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The *Local Government and Public Involvement in Health Bill*

Bill 16 of 2006-07

The *Local Government and Public Involvement in Health Bill* was given its first reading in the House of Commons on 12 December 2006.

The Bill seeks to enact many of the provisions of the local government white paper – *Strong and prosperous communities* (Cm 6939). It introduces measures designed to: (1) empower communities, such as devolving power to create parishes (and other forms of community governance) to principal authorities, and introducing a community call for action; (2) make local government more effective and accountable through, for example, revised leadership and electoral arrangements, provision for restructuring in two-tier areas and a move to a more locally-based standards regime; (3) strengthen the community leadership role of councils; and (4) simplify the performance framework and reduce the burden of inspection on councils. The Bill also provides for a Valuation Tribunal for England and it contains a number of measures designed to enhance patient and public involvement in health and social care.

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Summary of main points

The *Local Government and Public Involvement in Health Bill* gives legislative effect to many of the proposals contained in the local government white paper, *Strong and prosperous communities* (Cm 6939), published in October 2006. The programme of reforms contained in the white paper owed much to the *local:vision* debate, initiated by ministers of the then Office of the Deputy Prime Minister in mid-2004 with the aim of developing a vision of the future role of local government in England.

Four major themes of the white paper give rise to measures in the Bill. Firstly, the Government aims to create more effective and accountable local government and, in this context, the provisions on council restructuring and new leadership arrangements are likely to be among the more controversial. The Bill provides for:

- The Secretary of State to invite or direct local authorities to make proposals for establishing unitary authorities in two-tier areas, and to implement such proposals;
- All but the smaller authorities to adopt one of three models of executive arrangements – directly-elected mayor, directly-elected executive or indirectly-elected leader. Leaders to hold executive powers and to serve for four-year terms;
- Councils to be enabled to adopt 'all-out elections' every four years; and to have single-member wards;
- Councils to be empowered to make byelaws without ministerial confirmation and to be able to enforce them through fixed-penalty notices;
- Revision of the ethical framework so that most decisions are taken by local standards committees and the Standards Board acts more as a strategic regulator.

A second theme is concerned with strengthening local strategic leadership and partnership working. The Bill:

- Places a duty on top-tier authorities to prepare a Local Area Agreement (LAA) in consultation with others;
- Requires the local authority and public sector partners to co-operate in agreeing targets within the LAA, and to have regard to those targets when carrying out their functions;
- Empowers overview and scrutiny committees to review and scrutinise the actions of local partners in regard to targets.

Thirdly, the Government wishes to empower citizens and communities. Measures include:

- Devolving the power to create parishes, and other forms of community governance, to district and unitary authorities; allowing parishes to be created in London;

- Introducing a “community call for action” procedure whereby councillors may involve overview and scrutiny committees in resolving issues of concern to their constituents;
- Revising the duty on best value authorities to require them to secure the participation of local people in service design and delivery.

A fourth theme relates to simplifying the performance framework and reducing the burden of inspection on councils. The Bill:

- Removes the requirements for authorities to produce best value performance plans and to carry out best value reviews;
- Allows for the introduction of more targeted risk-based inspection with the Audit Commission acting as ‘gatekeeper’ for all local authority inspection.

Additionally, the Bill provides for the merger of the inspection function of the Audit Commission and Benefit Fraud Inspectorate in relation to English local authorities. And it establishes a single Valuation Tribunal for England with a national president and a revised appointments system.

In the area of patient and public involvement in health, the Bill:

- Places new duties on local authorities to foster patient and public involvement, both in the NHS and in social services, by entering into contracts for the establishment of Local Involvement Networks (LINks);
- Abolishes parts of the existing system for patient involvement in the NHS – the Patient Forums and the Commission for Patient and Public Involvement;
- Clarifies the existing duty of NHS bodies to consult users over NHS changes by specifying that the relevant changes and decisions must be *significant* and by defining the meaning of *significant*;
- Creates a new duty for Primary Care Trusts to report on their consultations.

In terms of territorial extent, the Bill in general extends to England and Wales but most of it applies in relation to England only. The Bill gives the National Assembly for Wales framework powers to legislate for Wales on a range of local government matters.

CONTENTS

I Background

The first term of the Labour administration elected in 1997 saw two major local government Acts, those of 1999 and 2000, introducing the best value regime, powers of well-being and community leadership for local authorities, revised political management arrangements and a new ethical framework. The second term has been characterised as a "...poor imitation of the first", with critics suggesting that little was achieved other than the introduction of Comprehensive Performance Assessment and a series of *ad hoc* initiatives inspired by various government departments.[1] Others point to the tools that were introduced during this period – local strategic partnerships, local public service agreements and local area agreements – which were designed to facilitate partnership working and service improvement:

> Without them many community strategies would have remained rather high level statements of intent which were often dominated by local authority policies rather than being genuinely 'owned' by a broader range of local agencies...seen from this perspective, the LGMA [local government modernisation agenda] has many of the hallmarks of a classic evolutionary strategy which has been fine-tuned and adapted over time as circumstances have changed and the weaknesses of some of the initial proposals have become evident.[2]

A. Local:vision

During this second term the Local Government Minister, Nick Raynsford, announced that he was seeking to develop a vision of how local government would look in ten years time.[3] The ten year plan for local government was launched on 16 June 2004 with publication of a leaflet entitled *The future of local government*.[4] Mr Raynsford said this would provide a "...useful springboard for discussions about what local government could look like in 10 years' time, the challenges that need to be overcome and new ways of working to realise this vision."[5] The Office of the Deputy Prime Minister (ODPM) established a *local:vision* website and welcomed views, particularly from those involved in "local leadership and local service delivery". It also announced that the Department would host and participate in a range of meetings and seminars across England to debate the future of local government.

The debate began in earnest in July 2004 with publication of a pamphlet entitled *The future of local government: developing a 10-year vision*.[6] Each of the main sections – (1) vibrant local leadership, (2) citizen engagement and participation, (3) service delivery

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1 Steve Leach and Lawrence Pratchett "Local government: a second wave of modernisation?" in Michael Rush and Philip Giddings (Eds), *Palgrave review of British politics 2005*, Palgrave Macmillan, 2006, p181

2 James Downe and Steve Martin, "Joined up policy in practice? The coherence and impacts of the local government modernisation agenda", *Local Government Studies*, Vol 32, No 4, August 2006, p

3 *Local Government Chronicle*, 16 January 2004

4 http://www.communities.gov.uk/index.asp?id=1137798

5 ODPM, "We want your views on the future of local government – ODPM kicks off discussion of 10-year vision, *News release 2004/0137*, 16 June 2004, http://www.communities.gov.uk/index.asp?id=1002882&PressNoticeID=1570

6 http://www.communities.gov.uk/index.asp?id=1137798

and the performance framework, (4) a new settlement between central and local government - was accompanied by a vision statement. The intention was to publish a "...fully developed strategy for local government, possibly in the form of a White Paper, next year."

Leach and Pratchett, writing in *Parliamentary Affairs* in early 2005, thought that the vision document, whilst giving the appearance of coherence, was really a "...limited and vague collection of ideas" and that there were dangers in not proceeding from a green paper with tangible proposals since "...consultation may become a process of legitimisation in which governments can argue that stakeholders have been allowed to express their views and, therefore, cannot complain about the vision as it unfolds."[7]

Nevertheless, three key vision documents were published before the 2005 general election: *Vibrant local leadership* (January 2005), *Citizen engagement and public services: why neighbourhoods matter* (January 2005) and *Securing better outcomes: developing a new performance framework* (March 2005).[8] Taken together, these formed in effect a composite green paper, setting out the Government's thinking in a number of areas and containing ideas which, following consultation, were eventually included in the white paper. Aspects of these documents are discussed in the appropriate sections of this paper.

B. Neighbourhood empowerment and double devolution

Following the general election of May 2005, David Miliband was appointed to the Cabinet with the post of Minister for Communities and Local Government. The debate on the future of local government widened to take in issues such as local government restructuring and governance arrangements for 'city regions'. Much debate on the former subject was conducted almost literally 'on the road' with presentations by ministers and officials to senior local government personnel. However, *local:vision* survived both as a forum for debate on an evolving set of issues and as a repository for emerging policy and discussion documents (byelaws, standards of conduct, community ownership of assets). There were also a number of formal consultation exercises, among them local strategic partnerships and inspection reform.

At the forefront of policy discussion at this time was the issue of neighbourhood empowerment (the relevant section of the manifesto was entitled "Building from the neighbourhood up"). One key speech of David Miliband's, delivered to the New Local Government Network annual conference on 18 January 2006, was converted into a local:vision pamphlet.[9] It set out a range of models by which neighbourhoods might gain more power over the way services are delivered locally including neighbourhood managers, petitions, satisfaction surveys, delegated budgets, neighbourhood charters and stronger parish councils. He also referred in the speech to "double devolution, not just to the town hall but beyond to neighbourhoods and citizens." This concept was an

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7 Steve Leach and Lawrence Pratchett, "Local government: a new vision, rhetoric or reality?" *Parliamentary Affairs*, Vol 58, No 2, April 2005, p321

8 All can be found at: http://www.communities.gov.uk/index.asp?id=1137794

9 ODPM, *Empowerment and the deal for devolution: a discussion document*, February 2006, http://www.communities.gov.uk/index.asp?id=1163597

essential accompaniment to a restructuring policy since the latter implied fewer and more sizeable unitary authorities operating at a greater distance from individual citizens and communities.

The Local Government Association published its own vision documents throughout this period, pursuing an agenda in which the twin goals of greater devolution of powers to local authorities and a less burdensome and Whitehall-centred performance and inspection regime featured prominently. *Independence, opportunity trust – a manifesto for local communities*, published in September 2004, set out the LGA's vision for the next ten years.[10] *The next four years: the future is local*, published in September 2005, was an action plan for the 2005 Parliament.[11] Another significant document, *Closer to people and places: a new vision for local government*,[12] was published in May 2006. In the same month Sir Michael Lyons published his interim report on the role and functions of local government.

C. Lyons and "place-shaping"

The Government had established an independent inquiry into local government funding by Sir Michael Lyons in July 2004. The remit and timescale of the inquiry was extended in September 2005 so that consideration could be given to the functions of local government and its future role. In May 2006, Lyons published an interim report devoted to these matters entitled *National prosperity, local choice and civic engagement: a new partnership between central and local government for the 21st century*.[13] The accompanying press release summarised Sir Michael's thinking as follows:

> **In his report Sir Michael argues for a system of local government for the 21st century** that can manage increasing pressures on public expenditure, increase satisfaction and build more prosperous communities. Greater local choice, not more central control, is needed to achieve this.
>
> He also argues that local government should be given greater freedom to 'place-shape' where local government takes responsibility for the well-being of an area and the people who live there, promoting their interests and their future.
>
> **Sir Michael sets out a challenge for central government** to clear the space for effective 'place-shaping' by setting fewer and better-focused targets and reducing supervision of local government by central government. It should also clarify the roles of central and local government, based on a realistic assessment of who is best placed to do what, and allow greater local influence over public services.
>
> **In addition he challenges local government to further raise its game**, building on recent improvements, to tackle the challenges of promoting effective local choice and energetic 'place-shaping'. This requires stronger leadership, closer engagement with local residents, effective partnership working with other

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10 http://www.lga.gov.uk/publication.asp?lsection=0&id=SX9DCA-A7827580
11 http://www.lga.gov.uk/publication.asp?lsection=0&id=SX9DCA-A7832B56
12 http://www.lga.gov.uk/Publication.asp?lSection=0&id=-A783A761
13 See http://www.lyonsinquiry.org.uk

services and the business community, and a consistent commitment to efficiency and cost effectiveness.

