not require the revision proposal to be modified.

213. *Subsections (2) and (3)* provide that where the Secretary of State approves the revision proposal, the approved local area agreement is amended to take on the changes set out in the revision proposal. A designated target which is revised will then be treated as if it had been designated in its revised form, by the Secretary of State, in place of the target which was the originally designated.

214. *Subsection (4)* provides that where the Secretary of State has required a responsible local authority to modify a revision proposal, that it shall be treated as a direction to that local authority to prepare another revision proposal. This means that

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

the authority will be under the same duties again to consult and co-operate and to have regard to the community strategy and to guidance, and that partner authorities will be under the duty to co-operate and to also have regard to guidance, when modifying the revision proposal.

**Clause 88 - Duty to publish information about local area agreement**

215. *Subsection (1)* provides that the responsible local authority must publish a memorandum relating to the local area agreement where:

- the Secretary of State has designated a local improvement target or has revoked a designation (under clause 84);
- the approved local area agreement has been amended by a revision proposal, that has been approved by the Secretary of State (under clause 87(2));
- the approved local area agreement has been amended by locally agreed alterations or additions or deletions of local priority targets (under clause 85(2) and (6)).

216. *Subsection (2)* sets out the information that will be included in the memorandum. It will set out in such form as the Secretary of State may direct:

- The period the LAA will have effect.
- The local improvement targets included in the LAA
- Which targets are designated and, for these, the partner authorities required to have regard to the target, and any other persons to whom the target relates.

**Clause 89 - Preparation of community strategy**

217. This clause amends section 4 of the Local Government Act 2000 by requiring responsible local authorities to consult and seek the participation of partner authorities in the development and subsequent modification of the community strategy. The partner authorities will be the same as those involved in the preparation of the LAA. Local authorities will remain under a duty to also consult and seek the participation of such persons as they see fit when preparing the community strategy. This is intended to include the voluntary and community sector and local businesses.

**Clause 90 - Interpretation of Chapter**

218. This clause provides a glossary to the terms used in these clauses.

**Clause 91 - Transitional provision**

219. This clause sets out the arrangements for change from voluntary local area agreements to those required by these clauses.

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

220. *Subsection (1)* notes that this clause applies only where the Secretary of State first directs a responsible local authority under clause 81(1) to prepare and submit a draft of a local area agreement.

221. *Subsection (2)* sets out that the first direction of the Secretary of State to an authority to prepare a LAA may provide that the LAA submitted may have been prepared *before* the direction to do so was given. That is, that where such a direction applies, an authority may submit a LAA which was in existence previously as a voluntary LAA. Such a direction will also provide that the local area agreement submitted need not have been prepared following consultation with partner authorities, and with co-operation between the responsible local authority and partner authorities nor with regard to guidance issued by the Secretary of State and in the case of the authority, without having regard to the community strategy. This means that the Secretary of State will have the flexibility to allow certain local authorities to submit voluntary LAAs for approval, which were in existence before the provisions came into force.

222. He can also direct that other local authorities prepare a fresh LAA in accordance with all the statutory provisions under clause 81. This may be necessary in cases in which local authorities are at the point of negotiating their next LAA, i.e. where their present voluntary LAA is about to expire

## **CHAPTER 2: OVERVIEW AND SCRUTINY COMMITTEES**

### **Clause 92 - Reference of matter by councillor to overview and scrutiny committee**

223. Several pieces of legislation introduced in this Bill together provide for the process called a “Community Call for Action” in the Local Government White Paper. These are clause 92, accompanied by clauses 166 and 167. Clause 92 inserts section 21A into the Local Government Act 2000. It requires each local authority operating executive arrangements to ensure its overview and scrutiny arrangements enable any member of the authority to refer a local government matter to the relevant overview and scrutiny committee. (Section 21 of the Local Government Act 2000 empowers overview and scrutiny committees to review or scrutinise decisions made, and to make reports and recommendations about matters whether or not they are the responsibility of the Executive; and to make reports or recommendations on matters which affect the authority’s area.) Corresponding provision can be made for authorities operating alternative arrangements under secondary legislation available under section 32(3) of the 2000 Act.

224. Inserted section 21A(2) provides that such arrangements must enable a councillor to put a local government matter on the agenda, and to have it discussed at a meeting, of the relevant overview and scrutiny committee.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

225. Inserted section 21A(5)-(8) applies to references by councillors who are not members of the committee. Section 21A(6) entitles a committee, when deciding how to proceed, to consider representations from the member who referred the matter, and to take into account the extent to which he has exercised the powers given to him under clause 166 of the Bill to resolve it. Section 21A(7) makes clear that, although it is open to a committee not to pursue a matter, it must let the member know the reason for the decision. Section 21A(8) requires the committee to copy its report or recommendations on the matter to the member who referred the matter. Section 21A(9) defines the matters which can be referred to overview and scrutiny in this way. Its scope is intended to cover any matter that relates to the work of the local authority other than a crime and disorder matter (such matters being dealt with by the Police & Justice Act 2006), or a matter in a category which the Secretary of State has excluded by order.

**Clause 93 - Power of overview and scrutiny committee to question members of authority**

226. By virtue of clause 166 of the Bill, an authority can make arrangements for individual members to exercise functions of the authority in relation to the electoral division or ward for which the member is elected. Clause 93, inserts a provision in section 21 of the Local Government Act 2000 allowing Overview and Scrutiny Committees to require such members to appear before the Committee to answer questions in relation to any functions that they exercise.

**Clause 94 - Powers to require information from partner authorities**

227. This clause inserts section 22A after section 22 of the Local Government Act 2000.

228. Section 22A: Subsection (1) provides for the Secretary of State to make regulations which determine what information relevant partner authorities must provide to a relevant committee or may not disclose to such a committee.

229. “Relevant partner authority” is defined in new section 21C(7), which is inserted by clause 95, and means a person who is a partner authority in relation to a local authority for the purposes of Part 5 (Co-operation of English authorities with local partners, etc) Chapter 1 (local area agreements), except for a police authority or a chief officer of police.

230. “Relevant committee” is defined in section 21C(7) of the Local Government Act 2000, which is inserted by clause 95, and means any overview and scrutiny committee of an authority which is required to prepare local area agreements under Chapter 1 of Part 5 of the Bill.

231. The type of information about which regulations may be made under subsection (1) of section 22A does not include information that can be the subject of

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

regulations made under section 20(5)(c) or (d) of the Police and Justice Act 2006 or section 244(2)(d) or (e) of the National Health Service Act 2006.

232. Subsection (6A) of section 20 of the Police and Justice Act 2006, which is inserted by subsection (3) of clause 94, makes it clear that information about which provision can be made in regulations made under that section can only relate to the discharge of crime and disorder functions and local crime and disorder matters.

233. Subsection (2A) of section 244 of the National Health Service Act 2006, which is inserted by subsection (5) of clause 94, makes it clear that information about which provision can be made in regulations made under that section can only relate to the health service in the local authority's area.

234. Subsection (2) of section 22A inserts new wording in section 32(3) of the Local Government Act 2000. The effect of this change is to enable regulations to be made in relation to authorities operating alternative arrangements which replicate the provision contained in the new section.

**Clause 95 - Overview and scrutiny committees: reports and recommendations**

235. Subsection (1) inserts new sections 21B to 21D after section 21A, which is inserted by clause 92 of the Bill, of the Local Government Act 2000.

236. Section 21B: This section applies where an overview and scrutiny committee of an authority in England makes a report or recommendations to the authority or the executive. It does not apply where the report or recommendation is made to the authority or the executive by a crime and disorder committee under subsection (1)(b) or (6) of section 19 of the Police and Justice Act 2006.

237. Subsection (2) empowers the overview and scrutiny committee to publish its report or recommendations.

238. Where the overview and scrutiny committee does this, it must give the local authority or executive notice in writing specifying the steps which the local authority or executive must take within two months of receiving the report or recommendations or, if later, the notice. These steps include responding to the report or recommendations and, if these documents have been published by the overview and scrutiny committee, publishing the response.

239. The local authority or executive must comply with the notice.

240. The provisions of section 21D, which is also inserted by clause 95, and is concerned with confidential and exempt information applies in relation to the publishing of a report or recommendations or a response to any of these documents.

241. Section 21C: This section applies where a relevant committee make a report or recommendations to an authority or an executive and the report or recommendations

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

relate to a local improvement target which relates to a relevant partner authority and is specified in a local area agreement of the authority. It does not apply where the report or recommendations are made by a crime and disorder committee under subsections (1)(b) or (6) of section 19 of the Police and Justice Act 2006.

242. “Local improvement target” and “local area agreement” are defined in subsection (7) of section 21C and have the same meanings as in Chapter 1 of Part 5 of the Bill.

243. The overview and scrutiny committee may give the relevant partner authority notice in writing requiring them to have regard to the report or recommendations in exercising their functions. A relevant partner authority cannot be required to have regard to the document if it was made to that authority under regulations made under section 244 of the National Health Service Act 2006.

244. The relevant partner authority has a duty to comply with the requirement specified in the notice.

245. Section 21D: This section applies to the publication under section 21B of any document comprising a report or recommendations of any overview and scrutiny committee or a response of an authority to any such report or recommendations. It also applies to the provision of a copy of such a document to a member of an authority under new section 21A(8) or 21B or to a relevant partner authority under section 21C.

246. Subsection (2) places a requirement on an overview and scrutiny committee or a local authority to exclude confidential information when publishing a document or providing a copy of it to a relevant partner authority. “Confidential information” is defined in subsection (6) of section 21D and has the meaning given by section 100A(3) of the Local Government Act 1972.

247. It also gives a power to an overview and scrutiny committee to exclude any relevant exempt information. “Relevant exempt information” is defined in subsection (6) of section 21D and means, in relation to a report or recommendations of an overview and scrutiny committee, exempt information specified in a resolution of the overview and scrutiny committee under section 100A(4) of the Local Government Act 1972, and, in relation, to a response of the local authority, exempt information of a description specified in such a resolution of the authority. In both cases, the resolution must apply to a meeting of the overview and scrutiny committee or the executive at which the report or response was, or the recommendations were, considered. The definition of “relevant exempt information” includes, in relation to an overview and scrutiny committee with functions under section 21(2)(f) of the Local Government Act 2000, information which is exempt information under section 246 of the National Health Service Act 2006.

248. It should be noted that section 21D does not apply to the executive of an authority in relation to responses. This is because the meaning of “relevant exempt

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

information” has been imported from Part 5A of the Local Government Act 1972 which applies to an authority but not to an executive of that authority.

249. Subsection (3) enables the overview and scrutiny committee or an authority to exclude if they wish any confidential information or relevant exempt information from a copy of a document provided to a member of the local authority.

250. When information is excluded from any document, subsection (4) enables the overview and scrutiny committee or the authority, in publishing, or providing a copy of it, to replace any part of the document which discloses confidential information or exempt information with a summary that does not disclose that information. Where in consequence of the exclusion of confidential information or exempt information, the document would be misleading or not reasonably comprehensible, subsection (4) requires the authority to provide a summary of the part concerned.

251. An overview and scrutiny committee which, in publishing, or providing a copy of, a document, excludes information or replaces part of the document with a summary, will be taken to have complied with the requirement in subsection (3)(c) or (d) of section 21B. This is by virtue of subsection (5) or section 21D.

252. Subsection (2) of clause 95 amends section 22 of the Local Government Act 2000 by inserting new subsection (12A) to give the Secretary of State a power to make regulations in relation to local authority executives in England which replicate the provision contained in section 21D.

253. Subsection (3) of clause 95 amends subsection (3) of section 32 of the Local Government Act 2000 by inserting references to sections 21B, 21C and 21D to enable the Secretary of State to make regulations in relation to local authorities operating alternative arrangements in England which replicate the provision contained in those sections.

#### **Clause 96 - Transitional provision**

254. The new procedure for altering executive arrangements which are being introduced through Clause 33E of the Bill will also apply to overview and scrutiny.

### **PART 6: BYELAWS**

#### **Introduction**

255. A local authority byelaw is a law which has been made by a local authority under a power conferred by statute. Currently local authority byelaws must be confirmed by the Secretary of State. Offences against local authority byelaws attract a penalty fine, which is enforced through the Magistrates’ Courts.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

256. These clauses give effect to the Government's proposals to simplify procedures for making and enforcing local authority byelaws. Proposals for changes to current procedures were set out in the Government's discussion paper *Local Authority Byelaws: Procedures for making, confirming and enforcing byelaws*, issued in April 2006. Decisions on action to be taken were then announced in the Local Government White Paper.

257. The Government initially intends to use the powers in these clauses to introduce new procedures for local authorities to make byelaws and enforce them through fixed penalty notices only in relation to local authority byelaws which are confirmed by the Secretary of State for Communities and Local Government. These byelaws regulate matters such as low-level nuisance in local spaces (for example parks and beaches, the use of market places and the cleanliness of barbers' and hairdressers' premises). The powers could be used in relation to byelaws in other areas in the future.

258. These clauses enable the Secretary of State to make regulations establishing a new procedure for local authorities to follow in making byelaws. The intention is that this power will be used so that once local authorities have consulted on, prepared and advertised draft byelaws locally, they can be enacted without confirmation by the Secretary of State. The Secretary of State will have the power to make regulations dealing in particular with consultation on, and the advertisement of, byelaws locally and the power to issue guidance in relation to the new procedures.

259. The clauses also provide for the enforcement of byelaws through fixed penalty notices, as an alternative to enforcement through Magistrates Courts. This will bring the enforcement of byelaws on to the same footing as the enforcement of other low-level nuisance activities, and will facilitate a more coordinated approach to the enforcement of such matters.

#### **Clause 97 - Alternative procedure for byelaws**

260. This clause inserts a new section 236A into the Local Government Act 1972. This will give the Secretary of State, in relation to England, the power to make regulations prescribing classes of byelaws which can be made using the procedure described in the regulations rather than the procedure in section 236 of that Act. The intention is that regulations will prescribe a procedure which does not require the byelaw to be confirmed by the Secretary of State. It will be possible for the classes of byelaw to which the alternative procedures will apply to be described in different ways - by reference to one or more of the enabling power for the byelaws, their subject matter, and the authority empowered to make or confirm the byelaws. This approach has been taken to ensure that regulations can describe clearly which byelaws will be subject to the alternative procedures, and, therefore, ensure certainty as to which local authority byelaws will continue to be subject to the procedure in section 236 of the Local Government Act 1972.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

261. In prescribing the alternative procedures to be followed, the clause empowers the Secretary of State to include in regulations provision on the consultation procedures which local authorities should follow before a byelaw is made, and on local publicity after a new byelaw has been made.

#### **Clause 98 - Fixed penalties for breach of byelaws**

262. This clause inserts new sections 237A to 237C, and new section 237F, into the Local Government Act 1972.

263. New section 237A empowers the Secretary of State to make regulations prescribing classes of byelaws which may be enforced by means of fixed penalty notices. Where a byelaw is within such a class, subsection (3) provides for an authorised officer of an authority to issue a fixed penalty notice offering a person the opportunity of discharging liability for conviction for a byelaw offence by the payment of the amount specified in the notice. Subsection (4) provides that, following receipt of a fixed penalty notice, the recipient has fourteen days in which to pay the specified fine, and thus avoid attending the Magistrates' Court in respect of the offence. Subsection (6) provides that the fixed penalty notice must give sufficient information to the recipient so that the nature of the offence is clear. Subsection (12) makes provision about which persons are authorised to issue fixed penalties. "Authorised officers" will be restricted to those authorised in writing by the authority to carry out the function. This may be a direct employee of the authority, or a person, or an employee of a person, with whom the local authority has a contract for the enforcement of byelaws.

264. New section 237B provides for the level of fixed penalties for breach of byelaws. The clause confers on the Secretary of State the power to make regulations specifying a range within which the amount of fixed penalty must fall. Where a range has been specified, local authorities may choose to set an amount within that range. Where no range has been set, local authorities will have freedom to set the penalty. Where the local authority does not specify a penalty for breach of a byelaw, the clause provides for a default amount of £75. The clause empowers the Secretary of State to make an order to change the default amount as necessary, so that the level remains in line with similar low-level offences.

265. New section 237C gives an authorised officer who proposes to issue a fixed penalty notice for breach of a byelaw the power to require the person to whom he is giving the notice to give their name and address. A person who fails to give their name and address or gives a false name and address will commit an offence.

266. New section 237F makes supplementary provision about regulations and orders under section 237A and 237B.

#### **Clause 99 - Use of fixed penalty receipts**

267. This clause requires local authorities, when considering how to use their fixed penalty receipts, to have regard to the desirability of using the money in combating

nuisances governed by byelaws for which fixed penalty notices may be issued. This means that local authorities would be required to consider whether fixed penalty receipts should be used generally in combating such nuisances. It would not be necessary for receipts to be used only towards combating the nuisance the relevant byelaw is concerned with.

#### **Clause 100 - Guidance**

268. This clause gives the Secretary of State the power to issue guidance in relation to the new procedures for making byelaws, the use of fixed penalties to enforce byelaws and on related matters. This will include guidance on consulting on and publicising new byelaws and good practice in relation to issuing fixed penalty notices.

#### **Clause 101 - Community Support Officers**

269. This clause amends the Police Reform Act 2002 so that if local authorities and the chief police officer for the area agree, community support officers and other “accredited persons” under that Act may issue fixed penalty notices for breach of local authority byelaws. Before a community support officer or accredited person will be able to do this, the chief police officer will have to designate them as having that function and the byelaw to which the fixed penalty notice relates will have to appear on a list agreed between the chief police officer and the local authority.

#### **Clause 102 - Revocation of byelaws**

270. This clause gives local authorities, the Greater London Authority, Transport for London and metropolitan county passenger transport authorities the power to make a byelaw revoking a byelaw it has previously made where, for some reason, there is no other power to do so. This will allow local authorities to “tidy up” unnecessary and obsolete provisions.

271. This clause also confers a power on the Secretary of State and on Welsh Ministers to make an order revoking a byelaw where it appears to have become obsolete or unnecessary. The intention is that this power will only be used where the power to revoke the byelaw, or the identity of the authority which should otherwise revoke the byelaw, is unclear.

### **PART 7: BEST VALUE**

#### **Introduction**

272. Part 7 of the Bill amends the “best value” regime, ie. the regime under which best value authorities are required to make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness (see Part 1 of the Local Government Act 1999). “Best value authorities” include most local authorities, police authorities and fire and rescue authorities.

273. Part 7 removes certain aspects of the best value regime, in particular the requirement on best value authorities to carry out best value reviews. It places a new duty on English best value authorities to actively involve representatives of local people in the provision of local services. It provides the Secretary of State and Welsh Ministers with a new power to issue guidance to best value authorities on the general duty of best value. It also provides Ministers of the Crown and Welsh Ministers with power to issue grants to promote or facilitate the economic, efficient and effective provision of services by best value authorities.

274. The Bill confers a Measure-making power on the National Assembly for Wales in relation to best value (see clause 165 and Schedule 14).

### **Best value authorities**

#### **Clause 104 - Parish councils and community councils not to be best value authorities**

275. Clause 104 amends the definition of local authorities in England and Wales that are best value authorities for the purposes of Part 1 of the Local Government Act 1999.