D. The local government white paper

A new department, the Department for Communities and Local Government (DCLG), replaced the Office of the Deputy Prime Minister on 5 May 2005. The Prime Minister wrote to the new Secretary of State, Ruth Kelly, setting out the challenges ahead for the new department and calling for a "...radical, devolutionary White Paper and subsequent Bill, with more powers for local neighbourhoods and new models of accountability and leadership, including mayors."[14] The white paper, *Strong and prosperous communities* (Cm 6939), was published on 26 October 2006.[15] Volume 1 set out the main proposals while volume 2 was arranged thematically to show how the proposals were expected to impact on specific policy areas.

The first chapter of the main volume outlined the principal themes set out the main themes and the following summary borrows freely from the wording in that chapter. A key theme of the white paper is the idea of reshaping public services around the communities who use them. Different communities have different needs and this will only work if local public service providers (PSPs) have the freedom and ability to adapt and change what they are doing. This means central government stepping back and allowing more freedom for service providers at the local level. Thus, the Government proposes:

- To enable local authorities in two-tier areas to move to new unitary structures;
- Removal of the Secretary of State's powers on byelaws, all-out elections, single member wards and establishing parish councils; and devolution of most aspects of the standards regime to local authorities.

If PSPs are to respond to the needs of different citizens and communities, those citizens and communities must be empowered to voice their opinions and influence service providers. Thus:

- The Government wishes to strengthen the ability of local councillors to speak up for their communities and demand an answer when things go wrong (the Community Call for Action);
- Local authorities will be encouraged to deal with petitions systematically;
- Best value requirements will be revised to secure the participation of citizens and communities in delivery of local public services;
- A policy of encouraging more community involvement in owning and running local facilities will be pursued.

If local authorities are to play a bigger role in the life of their communities, there needs to be strong and visible council leadership. The Government proposes:

- Three types of council leader – a directly-elected mayor, a directly-elected executive and an indirectly-elected leader with a four year mandate;

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[14] *Letter from the Prime Minister to Ruth Kelly*, 9 May 2006, http://www.communities.gov.uk/index.asp?id=1165650

[15] Available at: http://www.communities.gov.uk/index.asp?id=1503999. Press notice "Strong and prosperous communities: Kelly unveils new vision of local government, DCLG News release 2006/0125, 26 October 2006, http://www.communities.gov.uk/index.asp?id=1002882&PressNoticeID=2271

- All executive power to be vested in the hands of the leader with a strong role for the council to scrutinise the leader's actions and approve the budget and major plans.

Local communities need stronger strategic leadership if they are to flourish. Local authorities already have a general power to promote well-being and are required to produce a sustainable community strategy (SCS) for their area. The SCS is to be at the heart of what local authorities do through the new performance framework. The Government will establish a single set of about 200 national outcome indicators covering everything from climate change to teenage pregnancy. All areas will report against these indicators so that citizens and communities will know how well their area is doing. Local authorities will prepare a Local Area Agreement in consultation with other stakeholders, setting around 35 priorities for improvement locally. Local partners will be placed under a duty to work towards the agreed targets. Finally, reform of the inspection regime is proposed with more proportionate and risk-based inspections. This will cut down on bureaucracy and allow more targeted support or intervention when things go wrong

Further information on the white paper, including issues such as efficiency, community cohesion and city regions, is contained in a Library note.[16]

E. The *Local Government and Public Involvement in Health Bill*

The Bill was introduced on 12 December 2006 and was accompanied by explanatory notes and a regulatory impact assessment.[17] Chapter 9 of the white paper had listed the legislative steps required to implement the proposed changes and, with very few exceptions, these measures were included in the Bill. The Bill also contained provisions relating to valuation tribunals and the Audit Commission, and in respect of patient and public involvement in health and social care.

This research paper follows the structure of the Bill for convenience, which means that there is some scattering of the themes of the white paper between the various parts. In very broad terms, the themes are:

- Community empowerment - chapter 2 of the white paper - covers parishes, the Community Call for Action (discussed under 'overview and scrutiny') and the best value duty to secure local participation (discussed under 'best value');
- Effective and accountable local government – chapter 3 of the white paper – covers unitary structures, electoral arrangements, executive arrangements, byelaws and ethical standards;
- Local government as strategic leader and place-shaper – chapter 5 of the white paper – covers local area agreements and overview and scrutiny

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16 *Local government white paper*, SN/PC/4184

17 DCLG, *Local Government and Public Involvement in Health Bill - Regulatory Impact Assessment*, December 2006, http://www.communities.gov.uk/index.asp?id=1505155

- A new performance framework – chapter 6 of the white paper – covers, primarily, best value and inspection.

In each section, the paper attempts to sketch out the background to the subject, where relevant the commitments contained in the white paper, a summary of what is in the Bill and reactions to the measures.

II Structure and boundaries

A. Background

The Conservative Government elected in 1970 rejected the broadly unitary structure recommended in the majority report of the Royal Commission on Local Government in England (chaired by Lord Redcliffe-Maud) and opted for a two-tier structure for the whole of England and Wales. Following the enactment of the *Local Government Act 1972*, the number of county councils was reduced from 58 to 47 (39 in England, 8 in Wales) and, within the counties, the many borough, urban and rural district councils were replaced by 333 district councils (296 in England, 37 in Wales). In the major conurbations, the Act created six metropolitan county councils – Greater Manchester, Merseyside, South Yorkshire, Tyne and Wear, West Midlands and West Yorkshire – and, within these, 36 metropolitan district councils.

A decade later, the system established by the 1972 Act was modified by the abolition of the six metropolitan county councils and the Greater London Council. The Conservatives' 1983 election manifesto declared these councils to be a "wasteful and unnecessary tier of government" and the policy was implemented by the *Local Government Act 1985*.

1. The local government review of the 1990s

Following the appointment of Michael Heseltine as Secretary of State for the Environment, a review of local government began. In a statement on March 21 1991 he said that this would be an opportunity to think afresh about the structure of local government, but that it would not involve the imposition of a new pattern of local authorities according to a 'national prescription'. Local people should have an important role in determining what structure best reflected their community loyalties.[18]

In a further statement on 23 April 1991 announcing publication of a consultation paper[19], Mr Heseltine put the case for single-tier or unitary authorities:

> First, unitary authorities are more clearly responsible for the delivery of services and more clearly accountable for the bill local people are expected to pay. Secondly, two tiers may lead to excessive bureaucracy and duplication of effort. Thirdly, the Government are committed to developing the concept of enabling authorities. Councils will increasingly be able to take advantage of competition

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[18] HC Deb 21 March 1991 c402

[19] Department of the Environment, *The structure of local government in England*, 1993, Dep 6993

> between those seeking to provide a service. It is, therefore, less important today to insist on councils of a particular size. Fourthly, the Government intend to increase the momentum of their existing policies to enable decision-making and responsibility to be more directly in the hands of the people. Fifthly, the present structures of local government do not win universal favour with local people who have their own ideas about what sort of structure would best reflect local loyalties and communities. [20]

The *Local Government Act 1992* created the Local Government Commission, which was to undertake the review, and set out the procedures to be followed. Its first chairman was (Sir) John Banham. As indicated above, the Government started the review with a marked preference for unitary councils although it was repeatedly stressed that a national blueprint for unitary authorities would not be imposed. During the course of the review the Commission undertook some sizeable public consultation exercises, the results of which indicated that public opinion favoured retention of the *status quo* in many areas. The Commission declined to recommend unitary structures for large parts of rural England and the then Secretary of State, John Gummer, announced on 2 March 1995 that the Government would, subject to certain provisos, accept the retention of a two-tier structure in 17 counties where the Commission had recommended no change.

The result of the review was that, between 1995 and 1998, 46 unitary authorities were created covering roughly one quarter of the population of non-metropolitan England. The county and district councils in the Isle of Wight were replaced by a single unitary authority. The former counties of Avon, Cleveland, Humberside and Berkshire were replaced by unitaries. Hereford and Worcester was replaced by a new county council for Worcestershire (with district councils) and a unitary Herefordshire.

A concise account of the local government review can be found in a Library research paper on the *Regional Assemblies (Preparations) Bill*.[21] Local government reorganisation in Scotland and Wales at this time was implemented by ministers following consultation exercises. Both Scotland and Wales moved to a wholly unitary pattern of local government in 1996.

2. Regional elected assemblies

The idea of simplifying and restructuring local government re-emerged in the context of the Labour Government's policy of establishing elected regional assemblies. The Government's policy of devolving power to the English regions set out in the 2002 white paper, *Your region, your choice,* envisaged a move towards unitary arrangements wherever an elected regional assembly was established.[22] The *Regional Assemblies (Preparations) Act 2003* made provision for the conduct of unitary reviews within a region and these had to be completed before a referendum could be called. Reviews were to be carried out by the Boundary Committee for England (BCE) which was established in April 2002 as a statutory committee of the Electoral Commission. The Committee's task was

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[20] HC Deb 23 April 1991 c901

[21] *The Regional Assemblies (Preparations) Bill*, HCL Research Paper 02/62, 21 November 2002, pp50-4, http://hcl1.hclibrary.parliament.uk/wdw/rp/RPlist.asp?rpyear=2002

[22] *Your region, your choice*, Cm 5511, 2002, chapter 9, http://www.communities.gov.uk/index.asp?id=1139487

not to consider whether a move to unitary arrangements was desirable or not, but simply to recommend the best form of unitary structure for a region. The Secretary of State could modify the recommendations if he wished to, and implement them by order.

The BCE conducted reviews and published recommendations for new unitary structures in the North East, North West and Yorkshire and Humber regions. However, the decisive rejection of a regional assembly for the North East in the referendum held in November 2004 led to the announcement by the Deputy Prime Minister that the other planned referendums would not go ahead, and that there would be no need for any local government reorganisation in the regions under review[23].

3. The present restructuring debate

In November 2005, the *Local Government Chronicle* reported that David Miliband, Minister for Communities and Local Government, was "keen to listen" to those arguing the unitary case.[24] In early December, Mr Miliband wrote an article on reorganisation in the *LGC* and this was subsequently reproduced on the ODPM website.[25] He acknowledged that the Government was "actively considering the case for reorganisation in the 34 two tier English counties":

> The charge put to me is that too many districts are too small to be strategic and yet too big to be local. The two-tier system stands accused of being confusing, inefficient and costly.
>
> Confusing because of the way responsibilities are divided. Counties deal with social services; districts deal with housing. Counties dispose of waste; districts collect it. Districts deal with town planning; counties deal with transport planning. Keeping the grass verge cut can be a matter for the parish council, keeping the pavement clean, the district and keeping the road clean, the county council. People may not much care about these distinctions - but they're paying for multiple back offices. Seventy district councils have budgets of less than £10m. That partly explains the high proportion of cost spent on central administration - about 30% (£1bn out of a £3bn spend) compared to 3-4% in counties.