276. *Subsection (1)(a)* removes parish councils and parish meetings from the definition of “local authorities”. This has the effect that parish councils and parish meetings will no longer be subject to the best value duties set out in the Local Government Act 1999.

277. In practice, an Order<sup>1</sup> made by the Secretary of States under section 2(5) of the Local Government Act 1999 exempted all English parish councils and meetings, except those whose budgeted income for 1997, 1998 and 1999 was over £500,000, from the duties set out in sections 3 to 6 of the Local Government Act 1999. The Bill will disapply the best value duties for the 41 larger English parish councils.

278. *Subsections (1)(b) and (c)* make equivalent provision for Wales, where the equivalent of a parish council is a community council. They provide that a community council is not a best value authority. An Order<sup>2</sup> made by the National Assembly for Wales under section 2(5) of the Local Government Act 1999 exempted all community councils with an income of under £1,000,000 in 1998 and 1999 from any of the duties in sections 3 to 6 of the Act. In practice, this exempted all community councils from the best value regime, as none had an income in excess of that sum.

---

<sup>1</sup> The Local Government Best Value (Exemption)(England) Order 2003 – SI 2003/3343

<sup>2</sup> The Local Government (Best Value) (Exemption) (Wales) Order 2000, SI 2000/1029

279. *Subsection (2)* removes local precepting authorities<sup>3</sup> from the list of authorities and bodies to which the Secretary of State may by order extend the best value regime. In effect it removes the ability of the Secretary of State and Welsh Ministers to re-apply the best value regime to parish councils, parish meetings and community councils or to apply it to other local precepting authorities, such as charter trustees.

### **Duties of best value authorities**

#### **Clause 105 - Guidance about general best value duty**

280. Clause 105 extends the existing power of the Secretary of State and the National Assembly for Wales to give guidance to best value authorities. At present, guidance can be given about the consultation of local people by best value authorities about how the authorities fulfil the general best value duty set out in section 3 of the Local Government Act 1999. The Bill confers a more general power to issue statutory guidance to best value authorities about how to fulfil that duty.

#### **Clause 106 - Involvement of local representatives**

281. This clause inserts a new section 3A in the Local Government Act 1999. Subsection (1) of that new section places a duty on best value authorities (apart from police authorities and Welsh best value authorities) to involve representatives of local persons in the exercise of their functions, where they consider that it is appropriate to do so. Subsection (1) provides for best value authorities to determine if and how representatives should be involved, having regard to any guidance issued by the Secretary of State (subsection (5)). It sets out that best value authorities will need to consider each of three ways of securing the involvement of representatives of local people in the exercise of their functions, namely informing them, consulting them and involving them in other ways.

282. Subsection (2) establishes that the duty to involve local representatives does not grant best value authorities any additional powers. This subsection also clarifies that, where there is a conflict between this duty and another duty, the latter takes precedence.

283. Subsection (3) sets out those best value authorities who are not subject to the new duty. It also enables the Secretary of State to provide additional exemptions from the duty by secondary legislation subject to the negative resolution procedure.

284. Subsection (6) clarifies what is meant by certain terms, including “local persons” and “representatives”.

- The term *local person* refers to any person likely to be affected by or interested in the exercise of the relevant function of a best value authority. This could include a group or organisation. Under new section 3A, a best

---

<sup>3</sup> As defined in section 39(2) of the Local Government Finance Act 1992.

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

value authority might decide to involve representatives of individual citizens, local residents or service users, community groups, voluntary sector organisations or businesses (amongst others) in the exercise of its functions.

- The term *representative* refers to individuals or groups who appear to the best value authority to be typical of those likely to be affected by, or interested in, the exercise of the authorities' functions.

### **Clause 107 - Abolition of performance indicators etc. except for Welsh authorities**

285. Clause 107 provides that sections 4 and 6 of the Local Government Act 1999 no longer apply to best value authorities in England (including police authorities) or to police authorities in Wales, and in so doing removes (a) the power of the Secretary of State in section 4(1) to specify performance indicators and standards for such authorities; (b) the duty in section 4(5) on such authorities to meet such standards; (c) the duty in section 6(1) on such authorities to publish best value performance plans; and (d) the power of the Secretary of State to issue statutory guidance in respect of performance plans.

286. Sections 4 and 6 will continue apply to Welsh best value authorities (ie all best value authorities in Wales other than police authorities). The power in section 4(1) to specify performance indicators and standards, and the powers as regards best value performance plans in section 6, will continue to be available to the Welsh Ministers as regards such authorities. The Assembly will be able to amend or replace these provisions, or to confer power on Welsh Ministers to do so, using the framework power conferred by Schedule 14 to the Bill.

### **Clause 108 - Abolition of best value performance reviews**

287. Clause 108 removes the statutory requirement in section 5 of the Local Government Act 1999 for best value authorities to undertake best value performance reviews and the power of the Secretary of State and the Assembly to issue guidance on how best value authorities conduct such a review.

### **Powers to modify enactments etc**

#### **Clause 109 - Consultation with and consent of Welsh Ministers**

288. Clause 109 makes certain changes to the Secretary of State's powers under section 16 of the Local Government Act 1999 to modify enactments obstructing compliance with best value and under section 97 of the Local Government Act 2003 to modify enactments in connection with charging or trading. In particular, it precludes the Secretary of State amending, modifying or removing the application of any Assembly Measures, Assembly Acts or subordinate legislation made by Welsh Ministers or the Assembly without the consent of the Welsh Ministers or the Assembly (as appropriate), except where the provision is consequential on or incidental to other provisions.

**Clause 110 - Power of Welsh Ministers to modify enactments obstructing best value etc**

289. Clause 110 confers on the Welsh Ministers a power similar to that in section 16 of the Local Government Act 1999 to modify enactments obstructing compliance with best value, and removes from the Secretary of State the power to do so in relation to Welsh best value authorities.

290. *Subsection (1)* provides that the Secretary of State's existing power in section 16 is not to be exercisable as regards Welsh best value authorities (that is, all best value authorities in Wales except police authorities).

291. *Subsection (2)* inserts a new section 17A in the Local Government Act 1999 which in effect gives the Welsh Ministers similar powers to modify enactments as section 16 currently gives to the Secretary of State. It allows the Welsh Ministers to modify or exclude the effect of enactments when, in their view, such enactments prevent or obstruct compliance with the best value duties by Welsh best value authorities. It also allows the Welsh Ministers to confer on Welsh best value authorities additional powers which appear to them to facilitate such compliance. New section 17A provides that orders cannot make any provision which could not be made by an Assembly Measure. It also provides that an order under new section 17A must be approved by a resolution of the Assembly before it can be made (unless it merely extends or modifies a previous such order).

292. *Subsection (2)* also inserts a new section 17B in the Local Government Act 1999, setting out the procedures which the Welsh Ministers must follow when making an order under the new section 17A. It requires the Welsh Ministers to consult best value authorities and others with an interest, and to lay a summary of their proposals before the Assembly for a minimum of 60 days (excluding periods when the Assembly is in recess) before the Assembly considers the draft order. These provisions are similar to those that apply to the Secretary of State under section 17 of the Act.

293. Clause 110 will come into force two months after Royal Assent. *Subsection (3)* makes transitional provisions to cover the period before clause 112, which adds a definition of the term 'Welsh best value authority' to the Local Government Act 1999, comes into force.

**Other**

**Clause 111 - Grants to promote or facilitate exercise of functions by best value authorities**

294. Clause 111 inserts new sections 36A and 36B into the Local Government Act 2003 ("the 2003 Act"). Those sections enable grants to be paid to a person for the purpose of improving the performance of best value authorities. Any grant can be paid subject to conditions (sections 36A(5) and (6) and 36B(4) and (5)).

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

295. The powers are exercisable by a Minister of the Crown (“a Minister”) and, in relation to Welsh best value authorities, by Welsh Ministers (sections 36A(1) and 36B(1)). Treasury consent is required for any grant made by a Minister (section 36A(2)(a)). The consent of Welsh Ministers is also required where grant is given by a Minister as regards the exercise of functions by a Welsh best value authority (section 36A(2)(b)).

296. Clause 111 will come into force two months after Royal Assent. If clause 112 (which introduces the term “Welsh best value authority” into Part 1 of the Local Government Act 1999) has not been commenced at that time, clause 111(2) ensures that new sections 36A and 36B will have effect by reference to the existing provisions in the Local Government Act 1999 until such time as clause 112 is commenced.

297. The definition of best value authorities in section 36A(7) is slightly broader than the definition used elsewhere in the 2003 Act, since it includes the Greater London Authority exercising functions otherwise than through the Mayor.

298. It is envisaged that the new powers will primarily be used to improve the performance of best value authorities in situations where a grant cannot be paid under section 31 of the 2003 Act (power to pay grants to local authorities), or where for timing reasons grant cannot be paid under section 78 of the Local Government Finance Act 1988 (duty for Secretary of State to pay grants to receiving authorities and specified bodies) or section 84E of the same Act (which contains analogous functions as regards Wales).

#### **Clause 112 - Best value: minor and consequential amendments**

299. Clause 112 defines the term “Welsh best value authorities” for the purposes of the Local Government Act 1999 and introduces Schedule 8, which makes further minor and consequential amendments.

300. The amendments made by *subsection (1)* provide that all authorities which are currently “best value authorities in Wales” for the purposes of Part 1 of the Local Government Act 1999 will be “Welsh best value authorities”, apart from police authorities (since responsibility for policing is generally not devolved to Wales). Welsh best value authorities would be subject to subordinate legislation and guidance made or issued by the Welsh Ministers under that Part.