He also raised the issues of strategic leadership and representation (i.e. numbers of councillors). There would be upfront costs to reorganisation and it must therefore be justified by efficiency gains. Any changes must be carried out in partnership with local government, and there need not be one model for the whole of England. He was keen to hear people's views on the subject.

Early in 2006, senior officials and ministers from the then Office of the Deputy Prime Minister (ODPM) conducted a number of roadshows in which they "presented their thoughts on structure" to local authority chief executives. Subsequently, a series of regional roundtables, and other events hosted by ministers, were organised in which aspects of governance and structure were discussed with council leaders in shire

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23 HC Deb 8 November 2004 c587-

24 "Goodbye to two tiers?", *Local Government Chronicle,* 10 November 2005, p1 (and leader p11)

25 David Miliband, Article on reorganisation, *Local Government Chronicle*, 1 December 2005, available at: http://www.communities.gov.uk/index.asp?id=1161912

areas.[26] In May 2006, the ODPM was re-fashioned into the Department for Communities and Local Government (DCLG) with Ruth Kelly as its new Secretary of State. In a speech to the Local Government Association on 5 July 2006 she indicated a rather different approach to the issue of restructuring. She said that she would not stand in the way of councils wishing to restructure provided that they met the department's criteria:

> But let me also assure you that I am far more interested in outcomes for citizens than lines on maps. So we will have a short window of opportunity for that small number of councils who are keen for change and who meet our criteria to seek unitary status. But I have no desire whatsoever to create a great distraction of activity on the restructuring issue...In the clear majority of county areas two tiers will remain and in all of these areas we will need better joint working...[27]

B. The white paper and *Invitations to councils* document

The white paper's regulatory impact assessment summarised the benefits of a unitary system as:

- Removing public confusion over responsibilities;
- Consolidating local leadership in a single authority;
- Sweeping away the duplication, inefficiency and co-ordination failures that can result from split responsibilities; and
- Improving partnership working by reducing the number of local authorities that other public sector partners work with.[28]

However, the Government accepted that good councils in many two-tier areas were working together effectively to improve services and it believed there was potential to go further. The paper said:

> Local authorities in shire areas will be invited to:
>
> - Make proposals for unitary local government; or
> - Come forward as pathfinders to develop radically improved methods of two-tier working (paras 3.55, 3.63).

An accompanying document, *Invitations to councils in England*[29], provided further information concerning bids for both unitary status and two-tier pathfinders. The following points relate solely to bids for unitary status.

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[26] See ODPM, "Full engagement on best governance arrangements", *News Release 2006/0013*, 2 February 2006, http://www.communities.gov.uk/index.asp?id=1002882&PressNoticeID=2068

[27] Ruth Kelly, *Speech to LGA conference*, 5 July 2006, http://www.communities.gov.uk/index.asp?id=1501327

[28] DCLG, *Full regulatory impact assessment*, October 2006, p27, http://www.communities.gov.uk/index.asp?id=1504070

[29] DCLG, *Invitations to councils in England - to make proposals for future unitary structures, to pioneer as pathfinders new two-tier models*, October 2006, http://www.communities.gov.uk/index.asp?id=1504067

The principal criteria are that any proposed changes to local government structure must be:

- Affordable i.e. that the change itself both represents value for money and can be met from the councils' existing resource envelope;
- Supported by a broad cross-section of partners and stakeholders (the document adds that: "while no single council or body, or group of councils or bodies, will have a veto, it will be necessary for any proposal to have support from a range of key partners, stakeholders and service users/citizens").

Proposals must be made in the form of a business case setting out a full description of the proposed new structure, the electoral arrangements and detailed relevant statistics. Where the proposed unitary authority involves part of a county area, the applicants must set out the structural arrangements which are envisaged for the remainder of the county. There must be a detailed financial analysis of the costs involved. In terms of scale, the Government thought it unlikely that it would be able to implement more than eight proposals but did not rule out implementing more if they offered good value for money and were affordable. An indicative timetable was set out in tabular form:

Jan 2007	Deadline for councils to submit proposals for unitary structures.
March 2007	Announcement of the Government's preliminary views as to those proposals that have met specified criteria. Consultation with local stakeholders that are potentially affected by proposals.
June 2007	Stakeholder consultation closes.
Early July 2007	Final announcement of those areas that will be restructuring into unitaries.
May 2008	Elections to new unitaries.
By April 2009	New unitaries up and running.

C. The Bill

The first set of clauses relate to restructuring procedure. **Clauses 2 and 3** provide for the Secretary of State to either *invite* or *direct* principal authorities in two-tier areas to make proposals for single tier government. She may specify the type of proposal or allow the council to choose, but may only issue a direction where it is believed to be in the interests of effective and convenient local government. The various permutations of proposal are defined as:

- Type A covering the whole of an existing county area;
- Type B for an area covering one or more districts in a county area;
- Type C proposing the combination of a county or one or more districts, with an adjoining county or counties, or district(s);
- Type D combining type B and type C proposals.

Clause 4 sets out consultation procedures to be followed by the Secretary of State. Unless a proposal is submitted by all authorities within an area, she *must* consult any authorities affected and any person believed to have an interest. Where a proposal *is* submitted by all authorities, she *may* consult any person believed to have an interest. And she may request the advice of the Boundary Committee for England.

Clauses 5 and 6 concern the role of the Boundary Committee. If requested to provide advice, it may also (1) recommend implementation of a proposal, (2) recommend against implementation (3) make an alternative proposal. Alternative proposals do not have to follow existing county or district boundaries, but the Committee must take steps to publicise a draft proposal and take representations by interested persons into account. **Clause 7** enables the Secretary of State to implement proposals (or alternative proposals) by order, with or without modification, provided the requisite consultation has taken place. Such an order would be subject to affirmative resolution procedure.

Clauses 8 to 10 relate to boundary reviews, allowing the Boundary Committee to conduct boundary reviews of local government areas either on its own initiative or following a request from the Secretary of State or from a local authority. In carrying out such reviews, the Committee may *not* make recommendations which would result in structural changes involving two-tier and single-tier areas, for example altering the boundary of a single tier area with the result that a two-tier area is abolished. This is therefore a separate exercise from restructuring and relates to the need to update boundaries which, in many areas, have not been reviewed for more than 20 years.

Clauses 11 to 19 are concerned with implementation of changes arising from the above procedures. For a detailed explanation, readers are referred to the Bill's explanatory notes. Many of the matters referred to in **clauses 11 and 12** reproduce provisions in section 17 of the *Local Government Act 1992*. Transitional arrangements, and the establishment of shadow authorities with decision-making powers, may well be required because of the relatively tight timescale for the exercise. Clause 12(5) places a duty on the Electoral Commission to consider, as soon as practicable after the making of an order, whether electoral arrangements should be reviewed.

Clause 14 gives power to make regulations for supplementing orders. Examples are given in **clause 15** and include transferring property rights or functions or the jurisdictional areas of Lords Lieutenant and JPs. These clauses mirror to some extent section 19 of the *Local Government Act 1992*. Clause 15(2) allows for the modification, exclusion or application of any enactment, including Acts, instruments and any charter whenever granted (also provided for in the 1992 Act).

Clause 16 enables local authorities to make agreements over such matters as property, income, rights, liabilities etc, and, again, this is based on a section (20) of the 1992 Act which is earmarked for repeal. Where agreement cannot be reached, there is provision for arbitration. And, under **clause 17**, the Secretary of State may establish residuary bodies to oversee the orderly transfer of property, rights, liabilities etc to successor authorities (akin to section 22 of the 1992 Act). **Clause 18** enables the Secretary of State to establish staff commissions to consider and keep under review staffing arrangements, transfers of staff and related problems. This was originally the subject of section 23 (now repealed) of the *Local Government Act 1992*. **Clause 19** allows for a county council to become a billing authority where the functions of a district(s) are transferred to it.

Clause 21 is designed to ensure that certain procedures connected with restructuring, namely, invitations and guidance issued by the Secretary of State, proposals made in response to invitations, and consultation on proposals, are valid regardless of whether they were carried out before of after commencement of the Bill.

Clauses 24 to 30 relate to the control of disposals by authorities which are to be dissolved. **Clause 24** allows the Secretary of State to direct that an authority must obtain consent before:

- Disposing of any land if the consideration exceeds £100,000;
- Entering into a capital contract where the authority would be required to pay more than £1m or where the amount of consideration can be varied;
- Entering into any non-capital contract where the consideration exceeds £100,000 and the contract extends (or may be extended) beyond a specified date;
- Includes an amount of reserves in the calculation of its budget requirement for council tax purposes.

These provisions mirror similar provisions in section 51 of the *Local Government (Wales) Act 1994* and are designed to prevent an authority from binding a successor authority to long-term and/or sizeable contracts, or disposing of land or reserves. **Clause 27** sets a date of 31 December 2006, after which any disposals will count towards the £100,000 limit and contracts entered into must comply with the restrictions. Under **clause 28**, contracts and disposals made without consent in contravention of clause 24 will be void.

D. Issues and reactions

Arguments for and against unitary restructuring have been rehearsed in the local government press and in other sources such as Steve Leach (ed) *Local government reorganisation: the review and its aftermath* (Cass, 1998). The white paper made the point that the plethora of council leaders and executive members in two-tier areas makes it difficult to achieve strong leadership and clear accountability. It also suggested that the 'artificial' boundaries in many districts often do not reflect actual communities. Defenders of the *status quo* say that the districts are viewed by the public as less remote and more accountable than the counties. The creation of a unitary authority with robust neighbourhood representation is said to be nothing more than the re-creation of two-tier working arrangements and, moreover, that neighbourhood bodies may well be less capable of effective and efficient service delivery. Cost and upheaval are also cited as major factors.

Other issues include:-

1. The role of the Electoral Commission

Under the *Local Government Act 1992*, the Secretary of State must first request the Electoral Commission to make recommendations as to whether a structural change to a local government area(s) should be made. But responsibility for reviewing structure and boundaries rests with the Commission and its statutory committee, the Boundary Committee for England (BCE). Under both the 1992 Act and the *Regional Assemblies (Preparations) Act 2003*, the Secretary of State may implement changes only after seeking the advice of the Commission/Committee. Lord Falconer, Secretary of State for Constitutional Affairs, made it clear in his evidence to the Committee on Standards in Public Life concerning the Electoral Commission that, whilst the Commission had an important role to play in local *electoral* arrangements, the Government did not envisage it having a role to play in significant local government reorganisation:

> The experience of the last reorganisation of local government in the 1990s show clearly the weaknesses and drawbacks of involving an independent Commission in making proposals about local government structural change. This is not to say that reorganisation cannot be undertaken through such an approach – indeed as shown by the Regional Assemblies Act, it is sometimes appropriate. However the Government is clear that such an approach is neither the only nor necessarily the best way in which to achieve local government restructuring.[30]

In terms of *restructuring*, the Bill places the Secretary of State at centre stage, inviting or directing applications from local authorities, with the BCE in an advisory role. On the other hand, the Bill seeks to uncouple these structural changes from 'normal' *boundary changes* designed to ensure that boundaries reflect the communities within them. In this sense, the Bill seeks a return to the situation which pertained before the 1992 Act. Boundaries are to be kept under regular review by the BCE (just as they were originally by the Local Government Boundary Commission for England) and the Committee may respond to requests for review by local authorities and by the Secretary of State. Changes recommended to the Secretary of State may be quite major, for example they might result in the abolition of a whole district within a two-tier area, but they may not cross the line into changing two-tier areas into single tier and vice versa.

2. Cost

The white paper's regulatory impact assessment estimates potential initial transition costs of £12m per county area moving to a single unitary authority spread over three years, and initial savings of approximately £5m p.a. rising to at least £10m p.a. These figures relate only to the costs of being in business (i.e. irrespective of the level of services required or delivered). The RIA does not attempt to predict the full range of costs and savings which it says can only be provided by the authorities themselves and would depend in part on the reconfiguration of service delivery.

Disputes over the costs and benefits of restructuring have arisen following an independent report by the University of Birmingham's Institute of Local Government (INLOGOV) into the case for unitary status for four cities - Exeter, Norwich, Oxford and Ipswich. The review concluded that:

> The time seems right indeed to recognise the anomalous position of these most historic and dynamic cities by returning to them the all-purpose city governance status they have previously enjoyed.[31]

The County Councils Network commissioned a report on behalf of the four counties involved – Devon, Norfolk, Oxfordshire and Suffolk – from Michael Chisholm, a former member of the Local Government Commission and now with the Department of Geography, University of Cambridge. Professor Chisholm argued that there were serious

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30 Committee on Standards in Public Life, Eleventh Inquiry: Role of the Electoral Commission, evidence by Lord Falconer of Thoroton, 21 September 2006
http://www.public-standards.gov.uk/11thinquiry/transcripts_evidence.aspx

31 University of Birmingham, Institute of Local Government Studies, *An independent review of the case for unitary status: Oxford, Norwich, Exeter and Ipswich...*, April 2006

errors in the case that had been made by INLOGOV. He considered the relative performance of the existing unitaries and the likely costs of restructuring. On the latter issue he wrote:

> To convert the four cities into unitary authorities is estimated to involve transition costs for each one which would lie in the range of £11.3 million to £17.2 million [costs which equate to between £100 and £121 per citizen.] On the evidence available, there is no prospect that these costs would be offset by on-going savings, and the probability is high that costs would be increased.[32]

John Stewart has drawn attention to the less quantifiable costs that arose in connection with the local government review of the 1990s:

> Reorganisation has costs and most of them are rarely accounted for, since they are opportunity costs in the time and effort taken from the main work of local government.[33]

3. Reactions

The Local Government Association has said that it supports the development of shared services and integrated decision-making but is "resolutely opposed to *imposed* restructuring" and therefore opposes the power of the Secretary of State to direct. It wanted to see additional measures allowing councils to create joint waste authorities and permitting councils to introduce financial incentives for re-use and recycling.[34] Chris Leslie, Director of the New Local Government Network, thought the Government's "permissive and localist" approach was the right one although he expressed concern about the effort and money being spent on bidding for unitary status given the relatively low cap on permitted reorganisations.[35]

Caroline Spelman, Conservative Shadow Communities Secretary, spoke out against restructuring in a debate on the Queen's Speech. Quoting Professor Chisholm's estimates of the costs of restructuring she said:

> The reality is that there is no public appetite for restructuring. The only people for whom it holds any interest are politicians and some academics... it is a brave person who is prepared to stand on the doorstep pledging the abolition of someone's local council and charging them more than £100 for doing it.[36]

David Cameron, the Conservative leader, had opposed restructuring in a speech on 30 March 2006:

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32 Michael Chisholm, *Local government reform? A critique of the April 2006 INLOGOV document...*, CCN, September 2006, http://www.lga.gov.uk/ccn/research.htm

33 John Stewart, *Modernising British local government: an assessment of Labour's reform programme* (Palgrave, 2003 pp184-5

34 *LGA briefing on the Local Government and Public Involvement in Health Bill*, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?lsection=0&id=SXA4B3-A783EC78

35 NLGN, "Local government bill kicks off crucial 12 months for local government", *Press release*, 13 December 2006, http://www.nlgn.org.uk/nlgn.php

36 HC Deb 20 November 2006 c273

> Mr Miliband should remember the wise words of Sir John Banham, who led a Commission in the early 1990s into local government restructuring, and who warned, "any reorganisation costs more, takes longer and delivers less than any proponents of change ever thought."...interfering with traditional county and district councils that people can identify with in favour of new unitary authorities that bear little relation to existing communities is the route to further alienation of voters.[37]

Andrew Stunell, Liberal Democrat Shadow Communities Secretary said in the Queens' speech debate:

> I agree with the hon. Gentleman that across the country that is triggering a huge waste of effort by local authorities with ambitions that far exceed their capacity to deliver. By 25 January, the Secretary of State will have a desk groaning with applications from completely unsuitable sources, as well—no doubt—as one or two perfect little gems that she will approve. It might have been better if she had been able to indicate to local councils that they should not waste their money on such frivolous projects.[38]

A Liberal Democrat policy paper on local government, published in June 2006, said:

> 2.3.2 We believe that in most areas, a single principal tier of government, with boundaries set according to natural communities local people recognise, would foster good governance. However, the final structure must be a decision for the people living in an area. Any move from two-tier to single tier must be preceded by a local referendum, not imposed by central government.[39]

III Elections[40]

A. Whole council elections

The existing arrangements for local elections are summarised in the regulatory impact assessment which accompanied the white paper, *Strong and prosperous communities*:

> 9. There are a number of different electoral cycles in local government. At present all metropolitan authorities, and some district councils including some unitary councils elect by thirds (i.e. elections are held in three out of every four years with one third of councillors elected at each election). Seven districts councils vote by halves (i.e. elections are held every two years with one half of councillors elected at each election). London boroughs, county councils and the remaining district councils and non-metropolitan unitaries elect by whole council, or "all-out", elections (i.e. elections are held every four years with all councillors elected at each election).

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37 David Cameron, *Government plans to restructure councils will further alienate voters: speech, 30 March 2006*, Conservative Party

38 HC Deb 20 November 2006, c 282

39 Liberal Democrats, *Your community, your choice: policies for local government in England*, Policy paper 73, June 2006

40 This section contributed by Isobel White, Parliament and Constitution Centre

> 10. At present cycles can be changed either for all councils by order (without the need for the approval of the council); or a non-metropolitan district can request that the Secretary of State make an order changing their arrangements.[41]

1. Recommendations for change

The Labour Party manifesto for the 1997 general election included a commitment to the introduction of annual elections: "to ensure greater accountability a proportion of councillors in each locality will be elected annually." It was also hoped that annual elections would lead to an improvement in turnout. In February 1998, the green paper *Modernising Local Government: Local Democracy and Community Leadership* was published. The consultation paper asked for views on moving to a system of annual elections and the subsequent white paper of July 1998, *Modern Local Government: in touch with the people*, noted that there had been a mixed response to this proposal.[42] The Government concluded that it would build on the system of electing by thirds used in all metropolitan district councils and make this the standard practice of election for all unitary councils in future, including London boroughs. There would be one 'fallow year' since elections were for a four year term. The Local Government Association had noted in its response to the Government's proposals that annual elections might not necessarily improve turnout, although they would increase the opportunity to hold local authorities to account.[43] The Constitution Unit also suggested that annual elections appeared to depress turnout.[44] In an article in *Parliamentary Affairs* in January 1999 Collin Rallings and Michael Thrasher commented on the proposals for annual local elections and suggested that whole-council elections were more likely to improve turnout:

> Driving these proposals is the government's desire to improve local accountability. It is assumed that increasing the frequency of elections will make elected members more sensitive to the needs and demands of local taxpayers. This may or may not be true, but what is the likely effect of this reform upon levels of participation? Analysis of turnout in local elections suggests that voters are more likely to participate in quadrennial than in annual elections. Comparing those district authorities which elect the entire council every fourth year with those where a proportion of councillors are elected annually shows the former to enjoy a consistently higher turnout than the latter…Universal whole-council elections would do more for participation than a more frequent electoral cycle. Under the former, the electorate have the attraction of being able to change their council lock, stock and barrel if they so wish. With the latter, they will often find that the election outcome is predetermined before a single vote has been cast.[45]

Despite the conclusions in *Modern Local Government: in touch with the people* no legislative proposals were brought forward to move to a system of annual elections.

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41 DCLG, *Full regulatory impact assessment*, October 2006, p33 http://www.communities.gov.uk/index.asp?id=1504070

42 Cm 4014 July 1998

43 Local Government Association, *Making a difference: a White Paper for Local Government,* 1998

44 Constitution Unit, *A Panacea for Local Government? The role of PR*, October 1998, p13

45 "An audit of local democracy in Britain", *Parliamentary Affairs*, January 1999

A white paper, *Strong local leadership – quality public services*, followed in 2001 in which the Government commented on the current cycle of local government elections.[46]

> 2.18 The current cycle of local government elections is confusing. Some councils have elections once every four years while others have elections in three years out of four. It is too easy for electors to lose track of when elections are to be held or how many votes they have on any particular election day. And this arrangement can lessen the immediate impact of voters' behaviour on council control. We will therefore invite the Electoral Commission to propose options to simplify the current cycle of local elections.

The Electoral Commission, which had been established by the *Political Parties, Elections and Referendums Act 2000*, conducted this review of electoral cycles in 2003. The Commission had been asked by the Deputy Prime Minister to "review and submit a report to him on the cycle of local government elections in England, identifying options for change that would simplify the current cycle."[47] The Commission's report, published in 2004, concluded that the system was "unclear and inconsistent" and that the "disjointed and inconsistent pattern of local electoral cycles" had come about as a result of historical accident and "the piecemeal approach to structural change in local government during the past 30 years." In particular, the system was:

- confusing to electors and this mitigates against participation in the electoral process;
- inequitable in that there are wide variations in the opportunities for electors to take part in local elections;
- not conducive to policy consistency and forward planning ("whole council elections provide an administration with a clear four year mandate to implement its policies on which it can clearly be judged").[48]

The Commission recommended that all authorities should hold whole council elections every four years and, further, that all 'first tier' authorities (i.e. districts, boroughs, London boroughs, metropolitan boroughs and shire unitaries) should hold their elections in the same year with any 'second tier' authorities (county councils and the GLA) holding elections two years after that. In January 2005 the Government indicated in the local:vision document *Vibrant local leadership* that it was minded to agree with the Electoral Commission's principal recommendation to move to whole council elections. There were reservations about some of the implications of this, in particular the problems of implementation which the Commission addressed in Chapter 5 of its report.[49]

2. The white paper and Bill

The Government reiterated in the white paper that it accepted the case that whole council elections could increase participation and bring clearer accountability but it

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46 *Strong local leadership – quality public services* , Cm 5237 December 2001

47 Electoral Commission, *The cycle of local government elections in England: report and recommendations*, January 2004 http://www.electoralcommission.org.uk/templates/search/document.cfm/9056

48 ibid

49 ibid

considered that it would be "contrary to the devolutionary thrust of this White Paper to require everywhere to adopt whole council elections now." Instead:

- Councils would be enabled to move to a whole council election system more easily by removing the requirement to get the Secretary of State's permission.
- This to be available to all councils including metropolitan districts which are currently required to elect by thirds (para 3.43).