## **PART 8: LOCAL SERVICES: INSPECTION AND AUDIT**

### **Introduction**

301. Part 8 of the Bill makes provision about the inspection and audit of local services. In particular, clauses 115 and 116 of and Schedule 10 to the Bill provide for the merger of the inspection functions of the Benefit Fraud Inspectorate (in relation to

English local authorities) with the Audit Commission. The intention is that this will avoid duplication of effort and reduce inspection burdens on local authorities.

302. Clauses 117 and 118 and Schedule 11 make provision about the interaction between the Audit Commission and other authorities. Clauses 121 to 125 and 128 amend the Commission's powers to produce and publish studies and reports. Clauses 126-127 update and amend several of the Commission's powers relating to audit. Clauses 129 and 130 relax the restrictions on disclosure of information obtained by the auditor or the Audit Commission.

## **CHAPTER 1 - CONSTITUTION OF THE AUDIT COMMISSION**

### **Clause 113 - Membership**

303. This clause reduces the number of members of the Audit Commission. At present the Commission must comprise 15 to 20 members. The Bill reduces this requirement to 10 to 15 members.

### **Clause 114 - Change of name**

304. This clause removes the reference to Wales in the Audit Commission's official legal title. As of 1<sup>st</sup> April 2005 the Audit Commission ceased to operate in Wales, with the exception of a very limited residual power relating to its national studies function. Its core functions in Wales are now carried out by the Auditor General for Wales.

## **CHAPTER 2 - AUDIT COMMISSION AND AUDITORS: FUNCTIONS AND PROCEDURE**

### **Benefits inspections**

#### **Clause 115 - Powers of the Audit Commission relating to benefits**

305. This clause relates to the inspection of the administration of housing and council tax benefit administration by local authorities in England, which will be taken over by the Audit Commission, following its merger with the Benefit Fraud Inspectorate.

306. This clause amends the Local Government Act 1999 to provide that if, following a best value inspection, the Audit Commission has concerns about the administration of housing and council tax benefit by a local authority it is required to send a report on its findings to the Secretary of State, who can then take action if appropriate.

#### **Clause 116 - Benefits Fraud Inspectorate: transfers to Audit Commission**

307. This clause enables the Secretary of State to make transfer schemes transferring to the Audit Commission property, rights and liabilities relating to the

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

inspection of the administration of housing benefit and council tax benefit by the Benefits Fraud Inspectorate.

308. A transfer scheme under this clause may only transfer employees if the employee and the Audit Commission consent to the transfer. Schedule 10 to the Bill makes further provision about transfer schemes.

### **Interaction with other authorities**

#### **Clause 117 - Interaction of the Audit Commission with other authorities**

309. This clause introduces Schedule 11 to the Bill, which inserts a new Schedule 2A in the Audit Commission Act 1998, which makes provision about the functions of the Audit Commission in relation to inspections and about the Audit Commission's interaction with other inspection authorities, public bodies and others.

310. The new Schedule 2A includes provision enabling the Audit Commission to provide advice and assistance to public bodies, which replaces the existing provision in section 37 of the Audit Commission Act 1998 (power to provide advice and assistance to certain inspection authorities).

#### **Clause 118 - Interaction of benefits inspectors with the Audit Commission**

311. This clause relates to persons who are authorised by the Secretary of State under section 139A of the Social Security Administration Act 1992 to carry out inspections of the administration of housing benefit and council tax benefit. The Secretary of State is not expected to use the power to authorise such people often once the Audit Commission takes on the bulk of such inspections.

312. This clause requires such persons to produce documents setting out what inspections they expect to carry out and how they expect to carry them out, after consultation with the Audit Commission. It requires them to send copies of the final documents to the Audit Commission and the Secretary of State. It requires such persons to co-operate with the Audit Commission. It also enables them to act jointly with the Audit Commission.

### **Inspections and audit**

#### **Clause 119 - Powers of auditors and inspectors to obtain information**

313. This clause clarifies the powers of auditors and the Audit Commission to obtain access to documents and information, under section 6 of the Audit Commission Act 1998 (financial audit) and section 11 of the Local Government Act 1999 (best value inspections). In particular, it enables them to inspect computers on which documents are held.

#### **Clause 120 - Inspections of best value authorities**

314. This clause extends the Audit Commission's existing power to inspect best value authorities' compliance with their duties under Part 1 of the Local Government

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

Act 1999 (best value). It enables the Audit Commission to carry out general inspections of the performance of best value authorities.

**Clause 121 - National studies**

315. Clause 121 adds to the list of bodies that the Audit Commission must consult on its proposals for national studies under sections 33 and 34 of the Audit Commission Act 1998. The amendment requires the Audit Commission to consult the Secretary of State to ensure relevant Government Departments are consulted on proposed national studies. The Audit Commission retains a limited residual power in Wales in relation to national studies. The amendments also provides that where a proposed study relates to a body in respect of which the Welsh Ministers may exercise functions, the Audit Commission must also consult Welsh Ministers

**Clause 122 - Studies at request of particular bodies**

316. Sections 35 and 35A of the Audit Commission Act 1998, which allowed the Audit Commission to carry out and charge for consultancy studies at the request of audited bodies, are repealed by this clause. This is intended to reduce duplication among Government sponsored bodies carrying out similar voluntary improvement work within audited bodies (particularly local authorities).

**Clause 123 - Information about performance standards of local authorities etc**

317. Clause 123 of this Bill repeals sections 44 - 47 of the Audit Commission Act 1998. Those sections gave the Audit Commission power to require local authorities to publish information about their performance.

**Clause 124 - Reports on English local authorities**

318. This clause inserts a new section 47A in the Audit Commission Act 1998. It enables the Audit Commission to produce three types of reports on English local authorities: (a) reports on the risk that authorities may fail to perform their functions; (b) reports on the rate at which authorities' performance is improving; (c) reports on authorities' use of resources.

319. This clause includes a power to report on all English local authorities, individual authorities or groupings of authorities. By virtue of *subsection (3)* the report can apply to a specific function or functions. English local authorities are defined *in subsection (5)*. This clause does not confer any new information-gathering powers on the Audit Commission.

**Clause 125 - Reports categorising English local authorities**

320. Clause 125 amends the requirement in section 99 of the Local Government Act 2003 for the Audit Commission to produce reports on its findings on local authorities' performance in exercising their functions which categorise the authorities. This clause provides that the Audit Commission will only need to produce a report if directed by the Secretary of State.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

## **Miscellaneous**

### **Clause 126 - Right to make objections at audit**

321. This clause amends section 16 of the Audit Commission Act 1998 (which gives local government electors the right to attend in person before the auditor to make objections) so that all objections are to be made in writing.

### **Clause 127 - Agreed audit of accounts**

322. This clause amends section 29 of the Audit Commission Act 1998 (which provides that the Audit Commission can undertake the audit of any body connected with local government or the National Health Service, subject to the consent of the Secretary of State and the agreement of the body concerned) to allow the Secretary of State to give consent to a class of body e.g. where there are a large number of bodies of the same type.

### **Clause 128 - Publication of information by the Audit Commission**

323. This clause will allow the Audit Commission to publish any information provided the publication will not prejudice the effective performance of its functions or those of an auditor.

## **CHAPTER 3 - AUDIT COMMISSION AND AUDITOR GENERAL FOR WALES: DISCLOSURE OF INFORMATION**

### **Clause 129 - Disclosure of information obtained by the Audit Commission or an auditor**

324. This clause amends the restrictions on the disclosure of information obtained by an auditor or the Audit Commission in the exercise of functions under the Audit Commission Act 1998 or Part 1 of the Local Government Act 1999.

325. The amended provision enables-

- a) a public authority (within the meaning of the Freedom of Information Act 2000) to disclose information except where the disclosure would prejudice the effective performance of that authority's functions;
- b) an auditor to disclose information except where the disclosure would prejudice the effective performance of his functions;
- c) any other person to disclose information with the consent of the Audit Commission or an auditor, such consent to be given unless the disclosure would prejudice the effective performance of the functions of an auditor or the Audit Commission.

### **Clause 130 - Disclosure of information obtained by the Auditor General for Wales or an auditor**

326. This clause makes provision for the Auditor General for Wales and an auditor

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

under the Public Audit (Wales) Act 2004 equivalent to provision made by clause 129 for the Audit Commission and an auditor under the Audit Commission Act 1998.

## **PART 9 - ETHICAL STANDARDS**

### **Introduction**

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

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

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

## **CHAPTER 1 - CONDUCT OF LOCAL AUTHORITY MEMBERS**

### **Conduct of Local Authority Members: assessment of allegations**

#### **Clause 131 - Conduct that may be covered by code**

330. This clause makes amendments to sections 49, 50, 51 and 52 of the Local Government Act 2000 to provide that the principles which govern the conduct of members and co-opted members of relevant authorities and the provisions of the code of conduct which they are required to follow, are not limited only to members' conduct in their official capacity. It is possible that this provision may engage Articles 8 and 10 of the European Convention on Human Rights. For example, a member may receive a sanction (including suspension or disqualification from being a member) for statements made or actions undertaken outside the performance of his functions as a member. This clause is considered to be capable of being exercised compatibly with the rights set out in the Convention.

**Clause 132 - Assessment of allegations**

331. This clause inserts section 57A of the Local Government Act 2000 which provides for individual local standards committees of authorities to undertake the role currently exercised by the Standards Board for England of conducting the initial assessment of allegations of misconduct which relate to one of their members or co-opted members.

332. It sets out the courses of action open to a standards committee where such an allegation is received. The options are either to refer the allegation to the authority's monitoring officer for consideration; to refer the allegation to the Standards Board; or to take no action in respect of the complaint.

333. It also provides that a standards committee has discretion, where the subject of the allegation is no longer a member or co-opted member of the authority in question and has moved to another relevant authority, to refer the allegation to the monitoring officer of the member's current local authority.

334. The clause requires that, if a standards committee decides to take no action over an allegation, it should write to the person who made the allegation informing them of the decision and the reasons for this.

335. The clause also makes provision for the Standards Board to issue guidance and give directions to a standards committee with respect to the exercise of these procedures.

336. The clause also inserts section 57B to the Local Government Act 2000, to provide, where a standards committee of an authority has made a decision that no action should be taken regarding an allegation, for the person who made the allegation to be able to ask the standards committee to review its decision. The request for review must be made within 30 days of the date of the notice of the original decision. Following receipt of such a request, the standards committee must undertake a new assessment of the allegation.

337. The clause also inserts section 57C to the Local Government Act 2000, to enable the Standards Board to direct that a standards committee's power to undertake initial assessments of misconduct allegations should be suspended, and to direct that any allegations the standards committee receives must be referred either to the Standards Board or to a specified standards committee of another authority. The clause provides a power for the Secretary of State to make regulations concerning the circumstances in which the Standards Board can exercise this power, and also for the Standards Board to issue relevant guidance.

338. A new section 58 sets out the courses of action open to the Standards Board when an allegation is referred to it for consideration. The Standards Board must either refer the allegation to an ethical standards officer of the Board, or decide that no action should be taken, or refer the matter back to the relevant local standards

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

committee. Where it decides to take no action, it should write to the person making the allegation of the decision and the reasons for the decision.

**Clause 133 - Information to be provided to Standards Board by relevant authority**

339. This clause requires a standards committee of an authority to furnish the Standards Board with periodic information on the allegations of misconduct it has received, any requests received to review its decisions to take no action in respect of allegations, and the exercise of any functions by the standards committee or the monitoring officer. The authority must comply with the request for information by such date as the Standards Board may specify.

**Clause 134 - Chairmen of standards committees**

340. Section 53(4) of the Local Government Act 2000 is amended to provide that standards committees of authorities should be chaired by a person who is neither a member nor an officer of a relevant authority.

**Clause 135 - Sub-committees of standards committees**

341. This clause provides that a standards committee may appoint a sub-committee to undertake any of its functions, including any functions concerning parishes.

**Clause 136 - Joint committees of relevant authorities in England**

342. This clause inserts section 56A into the Local Government Act 2000 to empower the Secretary of State to make regulations under which two or more relevant authorities may establish a joint committee and arrange for functions otherwise exercisable by their standards committees to be exercisable by the joint committee.

**Clause 137 - Standards Board for England: functions**

343. This clause amends section 57(5) of the Local Government Act 2000 and Schedule 4 of that Act to provide that the Standards Board may issue guidance to ethical standards officers with respect to the exercise of their functions, and to enable the Board to be able to take action to facilitate the functions of standards committees or monitoring officers.

**Clause 138 - Ethical standards officers: investigations and findings**

344. This clause makes amendments to sections 59 and 62 of the 2000 Act, amending the description of two of the findings which an ethical standards officer can make and providing that his access to documents will not be limited, as now, to documents relating to a relevant authority. It also extends section 63 to provide that information obtained by an ethical standards officer in the course of an investigation may be disclosed where the disclosure is made to allow the monitoring officer to carry out his duties or it is made to the Commissioner for Local Administration or to the Electoral Commission for the purpose of their functions. An order making power is

also provided for the Secretary of State to allow for such disclosures to be made to other people.

**Clause 139 - Ethical standards officers: reports etc**

345. This clause amends sections 64 and 65 of the Local Government Act 2000 to provide that a report by an ethical standards officer on the outcome of his investigation can be passed to the relevant standards committee in order to assist it in carrying out its functions.

346. It also provides a power for the Secretary of State to make regulations concerning the withdrawal of a reference by an ethical standards officer of matters which are the subject of either his report or interim report to the Adjudication Panel.

**Clause 140 - Disclosure by monitoring officers of ethical standards officers' reports**

347. This clause inserts section 65A of the 2000 Act to provide for a monitoring officer to inform any member or officer of an authority of the outcome of an ethical standards officer's investigation into an allegation, and also to furnish them with a copy of the report or any part of it where this will help to promote high standards of conduct by members and co-opted members of the authority.

**Clause 141 - Matters referred to monitoring officers**

348. This clause amends section 66 of the Local Government Act 2000, to provide for regulations to enable a monitoring officer to refer back cases referred to him by a standards committee and set out the circumstances in which such a referral back may be made. Regulations may make provision with regard to access to and disclosure of information.

**Clause 142 - References to Adjudication Panel for action in respect of misconduct**

349. This clause inserts section 66A, which provides for regulations to be issued in respect of the referral by standards committees of a case to the Adjudication Panel where it considers the sanction available to it would be insufficient. The Adjudication Panel's members will then decide what sanction, if any, should be imposed against the person.

**Clause 143 - Consultation with ombudsmen**

350. This clause extends to standards committees the provisions in section 67 of the Local Government Act 2000 to provide that the Local Government Ombudsman may consult the standards committee (as well as the Standards Board) about a case if he believes that the complaint he is considering relates partly to a matter which may be of concern to the committee.

**Clause 144 - Interim case tribunals**

351. This clause amends section 78 of the Local Government Act 2000 to provide that, where an interim case tribunal decides that a member should be suspended, the

effect of the tribunal's notice is to suspend or partially suspend the member, rather than, as currently, requiring that the authority should take action to put the notice into effect. In addition, new provision is made for an appeal to the High Court against a decision by an interim case tribunal only to be possible where the permission of the High Court has been given.

**Clause 145 - Case tribunals: England**

352. This clause inserts sections 78A and 78B into the Local Government Act 2000 Act in respect of case tribunals in England. This provides a new power for the Secretary of State to make regulations concerning the sanctions which a case tribunal can impose. In addition, new provision is made for an appeal to the High Court against a decision by a case tribunal only to be possible where the permission of the High Court has been given.

**Clause 146 - Case tribunals: Wales**

353. This clause amends section 79 of the Local Government Act 2000 to make provision in respect of case tribunals in Wales, including defining what is meant by the term 'Welsh case tribunal' and providing that provisions with respect to decisions made by case tribunals should apply in respect of Welsh case tribunals.

**Clause 147 - Exemption from Data Protection Act 1998**

354. This clause provides that under section 31(1) of the Data Protection Act 1998 personal data processed by a monitoring officer, an ethical standards officer or the Public Services Ombudsman for Wales for the purpose of discharging any function under Part 3 of the Local Government Act 2000 are exempt from the information provisions of the Act to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

**Clause 148 - Supplementary and consequential provision**

355. This clause makes supplementary and consequential provision, including allowing for the disclosure of information obtained by the Audit Commission or an auditor for the purposes of the functions of a monitoring officer.

**CHAPTER 2 - EMPLOYEES**

**Clause 149 - Politically restricted posts: grant and supervision of exemptions**

356. The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he holds a politically restricted post. This clause amends the 1989 Act so that the granting and supervision of exemptions from the political restriction will be the responsibility of the standards committee of each local authority in England, rather than that of the Independent Adjudicator.

**Clause 150 - Political assistants' pay**

357. This clause provides for the Secretary of State to make an order in relation to England which will specify the maximum pay of political assistants by reference to a

point on a relevant pay scale. Welsh Ministers may make such an order in relation to Wales.

## **PART 10 - THE VALUATION TRIBUNAL FOR ENGLAND**

### **Introduction**

358. Valuation Tribunals (VTs) are independent bodies established under Schedule 11 to the Local Government Finance Act 1988 (the 1988 Act), although they have existed in one form or another since 1948. In particular, they hear appeals in relation to business rating and council tax valuations and liability. There are 56 Tribunals in England, administratively served by the Valuation Tribunal Service (VTS) that was established under the Local Government Act 2003 (the 2003 Act).

359. VTs in England are organised broadly on a county or metropolitan area basis. Members of each VT are appointed jointly by local authorities and the relevant VT President. Chairmen and VT Presidents are elected by the serving membership of the relevant VT.

360. Part 10 of this Bill makes provision to replace the 56 VTs in England with a single Valuation Tribunal for England (VTE). It creates the new positions of VTE President and Vice-Presidents, which may be remunerated, and provides that appointments to the VTE be made by the Lord Chancellor on the advice of the Judicial Appointments Commission.

### **Clause 151 - Establishment of the Tribunal**

361. Clause 151 establishes the VTE (by giving effect to Schedule 12 to the Bill), abolishes the 56 VTs created under the 1988 Act and provides for the transfer of jurisdiction.

### **Clause 152 - Consequential and transitional provision etc**

362. Clause 152 makes consequential amendments relating to the establishment of the VTE (by means of Schedule 13 to the Bill). It also enables the Secretary of State to make regulations which supplement or give full effect to the establishment of the VTE, including (in particular) the power to make arrangements for appointing VTE members until the Lord Chancellor, on advice from the Judicial Appointments Commission, takes over the role of making those appointments.

## **PART 11 – PATIENT AND PUBLIC INVOLVEMENT IN HEALTH AND SOCIAL CARE**

### **Introduction**

363. Section 237 of the National Health Service Act 2006 (“the 2006 Act”) requires the Secretary of State to establish Patients' Forums for NHS trusts, Primary

Care Trusts and NHS foundation trusts. The principal role of Patients' Forums is to monitor and review the provision of health services on behalf of patients.

364. Section 243 of the 2006 Act provides for the Commission for Patient and Public Involvement in Health ("CPPIH"). The principal role of CPPIH is to advise the Secretary of State on arrangements for public involvement in, and consultation on, matters relating to the health service. CPPIH also represents, and manages the performance of Patients' Forums.

365. Part 11 of the Bill makes provision for the abolition of CPPIH and Patients' Forums. In their place, it imposes a duty on local authorities to make contractual arrangements for the involvement of people in the commissioning, provision and scrutiny of health services and social services. The means put in place under the contracts for involving people in this way are referred to as "local involvement networks".