The Bill enables, but does not require, eligible councils which currently hold elections by halves or thirds to hold whole council elections once every four years. **Clause 31** defines the term 'eligible councils' (those which currently elect by halves or thirds) as all metropolitan district councils and over 100 shire (non-metropolitan) councils including some single tier local authorities. **Clause 32** enables such councils to change to a system of whole council elections by resolution. The resolution can only be passed during "the permitted resolution period", although the Secretary of State may extend the period during which the decision must be taken. Once the council has resolved to move to whole council elections it will not be allowed to change the system again.

Clause 33 requires whole council elections to be held in particular years. For metropolitan district councils changing to whole council elections these will be held in 2008, 2012 and every four years thereafter. For non-metropolitan district councils the whole council election years continue to be 2011, 2015 and every four years thereafter.

Clauses 34 and 35 require the local authority to produce an explanatory document "as soon as practicable" after passing a resolution to change to whole council elections. The local authority must also publicise the decision and make the explanatory document available to the public. The Electoral Commission must also be informed of the decision.

Clause 36 makes consequential amendments to earlier legislation concerned with schemes for council elections and in particular removes the provision in the *Local Government Act 1972* which requires non-metropolitan district councils wishing to alter their scheme of elections to ask the Secretary of State to change this by Order.

B. Electoral areas

1. Number of councillors per ward

The ODPM Select Committee held an inquiry into the issue of local government ward boundaries in 2004 following the completion of the Periodic Electoral Review by the Electoral Commission through the Boundary Committee for England. (The functions of the Local Government Commission for England had been transferred to the Electoral Commission under the provisions of PPERA.) The Committee noted that the "statutory criteria used by the Electoral Commission…in making structural, boundary, or electoral changes might bear some examination." One of the Committee's conclusions was that

"the Electoral Commission should remain aware of the need to ensure community interest when contemplating the creation of new multi-member wards."[50]

In September 2005 the Electoral Commission launched a consultation exercise on the procedure for conducting electoral reviews. The report and reviews were published in July 2006. One of the key recommendations was for

> A greater degree of flexibility when determining the number of councillors per ward or division. Only 6% of respondents felt that the Commission should be rigidly prescriptive on this issue. There was support for moving away from the three-member ward constraint in metropolitan areas.[51]

The issue of single member wards had been raised in the local:vision document, *Vibrant local leadership,* in the context of local community leadership:

> This raises the question of whether multiple member wards in non county authorities facilitate such visible leadership or not. It could be argued that if the ambition is for every ward to be able to look to a councillor who, in effect, acts as a 'mini mayor' for a particular area, then multiple ward membership confuses this role.[52]

On the other hand, the Government noted the danger of making the (part-time) job of councillor too onerous, especially given that, in relation to other countries, the number of councillors in relation to size of population is relatively small.

2. The white paper and Bill

The Government noted in the white paper that there was no consensus on the issue of single-member wards and that it was not a sound electoral option where there are elections by thirds.

It proposed that:-

- Councils should not to be *required* to introduce single member wards but any council which holds whole council elections will be able to request that the Electoral Commission undertakes a review for the purpose of re-warding the area with single member wards.

- The Commission will be required to have regard to such a request when planning its work programme, but questions about the timing of reviews and issues like the appropriate number of councillors will continue to be ultimately for the Commission to decide (para 3.45).

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50 HC 315 2004-05

51 http://www.electoralcommission.org.uk/files/dms/PERfindings_22404-16560__E__N__S__W__.pdf

52 ODPM, *Vibrant local leadership*, January 2005, para 75, http://www.communities.gov.uk/index.asp?id=1163150

Clause 37 removes the requirement, in the *Local Government Act 1972*, that the number of councillors returned for a ward in a metropolitan district should be divisible by three which enabled a third of the council to be elected at each election. There will now be no restriction on the number of councillors for a ward.

3. Change of name of electoral area

The Electoral Commission's report on the Periodic Electoral Review recommended that it should be possible to rename wards at times other than during a review:

> We…found clear support for the ability to rename wards outside the electoral review process, with 92% of respondents supporting this option. We agree with the view that ward and division names should be able to be changed without the need for a review, and have asked Government to consider giving the Commission the power to make name-change Orders in legislation. We will, however, be considering the process and safeguards which need to be put in place to allow for a fair and transparent mechanism for renaming wards.[53]

Clause 38 enables a county council or a district council to change the name of an electoral division or district ward in its area by passing a resolution at a special meeting held for that purpose. If the name of an electoral area is 'protected' i.e. it has been changed within the preceding five years, the resolution to change the name may not be passed unless the Electoral Commission agrees to the change.

IV Executive arrangements

A. Background

Part II of the *Local Government Act 2000* required local authorities in England and Wales to make "executive arrangements" involving the formal separation of powers. This replaced the committee system which had previously been the normal decision-making structure in local government. The new system was designed to separate out the executive role from the backbench role so that it would be clear to councillors and public alike where the responsibility for a particular decision lay. Councillors who were not involved in taking decisions would have a clear and explicit responsibility to review and question those decisions. Background information on these issues can be found in the Library research paper on the *Local Government Bill 1999-2000*.[54]

The 2000 Act prescribed three main forms of executive, as follows:

- Directly-elected mayor with a cabinet consisting of two or more councillors appointed by the mayor;
- Indirectly-elected leader and cabinet - a councillor would be elected as leader of the executive by the full council, with a cabinet consisting of two or more councillors appointed by the executive leader or the full council; and

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[53] http://www.electoralcommission.org.uk/files/dms/PERfindings_22404-16560_E_N_S_W_.pdf
[54] *The Local Government Bill [HL]: Local government leadership etc*, RP 00/44, 6 April 2000

- Directly-elected mayor and council manager – mayor to be directly-elected but an officer of the authority is appointed to the executive by the full council;
- A fourth option, the adoption of streamlined committee arrangements, was available to district councils with populations of fewer than 85,000 persons.

Every council was required to consult local people about the new form of political management that it should adopt. If one of the two elected mayoral options was adopted, the consent of local electors had to be obtained by means of a referendum. And councils could be compelled to hold a referendum when (a) 5% of local electors petitioned the council for a referendum on whether there should be an elected mayor, or (b) the Secretary of State considered that a council was misrepresenting the views of local people.

A census in 2002[55] found that most authorities (316 or 81%) had opted for the leader and cabinet model while just 11 authorities (3%) had adopted mayoral systems (this has since risen to 12 excluding the Mayor of London). The remaining 59 smaller authorities adopted modified committee arrangements.

B. Mayors

There have been 34 mayoral referendums in England (excluding that for the Greater London Authority) and 1 in Wales. Of these, 11 took place as a result of petitioning by the public, 23 were requested by councils and one (Southwark) resulted from ministerial direction. Of the 35 referendums, 12 have voted for a mayor and 23 have rejected the system. The current list of mayors (excluding the Mayor of London) is as follows:-

Place	Name	Party
Bedford BC	Frank Branston	Independent
Doncaster MBC	Martin Winter	Labour
Hartlepool BC	Stuart Drummond	Independent
LB Hackney	Jules Pipe	Labour
LB Lewisham	Steve Bullock	Labour
LB Newham	Sir Robin Wales	Labour
Mansfield DC	Tony Egginton	Independent
Middlesbrough BC	Ray Mallon	Independent
North Tyneside MBC	John Harrison	Labour
Stoke-on-Trent City C	Mark Meredith	Labour
Torbay Council	Nicholas Bye	Conservative
Watford BC	Dorothy Thornhill	Liberal Democrat

Commentators have argued that the Government's decision to offer two mayoral options rather than one, and its methodology for consultation, adversely affected the pro-mayoral campaigns.[56] Nevertheless, low turnouts have suggested that the public has not been particularly engaged in the debate. Referendum campaigns have usually been

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55 Stoker, Gerry et al, *Report of the ELG survey findings for ODPM Advisory Group*, ODPM, 2002

56 See, for example, David Wilson and Chris Game, *Local government in the United Kingdom*, Palgrave Macmillan, 4th ed, 2006, p104; and Anna Randle, *Mayors mid-term*, NLGN, 2004

conducted "...in a low key manner with on many occasions most of the local political establishment lined up against a "yes" vote."[57] More recently, there have been moves in several areas to get rid of elected mayors. *The Times* reported in September 2006 that campaign groups had been set up in Stoke-on-Trent, Doncaster, Lewisham and Hartlepool to "trigger a referendum" to abolish the office of elected mayor in those places.[58] Such a move requires a council resolution since it would appear that, under existing legislation, a public petition cannot trigger a referendum on moving *away* from mayoral arrangements.

Research into the impact of new executive arrangements and ethical framework has been conducted for the Government by a consortium of universities led by Manchester under the 'Evaluating local governance' (ELG) programme. Research reports can be found on the ELG website[59] and some of the findings are quoted in the white paper (see below). The New Local Government Network has campaigned vigorously on behalf of directly-elected mayors and useful information on the subject can be found on its website.[60]

The local:vision document *Vibrant local leadership*, published in January 2005, reiterated the Government's views on the value of the mayoral system. Advantages were summarised as:

- Clear public accountability and visibility
- A focus for public engagement and bringing partners together
- Stability – ("there is a clear personal mandate for a four-year term to implement policies upon which an individual has campaigned...")

It went on:

> ...where local people have chosen to elect a mayor, there is evidence that they have achieved a relatively high level of public recognition. In some cases mayors have become a strong focus and force for change for things that matter most to local people, such as crime and anti-social behaviour, but they suggest that more could be done if they had more powers.

The paper stated that the Government would consult on proposals to develop, in partnership with local authorities, a new approach to create more mayors with more powers to transform our major cities. The Labour general election manifesto repeated this commitment and stated also: "We will explore giving people a more direct opportunity to express a view about whether they would like to have a directly-elected mayor."

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57 ODPM, *How are mayors measuring up? Preliminary findings – ELG Evaluation Team,* July 2004, http://www.elgnce.org.uk/research.htm

58 "Voters aim to throw out mayors they say are acting like dictators", *The Times*, 4 September 2006, p8

59 http://www.elgnce.org.uk/research.htm

60 http://www.nlgn.org.uk/nlgn.php

C. The white paper

In the 2006 white paper, *Strong and prosperous communities*, the Government made the following points about existing council leadership:

> **3.16** A 2005 survey of councillors, officers, and stakeholders shows that there is strong support for the view that the arrangements introduced by the 2000 Act support visible and effective leadership:
>
> - The role of leader was perceived to have become stronger (in the case of authorities with an elected mayor by 79% of respondents and in other cases by 69% of respondents);[61] and
> - Over half of councillors and nearly three-quarters of officers believe that under the new arrangements the executive has become more effective in articulating a vision for the area.[62]
>
> **3.17** However many local authorities have adopted a cautious approach to change. Only 12 local authorities have introduced the strongest leadership model, an elected mayor. Four out of five councils have opted for the leader and cabinet model in which the executive consists of a leader appointed by the council, with up to nine other members appointed by the council or by the leader. Of these councils, only a relatively small number give the leader authority to act alone. Rather they act collectively with other cabinet members, whom the leader often does not have the power to select...[63]
>
> **3.18** Moreover, in most authorities' leaders face election every year. This can make it hard to take and see through essential but difficult decisions that may in the short term be unpopular. It also brings uncertainty for senior management teams in pursuing and implementing longer term strategies. The Government believes that it is important that councils move towards having more stable and more visible political leadership. Our research shows that leadership is the single most significant driver of change and improvement in local authorities. This reinforces the authoritative conclusions of the report on the State of the English Cities earlier this year...

In the white paper, the Government proposes:

To legislate so that in future there will be three models of executive arrangements:

- A directly-elected mayor with a 4 year term
- A directly-elected executive with a 4 year term
- An indirectly elected leader with a 4 year term

Under all circumstances, a directly-elected mayor or executive will have a four year term. An indirectly-elected leader must be appointed by the council for four years.

In each model:

- All executive powers will be vested in the mayor or leader who will have

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61 DCLG, *Councillors, Officers and Stakeholders in the new Council Constitutions: Findings from the 2005 ELG Sample Survey*, 2006, http://www.communities.gov.uk/index.asp?id=1137115

62 ibid

63 ibid

responsibility for deciding how these powers should be discharged – either by him or herself or delegated to members of cabinet individually or collectively.

- The mayor or leader will either be responsible for appointing cabinet members or, in the case of the directly-elected executive, will have agreed that they should be on his or her slate of candidates standing for election;
- The mayor or leader will allocate portfolios to cabinet members.

There will be no change for smaller authorities which operate a reformed committee system. But all 318 councils with leader and cabinet executives will have to adopt new executive arrangements.

Where a directly-elected option has been chosen, there will be no requirement for a referendum of local electors to be held. However, local people will still be able to petition for a mayoral referendum.

Where an authority has opted for a directly-elected mayor or executive, the presumption should be that it should not move back to an indirectly-elected mode (paras 3.19 to 3.28).

D. The Bill

Executive arrangements for England are set out in clauses 39 to 53 and in schedules 2 to 4 of the Bill. The following summary refers to selected clauses only and readers are referred to the explanatory notes which accompany the Bill for a full explanation.

Clause 39 amends section 11 of the *Local Government Act 2000*, setting out the models of executive arrangements that are to be permitted, viz. (1) mayor and cabinet executive i.e. elected mayor and two or more councillors appointed by him to the executive; (2) leader and cabinet executive (England) i.e. a councillor elected as leader by the authority and two or more councillors appointed by him to the executive; and (3) elected executive consisting of an elected leader and two or more other persons elected to the executive.

Clause 41 inserts new sections 33A to 33Q into the 2000 Act and these set out the procedure for changing governance arrangements, where authorities wish to change from one form of executive arrangements to another, or from alternative (i.e. modified committee) arrangements to a form of executive arrangements. New sections 33A to 33I cover such matters as the drawing up of proposals for change and local publicity. 33F specifies that a resolution is required for a council to change its governance arrangements.

Sections 33J to 33N set out further requirements for certain changes. The 'presumption' that a council should not move away from a directly-elected option, once adopted, is implied in these provisions. If a council has adopted mayoral arrangements by referendum, it must hold another referendum to approve new proposals (33K). And clause 50 extends the period during which only one referendum can be held from five years to ten years. If a council has adopted a directly elected mayor or executive *without* referendum, it must go through the consultation process specified in 33L before it can

change. The written consent of the elected mayor or of the executive's leader is required before proposals to change from a directly-elected form of governance can be made (33N).

Sections 33O to 33Q set out the permitted periods in which councils can resolve to change their governance arrangements and action to be taken should a council fail to adopt executive arrangements within the time allowed.

Clause 42 amends section 34 of the 2000 Act and extends the right of local government electors to petition for a referendum on an elected executive (in addition to the right to petition for a mayor).

Clause 44 states that members of an elected executive are to be treated as councillors for certain purposes (examples given in the explanatory notes are voting rights, conduct and remuneration; these mirror the existing provision for elected mayors in the 2000 Act). The term of office for members of an elected executive is set at four years although the term ends if the elected leader ceases to hold office. The size of a proposed executive must be equal to the size of the executive to be elected. A person may stand both as a councillor and on a 'slate' as an elected executive member but, if returned as the latter, a vacancy for councillor will arise. This may therefore result in a number of by-elections immediately after the election.

Clauses 47 and 48 and schedule 2 amend the 2000 Act to extend the supplementary vote system used for the election of mayors to the election of executives. The explanatory notes show how the SV system is to apply to 'slates' of executives.

Clause 49 inserts new sections 44A to 44H into the 2000 Act with respect to the new style of leader and cabinet executive which replaces the existing model in England only. Sections 44A and 44B relate to the timing of leadership elections for councils holding whole-council, and part-council, elections respectively. 44C states that an authority's executive arrangements may provide for the council to remove the leader by resolution. Normally, though, the leader would serve the full four-year term where there are whole-council elections (44D). Where there are part-council elections, the leader's term may vary according to the length of the remainder of his term of office as councillor (44E). Section 44H provides for the Secretary of State to make regulations concerning the term of office of executive leaders and the filling of casual vacancies in the office of the executive leader.

Schedule 4 makes transitional provision for authorities operating old-style leader and cabinet executive to move to new governance arrangements. If an authority fails to make the necessary changes, the Secretary of State may by order specify executive arrangements which provide for a leader and cabinet executive (England). Part 2 makes transitional provision for councils currently operating a mayor and council manager system.

E. Reactions

The New Local Government Network greeted the leadership proposals with enthusiasm:

> The experience of Elected Mayors has shown that there are real advantages, especially in economic development, that flow from the authority of direct election and the clarity of four year terms in office. There should be no excuses for weak or drifting local leadership anymore, following today's announcement.[64]

The Local Government Association has said:

> - Strong, democratically-elected leadership is central to our vision for local government. There is no right model for all areas, whether mayor or leader. What is important is that leaders, whether directly or indirectly elected, have the powers needed to make a difference in their areas.
>
> - We recognise that the proposal for leaders to serve a four year term is intended to provide the stability necessary for strategic and sustained action, but there must be adequate means for removing incompetent leaders. We therefore support the provision for indirectly-elected leaders to be removed by council resolution.[65]

A pamphlet by David Cameron, Conservative Leader, and Caroline Spelman, Shadow Secretary of State for Communities and Local Government, which was published shortly after the white paper said:

> We strongly support an expansion in the number of elected mayors in Britain and an expansion in their powers, where they have community support. As international experience shows, a strong local leader, empowered by a local democratic mandate, is able both to re-energise politics, increasing public engagement in the democratic process, and to bring about real change in the face of long-standing vested interests. We welcome the commitment in last week's White Paper to permit the creation of new mayors. We would like to go further, and grant mayors additional powers, including over police.[66]

Sir Simon Jenkins, writing in the *Sunday Times*, praised the emphasis on direct election but bemoaned the inclusion of an indirectly-elected leader option which local parties would almost certainly adopt in order to protect their position:

> ...Greater personal visibility lies at the root of modern democratic accountability, locally as well as nationally. Without it, apathy tends to what de Tocqueville called the oligarchy of democratic centralism...Every shred of evidence shows that direct election is the best antidote to such apathy. Parties have a place in politics but in Britain they are too dominant. Civic leadership has been mired by parties and British cities bear the scars.
>
> Every community, from a city to a rural parish, has an opportunity to lobby for a new constitution, with the right to choose its own leader rather than having one chosen by a closed party hierarchy. Opposition will come from thousands of

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64 NLGN, "A good day for leadership" says New Local Government Network, welcoming today's white paper, 30 October 2006

65 *LGA briefing on the Local Government and Public Involvement in Health Bill*, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?Isection=0&id=SXA4B3-A783EC78

66 David Cameron and Caroline Spelman, *The permissive state*, Conservative Party, November 2006, http://www.conservatives.com/tile.do?def=news.story.page&obj_id=133382&speeches=1

> councillors with a vested interest in the old regime. Blair should have set his mind against them by giving a clear constitutional lead, the one duty of central government in this matter. Instead there is only a glimpse of a hope of a chance.[67]

Criticisms which have been levelled at the leadership proposals have included the following:

a. Concentration of power in the hands of one person

All leadership options require executive power to be vested in the mayor or leader who will decide how powers are to be discharged and allocate portfolios. The Local Government Information Unit has expressed concern that this centralisation of power runs counter to the white paper's aim of strengthening the role of ward councillor. Baroness Scott of Needham Market, Liberal Democrat Spokesperson in the Lords, said in debate:

> [The Government] intends to vest all executive authority in one person and no referendum proposal is enshrined. We believe that to put all executive authority into one person is a highly dangerous move in that it removes all the checks and balances to abuse of that power. I fail to see how one can argue that it is essential to go down that route to provide good and speedy decision-making.[68]

Jane Martin, a senior research fellow in public leadership at Warwick Business School, has written the following:

> To assume...that an increased concentration of executive authority will lead to even better government, and that this should be equated with strong leadership, needs further examination. Investing executive power (and control) in one individual may well allow them to act efficiently and decisively but it relies on charismatic individuals and leading from the front and does not necessarily guarantee decisions made in the public interest. On the contrary, the public is best served through inclusive and participative decision-making processes...strong leadership should be distributed and mobilised throughout the organisation rather than concentrated in one person.[69]

b. Removal of requirement for referendum

Lord Hattersley has argued against the scrapping of a referendum to endorse a directly-elected mayor or executive:

> Originally the idea of switching from a proper council to an elected mayor had to be endorsed by the local people about whom Kelly spoke so eloquently. But the rules have been revised. If a local authority wants to hand over its responsibilities to one individual supported by anonymous councillors with emasculated powers, it is now free to do so. The obligation to organise a referendum has been

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67 Simon Jenkins, "Mayors are rescuing politics and they've frightened new Labour", *Sunday Times*, 29 October 2006