366. Section 242 of the 2006 Act provides for public involvement and consultation on the planning of the provision of health services, proposals for change in the way that those services are provided and decisions to be made affecting the operation of those services. Part 11 of the Bill amends section 242 as it applies to certain English health-service bodies. Section 242 also applies to NHS trusts all or most of whose hospitals, establishments and facilities are in Wales: the Bill does not alter the way in which section 242 applies to those trusts.

367. Part 11 also imposes a new duty on each Primary Care Trust to report on consultation arrangements and the influence that the results of consultation have on commissioning decisions.

368. Although the 2006 Act does not come into force until 1st March 2007, as it is a consolidation of the existing law, its provisions have the same effect as the provisions which it replaces.

**Clause 153 - Health services and social services: local involvement networks**

369. Clause 153 requires a local authority (as defined in clause 159) to make contractual arrangements for the purpose of ensuring that there are means by which the activities specified in subsection (2) can be carried out.

370. Those activities are:

- promoting and supporting the involvement of people in the commissioning, provision and scrutiny of local care services as defined in subsection (5);
- obtaining the views of people about their needs for, and experiences of, local care services and making these views known to people responsible for commissioning, providing, managing or scrutinising those services;

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

- making reports and recommendations about how local care services could be improved, to people responsible for commissioning, providing, managing or scrutinising those services;

371. Subsection (3) provides that the Secretary of State may by regulations add to, omit or vary the activities specified in subsection (2).

**Clause 154 - Arrangements under section 153(1)**

372. Clause 154(3) requires arrangements made under clause 153(1) to be made with a person who is not a local authority.

373. Clause 154(4) provides that a local involvement network must not be one of the bodies there specified. One result of this is that a person who contracts with a local authority under clause 153(1) will not be a local involvement network but will be responsible for ensuring that one or more local involvement networks are put in place. Clause 154(2) refers to the fact that a local involvement network could be a body (whether a body that takes on being a local involvement network in addition to its existing activities or a body set up specially to act as a local involvement network) or could be some other means of carrying on activities specified in clause 153(2).

374. Clause 154(5) enables arrangements to include the making of payments by the local authority.

375. Clause 154(6) provides that arrangements must include the required provision about annual reports (see clause 158).

**Clause 155 - Duties of services-providers to respond to local involvement networks**

376. Clause 155 provides that the Secretary of State may, by regulations, impose a duty on a services-provider to:

- respond to requests for information made by local involvement networks;
- deal with reports or recommendations made by local involvement networks.

377. Subsection (4) provides that the Secretary of State must consult such persons as he considers appropriate before making regulations under this section.

378. In clauses 155 and 156 “services-provider” includes: certain NHS bodies; and local authorities as defined in clause 159.

**Clause 156 - Services-providers’ duties to allow entry by local involvement networks**

379. Clause 156 provides that the Secretary of State may, by regulations, impose a duty on services-providers to allow authorised representatives of local involvement networks to enter and view, and observe the carrying on of activities on, premises

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

controlled by services-providers. Such visits will enable local involvement networks to carry on, in particular, their activities in connection with the scrutiny of local care services and in connection with the making of recommendations about improving local care services.

380. Subsections (2) and (3) provide that the regulations may include conditions, restrictions and limitations.

381. Subsection (4) provides that the Secretary of State must consult such persons as he considers appropriate before making regulations under this section.

382. In clauses 155 and 156 “services-provider” includes: certain NHS bodies; and local authorities as defined in clause 159.

**Clause 157 - Local involvement networks: referrals of social care matters**

383. Clause 157 provides that where a local involvement network refers a matter relating to social care services to an overview and scrutiny committee, that committee must acknowledge receipt of the referral and keep the referrer informed of the committee’s actions in relation to the matter.

384. Subsections (3) and (4) require the committee to decide whether its powers are exercisable in relation to the matter and, if they are, whether or not they are to be exercised.

385. Subsection (5) provides that in exercising its powers in relation to the matter, the committee must take into account relevant information provided to it by a local involvement network.

386. Subsection (6) provides that the Secretary of State may by regulations make provision as to the time by which an overview and scrutiny committee must acknowledge receipt of a referral made by a local involvement network.

387. “Overview and scrutiny committee” is defined in subsection (8) since not all local authorities have overview and scrutiny committees appointed under section 21 of the Local Government Act 2000. In the case of the Council of the Isles of Scilly, it is required to appoint a committee under that section by virtue of the Isles of Scilly (Functions) (Review and Scrutiny of Health Services) Order 2004 (Statutory Instrument 2004 No. 1412) made under section 265 of the Local Government Act 1972.

**Clause 158 - Local involvement networks: annual reports**

388. Clause 158 sets out the required provision about annual reports referred to in clause 154(6).

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

389. Subsection (2) requires that the arrangements entered into by a local authority must make provision, for each local involvement network, for an annual report in relation to the activities of the network.

390. Subsection (3) provides that the report must address, in particular, such matters as the Secretary of State may direct and must include details of amounts spent in relation to the network's activities.

391. Subsection (5) provides that a copy of the report must be sent to:

- the local authority;
- each Primary Care Trust and Strategic Health Authority in the area concerned;
- any relevant overview and scrutiny committee of the local authority;
- the Secretary of State; and
- any other person the Secretary of State directs.

### **Abolition of Patients' Forums etc**

#### **Clause 160 - Abolition of functions of Patients' Forums**

392. Clause 160 abolishes specified functions of Patients' Forums and makes provision for final reports and accounts.

#### **Clause 161 - Abolition of Patients' Forums**

393. Clause 161 abolishes Patients' Forums and makes provision for the transfer of property, rights and liabilities of each forum to the Secretary of State for Health.

#### **Clause 162 - Abolition of Commission for Patient and Public Involvement in Health**

394. Clause 162 abolishes the Commission for Patient and Public Involvement in Health and makes provision for the transfer of property, rights and liabilities of the Commission to the Secretary of State for Health. Subsection (5) states that the Secretary of State may fix the Commission's final reporting period.

### **Consultation about health services**

#### **Clause 163 - Duty to consult users of health services**

395. This clause amends section 242 of the National Health Service Act 2006 ("the 2006 Act").

396. Section 242 applies to Strategic Health Authorities, Primary Care Trusts, NHS trusts and NHS Foundation Trusts. However, the amendments do not change how section 242 applies to NHS trusts all or most of whose hospitals, establishments

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

and facilities are located in Wales. The amendments do alter how section 242 applies to the rest of the bodies to which the section applies, and the bodies to which the amendments do apply are referred to as “relevant English bodies”. The amendments replace the existing duty imposed by section 242 on relevant English bodies with a new duty to make arrangements to consult with the users of health services.

397. The new section 242(1B) provides that relevant English bodies must consult on the planning of the provision of services, the development and consideration of significant proposals for change in the way services are provided and significant decisions affecting the operation of services.

398. New section 242(1C) to (1E) establish when proposals or decisions are “significant” for the purposes of new section 242(1B)(b) and (c).

399. New section 242(1G) provides that a relevant English body must have regard to any guidance issued by the Secretary of State as to the discharge of its new duty under section 242(1B).

#### **Clause 164 - Primary Care Trusts: reports on consultation**

400. This clause provides that each Primary Care Trust must, at such times as the Secretary of State may direct, prepare a report on the consultation it has (or proposes) to carry out and on the influence the results of consultation have on its commissioning decisions. Subsection (3) provides that the Secretary of State may give directions in this respect.

## **PART 12 - POWERS OF THE NATIONAL ASSEMBLY FOR WALES**

### **Introduction**

401. Part 12, together with Schedule 14, of the Bill makes amendments to Part 1 of Schedule 5 to the Government of Wales Act 2006 (the 2006 Act) so as to confer enhanced legislative competence on the Assembly in specific fields. Section 93 of the 2006 Act enables the Assembly to make laws known as Assembly Measures. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is within the Assembly's competence if it relates to (or is incidental or consequential on provision that relates to) one or more of the matters specified in the fields listed in Part 1 of Schedule 5 to the 2006 Act. Sections 93 and 94 of the 2006 Act are due to come into force mid 2007. Part 1 of Schedule 5 to the 2006 Act lists twenty fields in which the Assembly currently exercises functions and each field will be divided into matters. Field 12 provides for matters in the field of local government. An Assembly Measure may include any provision that could be made by Act of Parliament, subject to specific restrictions set out in Part 2 of Schedule 5 to the 2006 Act.

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

### **Clause 165 - Powers of National Assembly for Wales**

402. Clause 165 gives effect to Schedule 14 to the Bill.

## **PART 13 - MISCELLANEOUS**

### **Exercise of functions by members of local authorities in England**

#### **Clause 166 - Exercise of functions by members of local authorities in England**

403. This clause provides that an authority may make arrangements for individual members to exercise functions of the authority in relation to the electoral division or ward for which the member is elected. The clause applies to principal authorities. The Secretary of State may by order exclude functions from such arrangements, or place conditions on how such a function is exercised. Where the function to be included in the arrangements is the responsibility of the executive of the authority, it is for the senior executive member (i.e. leader) to make the arrangements. In all other cases, it is for the authority itself.

#### **Clause 167 - Exercise of functions under section 166: records**

404. The purpose of this clause is to ensure transparency and accountability by allowing records of decisions or actions taken as a result of a Community Call for Action (see clause 92 above) to be made available to the public.

### **Accounting**

#### **Clause 168 - Amendments relating to capital finance and accounting practices**

405. The “prudential” capital finance system, in Part 1 of the Local Government Act 2003, is the framework within which authorities finance their capital expenditure.