68 HL Deb 16 November 2006 c30

69 Jane Martin, "This is topsy turvy leadership", *Public*, December 2006, pp42-3

> scrapped. Too many referendums produce the wrong result. That decision was, we must hope, the death throes of New Labour's novel definition of local democracy - the right of the people to choose as long as they make the choice that the government wants.[70]

c. Directly-elected executives

The New Local Government Network welcomed the adoption by the Government of its proposal for directly-elected executives to supplement the mayoral option, "...overcoming concerns about the concentration of power by creating an additional broader vehicle for a strong mandate from residents."[71] However, George Jones and John Stewart, writing in *Municipal Journal*, pointed out some potential difficulties including:-

> Problems arise from keeping the same executive for four years. It seems unlikely that a leader would want to maintain the same cabinet for a four-year period, yet that is the equivalent of what is proposed...What happens is a leader wants to remove a member from the executive because of differences on policy, or because of perceived failures? Can the leader do so?...If not, the leader can hardly be the strong role model proclaimed in the White Paper. But, if he or she can, what has happened to the electorate whose election of the executive has been ignored.[72]

Jones and Stewart had recommended the preparation of a consultation paper on how this might work before the Government committed itself to the proposal.

d. Imposition by Government

Professors Jones and Stewart wrote in an article which preceded publication of the white paper:

> Rather than central government designing new political structures for local authorities which understand the issues better than Whitehall, much greater freedom should be given to local authorities to develop their structures to meet their own requirements. They might even find mayoral models more attractive, if free to do so, learning from the variety of experience abroad...[73]

V Parishes

A. Background

The 1992 Department of the Environment consultation paper, *The role of parish and town Councils in England,* gave a brief account of the development of the parish in England:

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70 Roy Hattersley, "Let local people decide", *Guardian*, 6 November 2006

71 NLGN, "A good day for local leadership", says NLGN, welcoming today's White Paper", 30 October 2006

72 George Jones and John Stewart, "Putting a dampener on structure", *Municipal Journal*, 30 November 2006, pp10-11

73 George Jones and John Stewart, "Free the mayoral chains", *Municipal Journal*, 3 August 2006, pp10-11

> Parishes date from medieval times or earlier. In the 16th, 17th and 18th Centuries they were the main unit of local government responsible for poor relief, highway maintenance, and law and order, as well as for their ecclesiastical functions. In the 19th Century these civil functions were largely transferred to or taken over by other bodies. They have operated in their current form only since 1894. As a tier of local government they are elected bodies with discretionary powers and rights laid down by Parliament to represent their communities and to provide services for them.[74]

Parishes were retained in the reorganisation which followed the *Local Government Act 1972*, forming a third tier of government below the districts and the counties. Many smaller urban areas, particularly those formerly represented by urban district and borough councils, joined this tier and were able to use the term "town council" for their elected body. Parish reviews by district councils over the next two decades led to a gradual increase in the number of parish councils but overall coverage was (and is) patchy, even in rural areas. There are over 10,000 parishes in England and approximately four fifths of these have a parish council. Parish and town councils cover some 16 million people across England.[75] Since 1997 local communities have had the right to petition for a parish council by virtue of the *Local Government and Rating Act 1997.*

Local councils may provide a wide range of services, both in their own right and as agents of a principal authority. These powers, which are essentially discretionary, are listed on the website of the National Association of Local Councils (NALC) which is the representative body.[76] Byrne has provided the following summary:-

> Their functions are broadly four-fold. Firstly, they provide certain services (playing fields, community halls, bus shelters etc), many of which are run concurrently with the district council or in partnership with private and voluntary organisations. Secondly, they have the discretionary power to spend Section 137 or 'free resource' money...Thirdly, they must be consulted about certain matters (such as footpath surveys by the county council and the appointment of governors to local primary schools) and they must be notified by the district council about certain other matters (including local planning applications, particular bylaws etc). Fourthly, and perhaps above all, their function is to act as a forum for the discussion of local affairs and to represent the interests of the local community to the district council and other local and national bodies generally.[77]

B. Government proposals

The Government's rural white paper[78], published in November 2000, highlighted the potential for town and parish councils ("the most local tier of local government") to act as

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74 DOE, *The role of parish and town councils in England*, 1992; Further information on the historical development of parishes can be found in *Parish Government 1894-1994* by K.P. Poole and Bryan Keith-Lucas (NALC, 1994)

75 Commission for Rural Communities, *Discussion paper: Shire local government: time for change?*, June 2006, p7

76 http://www.createacouncil.org.uk/

77 Tony Byrne, *Local government in Britain*, Penguin, 7th ed, 2000, pp520-1

78 *Our countryside: the future – a fair deal for rural England*, Cm 4909, November 2000

the voice of their communities and, where appropriate, to deliver a wide range of local services in partnership with principal authorities. The Government established a Quality Parish Scheme in 2003, with accreditation dependent upon proof of democratic credentials, competence and effectiveness. The scheme established model charters to govern partnership arrangements between parish and principal authorities.

The first major local:vision document published by ODPM, *The future of local government: developing a ten year vision* (July 2004), put the establishment of new parishes at the head of the list of models for giving local people a stronger voice and thereby securing greater citizen engagement and participation. A subsequent local:vision document – *Citizen engagement and public services: why neighbourhoods matter* (January 2005) – drew attention to the Quality Parish scheme which, it said, had helped parishes to take on services typically exercised at county or district level (maintenance of highway verges, footways and footpaths, the management of recycling provisions and street cleaning being examples). The document gave a commitment to "…work with councils to find ways to make it easier for communities to set up a parish council."

Parishes featured rather less prominently among the various forms of community empowerment set out in ministerial speeches after the 2005 election, but they re-emerged as a key part of the white paper's proposals for "responsive services and empowered communities." The Government declared its intention in the white paper to:

- Extend the power of well-being to all parish and town councils which satisfy criteria based on the Quality Parish scheme.
- Simplify and speed up the process of creating parishes by devolving the power to district and unitary authorities.
- Broaden local authorities' review powers so that in the course of a review they will be able to consider whether other forms of community governance are more appropriate.
- Give communities in London the same rights to have a parish council as the rest of the country.
- Offer parishes a wider range of alternative names including "community", "village" or "neighbourhood" (paras 2.55 to 2.59).

C. Parish names

The *Local Government Act 1972* changed the name of parishes in Wales to "communities", but in England the old name survived except that larger communities, both in England and Wales, could resolve to take the name 'town council' (and the chairman could take the title of 'Mayor'). City status may also apply to a town or parish since it is conferred by Royal prerogative.

The white paper proposed to allow use of the terms "community" "village" or "neighbourhood" Ruth Kelly, writing in *First tier* said:

> This is an important point because it relates to representation. There is still a perception that parishes are a rural phenomenon or that they are associated with

> the church. The reasons for this are, of course, historic, but we would like to see everyone today having a choice.[79]

The All Party Group on Community Governance (APPG), which is chaired by David Curry with Vice Chair Nick Raynsford, was in favour of discontinuing automatic use of the term 'parish' for new first tier authorities and allowing local people to have the right to decide from a range of options.[80] NALC suggested in its media briefing that the new umbrella or collective term for this tier of local governance might be 'community council.'[81]

Clause 54 of the Bill inserts three new sections into the *Local Government Act 1972*. New section 11A provides that parishes which are grouped together under section 11(1) of the 1972 Act must be termed by the same style, that is, as groups of communities, parishes, villages or neighbourhoods. For parishes which are not grouped together, new section 12A allows a parish council or meeting to resolve to adopt one of the new styles. Where a new style *is* adopted, it must be used in all contexts, for example, 'community council', 'community meeting', 'community trustees', and so on. Section 17A defines the alternative styles but states that a parish shall cease to have an alternative style if it has the status of a town by virtue of section 245(6) of the 1972 Act.

D. Co-option

On the issue of co-option, Ruth Kelly has written:

> …we think that the business of parish councils might be helped if they could routinely look to key members of their communities and co-opt them on the basis of their role in the community, such as a local teacher for example. We distinguish this from the existing power which councils have to make up their numbers by filling seats by co-option which have become vacant.[82]

The APPG report cited above commented:

> Despite stipulating that the majority of representatives need to be elected, the Group does see the advantage of councils having the option to co-opt people from local institutions...

Clause 55 inserts a new section 16A into the *Local Government Act 1972*, concerning the co-option of community representatives to parish councils. The explanatory notes explain this as follows:

> 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

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79 Ruth Kelly, "Strong and prosperous communities for all", *First tier*, Issue 11, Winter 2006

80 All Party Group on Community Governance, *Civic engagement and community governance: which structures work?* NALC, 2006

81 NALC, *Media briefing: Local government white paper*, October 2006

82 Ruth Kelly, "Strong and prosperous communities for all", *First tier*, Issue 11, Winter 2006

> 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.

The clause contains amendments to sections 15 and 16 of the 1972 Act which ensure that the posts of chairman and vice-chairman are filled by elected rather than appointed councillors.

E. Power to promote well-being

As explained in the Bill's regulatory impact assessment, this proposal will enable some parish councils, i.e. those with Quality Status, to undertake any activity (and incur associated expenditure) that supports the economic, social and environmental well-being of their area.[83] Ruth Kelly has explained that the decision to restrict the power to Quality Parish councils only - currently 350 in number - was partly in order to provide an incentive to others to "raise their game".[84]

Clause 56 of the Bill extends the power to promote well-being to 'eligible' parish councils, eligibility to be defined by the Secretary of State by order. **Clause 57** exempts eligible parish councils from preparing a community strategy. When exercising their power of well-being, parishes must have regard to the strategies of the relevant principal authorities.

1. Reactions

Extension of the power to promote well-being to local councils had been recommended in the report of the All Party Group on Community Governance.[85] The Commission for Rural Communities had also advocated the move, stating that it would allow the parish sector greater freedom from the constraints of the section 137 cap on spending when there where there was some benefit to the area and its citizens.[86] A Joseph Rowntree Foundation seminar, organised by the Local Government Information Unit in March 2005, concluded that a power to promote well-being, which would enable local councils to take "...innovative initiatives to respond to local needs" was far more important than giving them powers to tackle anti-social behaviour.[87]

NALC said in its white paper briefing that the general power to promote well-being would "...remove the shackles and give local communities the space, confidence and power to

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83 DCLG, *Local Government and Public Involvement in Health Bill: Regulatory Impact Assessment*, October 2006, p19, http://www.communities.gov.uk/index.asp?id=1504070

84 Ruth Kelly, "Strong and prosperous communities for all", *First tier*, Issue 11, Winter 2006

85 All Party Group on Community Governance, *Civic engagement and community governance: which structures work?* NALC, 2006, p13. Section 137 of the Local Government Act 1972 permits parish councils to spend a given amount in a financial year on items which are judged to be of benefit to their area but for which no specific power of expenditure exists. Following a commitment in the 2001 local government white paper, section 118 of the Local Government Act 2003 raised the ceiling on this expenditure to £5 per elector, to be raised annually in line with inflation. It is currently £5.44.