406. Section 21 of the 2003 Act contains a power to make regulations on local authorities’ accounting practices. This has been used, for example, to issue regulations about providing for debt repayment. This clause amends section 21 to give the Secretary of State a power to issue guidance on accounting practices, which authorities would be required to have regard to. The power is likely to be first used in relation to the regulations on debt repayment.

### **Contracting Out**

#### **Clause 169 - Contracting out**

407. The Deregulation and Contracting Out Act 1994 gives the Secretary of State the power to make an order enabling bodies which are local authorities for the purposes of that Act to contract out the functions specified in the order. One such order was made in 1996 to permit the contracting out of investment functions – something which authorities often wish to contract out to private-sector specialists. The Bill will bring the definition of “local authority” for the purposes of the Deregulation and Contracting Out Act 1994 broadly in line with the definition of a

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

“local authority” used for the purposes of the “prudential” capital finance system, in Part 1 of the Local Government Act 2003. This will in particular enable a new order which applies to a wider class of bodies to be made on the contracting out of investment functions.

## **PART 14 - FINAL PROVISIONS**

408. Part 14 of the Bill makes general provision for orders, regulations and guidance under the Bill. It provides for regulations and orders to be made by statutory instrument and for the Parliamentary or Assembly procedure which is to apply in respect of these instruments. The Secretary of State is given power by order to amend, repeal or revoke enactments for the purposes of making supplementary or consequential provisions. This Part also provides for extent, commencement and the short title of the Bill.

---

### **Schedule 1 - Structural and boundary change: consequential amendments**

409. Schedule 1 makes amendments consequential upon Part 1 of the Bill.

### **Schedule 2 - Supplementary vote system: consequential amendments**

410. Schedule 2 amends the Local Government Act 2000 so as to extend the supplementary vote (SV) system used for election of elected mayors to the election of elected executives

411. In relation to the election of an elected executive, under the supplementary vote system, the elector has two votes – a first preference vote cast for the elector’s preferred “slate”, and a second vote cast for the elector’s second preference from among the remaining “slates”. Schedule 2 specifies the procedure for returning a directly elected executive under this system

### **Schedule 3 - New arrangements for executives: further amendments**

412. Schedule 3 makes consequential amendments to the Local Government Act 2000.

### **Schedule 4 - New arrangements for executives: transitional provision**

413. Schedule 4 makes transitional provision with respect to local authorities operating the previous style of leader and cabinet executive in England which requires them to operate instead a form of executive permitted under section 11 of the Local Government Act 2000. Any such local authority must operate the new style of leader and cabinet executive, leader and cabinet executive (England), if they do not change their governance arrangements in accordance with the requirement to do so.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

**Schedule 5 - Parishes: further amendments**

414. This makes further amendments to the Local Government Act 1972 and omits Part 2 of the Local Government and Rating Act 1997 and repeals Part 2 of the Local Government and Rating Act 1997.

**Schedule 6 - Byelaws: further amendments**

415. Schedule 6 repeals a number of provisions relating to certain matters which byelaws can address. Section 82(4) of the Public Health Acts Amendment Act 1907 provides that byelaws affecting the foreshore below high water require the consent of "the Board of Trade" (which is now given by the Secretary of State for Transport) before they can be confirmed. This requirement will be lifted. Section 231(1) of the Public Health Act 1936 will be amended to repeal the provisions which relate to byelaws regulating the location of bathing-machines and the costumes to be worn by bathers. It also provides for the repeal of section 56(2) and (3) of the Public Health (Control of Disease) Act 1984 which provide for byelaws to prevent the spread of infectious disease by the occupants or users of tents, vans, sheds and similar structures used for human habitation. This provision has never been used.

**Schedule 7 - Amendments consequential on removing parish councils etc from best value duties**

416. Schedule 7 provides for consequential amendments to enactments where parish and community councils were included by virtue of the fact they were best value authorities. These amendments ensure that parish and community councils are not removed from these provisions simply because they are no longer best value authorities.

417. This Schedule repeals sections 34 and 35 of the Local Government Act 2003 (power to make grants to parishes and to communities in Wales towards expenditure incurred in complying with best value duties).

**Schedule 8 - Best value: Minor and consequential amendments**

418. Schedule 8 provides for minor and consequential amendments to Part 1 of the Local Government Act 1999 and to other enactments arising from Part 7 of the Bill (best value).

419. In particular, sections 4-9 of the Local Government Act 1999 are amended to reflect the fact that they will only apply to Welsh best value authorities (see clause 107).

**Schedule 9 - Consequential amendments relating to the change of name of the Audit Commission**

420. Schedule 9 contains consequential amendments to a range of legislation to omit the reference to Wales from the Audit Commission's full name - "the Audit Commission for Local Authorities and the National Health Service in England and Wales".

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

**Schedule 10 - Benefits Fraud Inspectorate: transfer schemes**

421. Schedule 10 makes detailed provision about the terms and effect of transfer schemes transferring staff, property, rights and liabilities from the Benefit Fraud Inspectorate to the Audit Commission. In particular, it provides for employees to transfer on their existing terms of employment and makes provision about their continuity of employment.

**Schedule 11 – Schedule to be inserted in Audit Commission Act 1998 – “Interaction with other authorities”**

422. The new Schedule 2A to the Audit Commission Act 1998 inserted by this Schedule makes provision about the interaction of the Audit Commission with various persons and bodies, in particular “inspection authorities” and “public authorities”.

423. “Inspection authorities” are the criminal justice inspectorates, the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection (see paragraph 1 of Schedule 2A).

424. “Public authorities” are persons or bodies in the United Kingdom whose functions are of a public nature (excluding the Houses of Parliament).

***Inspection programmes and inspection frameworks***

425. Paragraph 4 requires the Audit Commission from time to time to prepare documents setting out what inspections it proposes to carry out and the way in which it proposes to carry out those inspections. It must consult the Secretary of State, the inspection authorities and other persons specified in an order made by the Secretary of State before preparing such documents. It must also send copies of the final version of those documents to those people. The requirement to consult and to send copies of documents can be waived.

***Inspections by other inspectors of organisations within the Commission’s remit***

426. Paragraph 5 provides the Audit Commission with a “gatekeeper” role in relation to inspections of specified organisations by inspection authorities and others. The specified organisations will be set out in secondary legislation. This paragraph will enable the Audit Commission to prevent inspections of such organisations by other inspectorates where, in the Audit Commission’s opinion, the inspection or manner of it would impose an unreasonable burden on the organisation in question. This paragraph provides the Secretary of State with residual powers, in certain situations, to allow an inspection to take place. The Secretary of State may also specify, in secondary legislation, circumstances in which the power to prevent inspection will not apply.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

***Co-operation***

427. Paragraph 6 requires the Audit Commission to co-operate with the inspection authorities, benefits inspectors and other public authorities specified by the Secretary of State where it is appropriate to do so for the efficient and effective discharge of its functions.

***Joint working***

428. Paragraph 7 enables the Audit Commission to act jointly with an inspection authority or a benefits inspector where it is appropriate to do so for the efficient and effective discharge of its functions

***Delegation***

429. There will be situations where the work of the Audit Commission and other inspection authorities and certain public authorities will clearly overlap. Paragraph 8 allows the Audit Commission to delegate functions to such authorities.

***Advice or assistance for other public authorities***

430. Paragraph 9 will confer a power on the Audit Commission to provide advice and assistance to other public bodies in England. The Audit Commission will be able to charge a fee for carrying out such work to the inspection authorities and, with the consent of the Secretary of State, to other public authorities. The Audit Commission may also provide advice and assistance to certain bodies outside England, namely the Auditors General for Wales and Scotland, Audit Scotland and the Comptroller and Auditor General for Northern Ireland.

***Inspections carried out under arrangements***

431. Paragraph 10 enables the Audit Commission to exercise functions, which it does not ordinarily have, where another inspection authority has sought to delegate those functions to the Audit Commission.

**Schedule 12 - The Valuation Tribunal for England**

***Introduction***

432. Paragraphs 1 and 3 of Schedule 12 to this Bill amend Schedule 11 to the 1988 Act by dividing that Schedule into four Parts as follows. Part 1 (paragraphs A1 to A20) establishes the VTE and makes provision in relation to that Tribunal. Part 2 (paragraphs 1 to 7A) concern VTs in Wales only. Parts 3 and 4 (paragraphs 8 to 12A and 13 to 18 respectively) apply in relation to both England and Wales.

***Establishment of the Tribunal***

433. Paragraph 2 of Schedule 12 establishes of the VTE and makes further provision in relation to the Tribunal through new paragraphs A1-A20 of Schedule 11 to the 1988.Act

***Establishment and Jurisdiction***

434. Paragraph A1 states that there shall be a VTE and paragraph A2 transfers the jurisdiction of the VTs in England to the VTE. This jurisdiction includes the current

jurisdiction of the VTs as well as their historic jurisdiction (for example in relation to the community charge).

435. Paragraph A3 enables the Secretary of State to make provision (by way of regulations) for matters to be referred to arbitration where all of the parties to the appeal agree in writing.

### ***Membership***

436. Paragraph A4 specifies four types of members of the VTE. These are the VTE President, one or more Vice-Presidents, a panel of chairmen and other members.

437. Vice-Presidents have the functions assigned to them by the VTE President (paragraph A5) and may exercise the VTE President's functions in certain specified circumstances (paragraph A6).

438. The Lord Chancellor makes appointments to the VTE and the Secretary of State determines the terms and conditions of their appointment (paragraph A7).

439. The Secretary of State also determines (after consultation with the VTE President and the VTS) how many Vice-Presidents, chairmen and other members the VTE is to have. The determination may be a specific number, a minimum, a maximum, or a minimum and a maximum (paragraph A8).

### ***Tenure of Office***

440. VTE members hold office in accordance with their terms and conditions (paragraph A9).

441. The Lord Chancellor is able to remove a VTE member from post if satisfied the member is unable, unwilling, or unfit to perform their functions as a member (paragraph A10). Any removal must comply with the procedural requirements in the Constitutional Reform Act 2005 (see, in particular, section 108(1) of that Act).

### ***Remuneration, allowances and pension***

442. Paragraphs A11, A12 and A13 enable the Secretary of State to determine any remuneration and pension payable to the VTE President or Vice-Presidents, and to determine what allowances (including travel and subsistence) are payable to VTE members.

443. The VTS must pay these sums (paragraph A14). The Secretary of State has power to pay grant to the VTS under paragraph 18(1) of Schedule 4 to the 2003 Act.

### ***Organisation and delegation***

444. The VTE President may make arrangements about the organisation of the VTE (paragraph A15).

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

445. Paragraph A16 enables the VTE President and Vice-Presidents to delegate functions, in writing, to other VTE members, but not any function of deciding an appeal.

***Dealing with appeals***

446. The VTE President must make arrangements (tribunal business arrangements) providing for the selection of VTE members to deal with appeals (paragraph A17). These arrangements must provide for at least one senior member of the VTE (that is, the VTE President, a VTE Vice-President or a chairman) to deal with an appeal.

447. Appeals may continue if a member becomes unable to act, but not if that member is the only member dealing with the appeal (paragraph A18).

***Regulations***

448. The Secretary of State may make regulations in relation to the procedure or any other matter relating to the VTE (paragraph A19). In particular, these regulations may include provision about disqualification, or they may provide for functions to be discharged on the VTE's behalf by VTS staff.

449. By inserting amendments into Schedule 5 of that Act paragraph A19(3) provides that regulations may not be made in relation to staff, accommodation and equipment. This is because these matters are functions of the VTS and are addressed by the 2003 Act.

450. Paragraphs 4-9 of Schedule 12 to this Bill make various amendments to the new Part 2 of Schedule 11 to the 1988 Act (Valuation Tribunals: Wales). In particular, provision is made to enable the creation of one or more VTs in Wales and to allow members, in Wales, to be entitled to such remuneration as the Secretary of State may determine.

451. Paragraphs 10-18 of Schedule 12 to this Bill make various amendments to the new Part 3 of Schedule 11 to the 1988 Act (Procedure, Orders, etc).

**Schedule 13 - Consequential amendments relating to the creation of the Valuation Tribunal for England**

452. Schedule 13 to the Bill sets out consequential amendments of other legislation relating to the establishments of the VTE:

453. In particular, amendments to the 2003 Act:

a) make it a function of the VTS to make the payments necessary for the matters set out in paragraphs A11 to A13 (see paragraph 11(2)(e) of Schedule 13 to the Bill); and

b) make provision for the VTE President to be a member of the VTS as long as he remains President (see paragraph 13 of Schedule 13 to the Bill).

*These notes refer to the Local Government and Public Involvement in Health Bill as introduced in the House of Commons on 12th December 2006 [Bill 16]*

454. Amendments to the Constitutional Reform Act 2005 include amendments to Schedule 14 of that Act. These make provision for appointments to the VTE to be made by the Lord Chancellor.

#### **Schedule 14 - Powers of National Assembly for Wales**

455. Paragraph 1 provides for amendments to Schedule 5 to the Government of Wales Act 2006 (c.32) (Assembly measures) that will introduce a number of matters into "*Field 12: local government*".

456. Paragraph 2 provides that an Assembly Measure may make provision for or in connection with the following matters:

457. Matter 12.1: The constitution of a new county borough or county in Wales; the abolition or alteration of an existing county borough or county in Wales; the establishment of a council for a new county borough or county in Wales and the abolition of existing county and county borough councils in Wales; and, the alteration of a police boundary in Wales, as a consequence of an alteration to a local government boundary in Wales but in the latter case only with the consent of the Secretary of State.

458. Matter 12.2: The making, coming into force and confirming of a byelaw.

459. Matter 12.3: The conduct of elected members, co-opted members and employees of the following authorities in Wales: county, county boroughs, community councils, fire and rescue authorities, and National Park authorities. The amendment will include provision giving the Assembly certain legislative competence concerning the making and handling of allegations that a member or co-opted member of a police authority in Wales has breached their authority's code of conduct, although an Assembly Measure containing such provision may require Secretary of State consent under Part 3 of Schedule 5 to the 2006 Act.

460. Matter 12.4: County council and county borough council strategies for promoting and improving the economic, social and environmental well-being of local authority areas in Wales or contributing to sustainable development in the United Kingdom.

461. Matter 12.5: The making of arrangements by specified authorities in Wales to secure improvement in the exercise of their functions, ie. provisions equivalent to the best value duties in Part 1 of the Local Government Act 1999; the making of arrangements by such authorities for the involvement in the exercise of their functions of persons who are likely to be affected by or interested in the exercise of those functions; the assessment and inspection of the performance of such authorities.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

The specified authorities include a county council in Wales or county borough council, a fire and rescue authority in Wales and a National Park authority for a National Park in Wales.

462. Paragraph 3 and 4 provides that an Assembly Measure can only alter the boundary of a police area in Wales with the consent of the Secretary of State.

### **Schedule 15 - Repeals**

463. This Schedule will be supplemented by orders made under the power of the Secretary of State under clause 173 (power to make further amendments and repeals).

### **FINANCIAL EFFECTS**

464. Implementation of the measures in the Bill will mean some costs for the public sector. The RIA found that the net cost will be approximately £33m in 2008/09 and zero costs thereafter.

465. The majority of the measures in the Bill will affect only the public sector; overall there should be no negative impact on small firms as a result of the measures in this Bill.

### **PUBLIC SECTOR MANPOWER IMPLICATIONS**

466. The vast majority of costs for the public sector will fall initially on local government, although these will be offset by savings in other areas. For more detail on the costs and benefits of the measures in the Bill see the RIA.

### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

467. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Ruth Kelly, the Secretary of State for Communities and Local Government, has made the following statement: “In my view the provisions of the Local Government and Public Involvement in Health Bill are compatible with the Convention rights”.

- Clause 28 might be said to raise issues under Article 1 of Protocol 1. A contractor might seek in the future to argue that Article 1 of the First Protocol is engaged as his right to payment for contractual performance will be unenforceable against a successor authority, if entered into without the appropriate consent, as a result of this provision. However, as the legislation is not retrospective, there can be no existing “property” on which the provisions of Article 1 of the First Protocol may

bite. The possibility of acquiring a possession in the future (a right to enforce a contract against a successor authority) is not protected.

- Clause 98 gives the Secretary of State the power to make regulations prescribing classes of byelaws which local authorities may enforce by issuing fixed penalty notices. This might be said to be in breach of article 6(1) because it gives local authorities a financial incentive to issue fixed penalty notices and so may lead to claims that local authorities' decisions on enforcement are not impartial. There could also be a claim that it breaches a person's right to access to the courts. However, where a fixed penalty notice is issued, a person can choose not to pay it and instead attend court and defend the charge against them, which is considered to be compatible with article 6(1). Clause 98 also gives local authorities the power to require a person's name and address where it is proposed to issue a fixed penalty notice. This could be said to breach the article 6(1) right to silence and article 8 right to respect for private life. However, a person's failure to give their name and address would be an interference with the administration of justice and so this provision is considered necessary and proportionate.
- Clause 131 makes provision to amend the Local Government Act 2000 to provide, following comments made by the court in a recent case (*Ken Livingstone v the Standards Board for England*), that the code of conduct for local authority members (made under that Act) may apply to the misconduct of members otherwise than in the performance of their functions as members. It is possible that this provision may engage Articles 8 and 10. For example, a member may receive a sanction (including suspension or disqualification from being a member) for statements made or actions undertaken outside the performance of his functions as a member. This clause is considered to be capable of being exercised compatibly with the rights set out in the Convention.
- Clause 156 is a regulation making power. It provides that the Secretary of State may, by regulations, impose on specified persons a duty to allow entry to and viewing of, and observation of the carrying-on of activities on, certain premises on which health or social care services are provided. This could amount to a potential interference with Article 8 of the Convention. However, the ability to enter and view premises, and to observe activities, is central to the role that local involvement networks will play and the regulations will establish not only the circumstances in which specified health service bodies, or local authorities in respect of social care, will be required to allow representatives of local involvement networks to enter and inspect premises under their control, but also the conditions to be met by those seeking access. The powers are therefore considered to be capable of being exercised compatibly with Convention rights as they are proportionate and prescribed by law. For these same reasons, the right of entry and inspection is considered to be compatible with the rights under Article 1 of the First Protocol.

*These notes refer to the Local Government and Public Involvement in Health Bill  
as introduced in the House of Commons on 12th December 2006 [Bill 16]*

## **COMMENCEMENT DATE**

468. Clause 175 makes provision about commencement. In general the provisions of the Bill will be brought into force by order made by the Secretary of State. Certain provisions of the Bill will come into force on the day on which the Act is passed; these are set out in subsection (1) of clause 175. Certain provisions will come into force at the end of two months beginning with the day on which the Act is passed; these are set out in subsection (2) of clause 175. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in subsection (3) of clause 175.

# LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL

## EXPLANATORY NOTES

*These notes refer to the Local Government and Public Involvement in  
Health Bill as introduced in the House of Commons  
on 12th December 2006 [Bill 16]*

---

*Ordered, by The House of Commons, to be  
Printed, 12th December 2006.*

---

© Parliamentary copyright House of Commons 2006  
*Applications for reproduction should be made in writing to the Copyright Unit,  
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ  
Fax 01603 723000*

LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by  
The Stationery Office Limited

£x.00