86 Commission for Rural Communities, *Shire local government – time for change?* CRC, June 2006, p8

87 Parish and town councils and neighbourhood governance: report of a JRF Seminar held on 11 March 2006

innovate across the board of public service delivery."[88] The Young Foundation, headed by Geoff Mulgan, a former head of policy at 10 Downing Street, viewed the restriction as a missed opportunity:

> Restricting the power of well-being to community councils with Quality Status is a missed opportunity and seems to be rooted in misplaced caution. The well-being power does not give community councils opportunities to raise more money, so will not lead to escalating precepts. At present, only 3 per cent of the country's 10,500 councils will qualify under the current Quality Parish scheme – which we feel is flawed and lacks sufficient incentives to encourage take up. We believe central government should encourage all community councils to promote wellbeing, and we hope the well-being power is rapidly extended to all neighbourhood, community and parish councils.[89]

F. Community governance reviews

1. Existing arrangements

The *Local Government and Rating Act 1997* provides the statutory framework for the creation and dissolution of parishes. In the main, parishes are created as a result of a review by the district or unitary authority or as a result of a local petition, but the Secretary of State occupies a key position in either procedure.

Parish reviews - The district or unitary council may conduct a review to consider whether to recommend that the parish arrangements for its area should be changed. The district may recommend the creation or abolition of parishes within its area, and it may also make recommendations concerning alteration of boundaries and electoral changes. In conducting such a review, the authority must consult widely and must have regard to the need: a) to reflect the identities and interests of local communities, and b) to secure effective and convenient local government.

A district is not under any obligation to recommend changes following a review but, if it does intend to, it must publish draft recommendations for further consultation before making final recommendations to the Secretary of State. The latter may implement the proposals contained in the review (with or without modifications), or may reject them. Alternatively she may instruct the Electoral Commission to consider the district's recommendations if, for example, there is doubt as to whether the level of local support or opposition justifies the recommendations made.

Petitions - Under section 11 of the *Local Government and Rating Act 1997*, local electors may petition the Secretary of State, via the district or unitary council, to create a new parish. The petition must be signed by at least 250, or 10% of, local government electors in the area concerned, whichever is the greater. The district council may not block a valid petition unless a similar petition has been presented within the past two years. It may, however, add its comments when it forwards a petition to the Secretary of State. On

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88 NALC, *NALC media briefing – local government white paper*, October 2006

89 Young Foundation, "How far does the white paper go towards freeing up local government and empowering neighbourhoods?", 26 October 2006

receipt of a petition the district must take steps to publicise it and notify the county council and any neighbouring parishes. It must forward details of responses received to the Secretary of State. She may implement the proposals contained in a petition (with or without modifications), or may reject them. Alternatively she may instruct the Electoral Commission to consider the matter. The Commission may then make its own recommendations if it chooses.

2. The white paper and Bill

The white paper gives a commitment to simplify and speed up the process by:

- Devolving power to create parishes to district and unitary authorities, allowing them to implement the recommendations of a community governance review and to respond to petitions;

- Broadening local authority review powers so that they can consider whether other forms of community governance are more appropriate.

It adds: Local authorities *will be expected* to grant communities' requests to establish a council (except where there are good reasons not to), and existing parish councils are not to be abolished against the wishes of local people (para 2.56).

The following is a brief summary of the Bill's provisions. Readers are directed to the explanatory notes for detailed guidance on clauses.

A principal council may at any time undertake a community governance (CG) review and *must* undertake such a review on receipt of a valid CG petition (**clause 58**). Requirements for petitions are set out in **clause 59**. They must define the area to which the review has to relate and specify the recommendations the petitioners would wish the review to consider making. Required levels of support are as follows:-
(a) If the area to which the petition relates has fewer then 500 local government electors, it must be signed by at least 50% of electors;
(b) If it has between 500 and 2,500 electors, it must be signed by at least 250 electors;
(c) If it has more than 2,500 electors, it must be signed by at least 10% of the electors.

Clause 60 empowers the principal authority to decide terms of reference and the area under review. **Clause 61** provides for the authority to implement by order the outcome of a review *except* where it involves alterations to a principal authority's boundaries (in which case recommendations may be made to the Electoral Commission under clause 67) or where it changes electoral arrangements made within the previous five years in connection with the establishment of a new parish (in which case the Electoral Commission's agreement must be obtained).

Clauses 62 to 66 set out the detail to be included in recommendations including the various ways in which the new parishes/communities/neighbourhoods may be constituted, the geographical name, recommended style and whether there should be a council. It also covers reviews of existing parishes, grouping and de-grouping, and so on.

Clauses 68 to 70 specify the duties of an authority when undertaking a review. These include requirements for consultation and for taking account of representations made; a requirement to have regard to the need to secure community governance that is effective and convenient and that reflects community identity; and a stipulation that a review carried out in response to a petition must be completed within twelve months. Clause 69 sets out the criteria for the establishment of a council and these are based on numbers of electors. Clause 70 concerns recommendations on electoral arrangements.

Clause 71 sets out the steps a council must take to publicise the outcome of a review. **Clause 75** provides for the Secretary of State and Electoral Commission to issue guidance relating to CG reviews and requires principal authorities to have regard to this guidance.

3. Reactions

The All Party Group on Community Governance had considered that the removal of the role of the Secretary of State was the first prerequisite for a new system that would lead to the establishment of a greater number of local councils.[90] The Local Government Association has said:

> Devolving powers to district and unitary councils so that they can create parish councils and other local forms of community governance are significant and sensible steps to devolve power to local people.[91]

Chris Leslie, Director of New Local Government Network, has written that the Government's community empowerment proposals could "...deal local residents a far stronger hand in shaping their own destiny." He continues:

> Parish and town councils will gradually cover a greater portion of the country, a feather in the cap for their representative body and a NALC and the Young Foundation who have advocated this approach, albeit provoking a guarded response from principal authorities weary of the added consultation burden they will need to get used to.[92]

The Young Foundation has said:

> Broadening local government's power to review community governance arrangements and to consider what forms of governance are most appropriate for neighbourhoods is promising. This opens up opportunities for legitimising new forms of very local governance.[93]

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90 All Party Group on Community Governance, *Civic engagement and community governance: which structures work?* NALC, 2006

91 *LGA briefing on the Local Government and Public Involvement in Health Bill*, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?lsection=0&id=SXA4B3-A783EC78

92 Chris Leslie, "The long road to localism", *Public Finance*, 17 November 2006, p22

93 Young Foundation, "How far does the white paper go towards freeing up local government and empowering neighbourhoods?" 26 October 2006

4. Parishes in London

The provisions in the Bill relating to community governance reviews apply to London boroughs as well as to other principal authorities. Hitherto, there has been a legislative bar on the creation of parishes in the capital but the local:vision document, *Citizen engagement and public services: why neighbourhoods matter* (January 2005), suggested that all communities, including those in London, should be entitled to establish a local council if they so wished. Labour made a manifesto commitment in 2005 to remove the bar and the commitment was repeated in the white paper.

The Commission for London Governance, chaired by Hugh Malyan, opposed the creation of parishes in London in its report *A new settlement for London*.[94] The Commission believed that there was no convincing case, nor significant demand, for such a move. Boroughs already operate area committees and neighbourhood arrangements. Adding another tier would:-

- Cause confusion over roles and responsibilities of parish and ward councillors;
- Lead to antagonism and turf wars between the tiers;
- Empower 'Nimbyism' which might undermine attempts to equalise access to local services across London;
- Create significant capital and running costs.

Alan Pike, a consultant who researched the subject for the Commission, wrote in *Municipal Journal* of the potential size of some London parish councils and the implications for existing local government of new large bodies becoming involved in commissioning and delivering services. [95]

The white paper had pointed out that "...as with all other parts of the country, local authorities will need to consider the impact on community cohesion when deciding whether to create a parish in London" (p 44). Merrick Cockell, Chairman of London Councils (formerly the Association of London Government), acknowledged that the Secretary of State has clearly listened to repeated warnings from London councils over "...the potential dangers of new urban parish councils being hijacked by extremist parties or narrow interests."[96]

Caroline Spelman, Conservative Shadow Secretary of State for Communities and Local Government, said in debate on the Queens Speech:

> Furthermore, we learn that the Government are eager to install parish councils across the capital. There are already a host of thriving residents' associations, properly constituted, and societies across London. They have rights to consultation with borough councils and are highly regarded by the communities

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94 Commission for London Governance, *A new settlement for London*, February 2006, http://www.londoncouncils.gov.uk/doc.asp?doc=16686

95 See "Pumping up the parishes", *MJ*, 8 June 2006, p21; also Alan Pike, *London – any place for parish councils?*, ALG, 2006, http://www.londoncouncils.gov.uk/doc.asp?doc=17453

96 http://www.londoncouncils.gov.uk/doc.asp?doc=18590&cat=2423

> they serve. Why do the Government want to bureaucratise and politicise those voluntary bodies?[97]

VI Local leadership and place-shaping: Cooperation with partners

A. Local Area Agreements and partnership working

The 1998 white paper *Modern local government: in touch with the people* (Cm 4104) explicitly set out the community leadership role that was envisaged for local authorities:

> 8.1 Community leadership is at the heart of the role of modern local government. Councils are the organisations best placed to take a comprehensive overview of the needs and priorities of their local areas and communities and lead the work to meet those needs and priorities in the round.[98]

The *Local Government Act 2000* gave local authorities a new power to promote or improve the economic, social and environmental well-being of their area. Local authorities were required to prepare a community strategy which should be "a clear and understandable strategy for every area, based on an analysis of the area's needs and priorities for future action. It should be developed with local people, local business and with public and voluntary sector bodies who operate in the local area."[99]

1. LSPs and LAAs

Local Strategic Partnerships (LSPs) have become the main vehicle for developing and implementing the community strategy. Government guidance on LSPs issued in March 2001 defined an LSP as a single body which:-

- brings together at a local level the different parts of the public sector as well as the private, business, community and voluntary sectors so that different initiatives and services support each other and work together;
- is a non-statutory, non-executive organisation;
- operates at a level which enables strategic decisions to be taken and is close enough to individual neighbourhoods to allow actions to be determined at community level; and
- should be aligned with local authority boundaries.[100]

The initial focus of LSPs was on regeneration – areas in receipt of Neighbourhood Renewal Funding were required to have an LSP while elsewhere they were entirely voluntary. However, the guidance stated that "all areas should have an LSP, not just the most deprived areas." Increasingly LSPs have become the mechanism for negotiating

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97 HC Deb 20 November 2006 c274
98 http://www.communities.gov.uk/index.asp?id=1165212
99 Ibid, para 8.13
100 ODPM, *Local Strategic Partnerships: Government guidance, March 2001,* http://www.communities.gov.uk/index.asp?id=1163200

local public service agreements between local and central government, and local area agreements. They may also be multi-layered and will normally have links with issue-based partnerships such as Crime and Disorder Reduction Partnerships and Children's Trusts. There are over 360 LSPs in England, some of which date from the early 1990s.

Local Area Agreements are agreements between the Government, the local authority and its major 'delivery partners' in a particular area. They are designed to simplify the additional funding streams from central government going into that area and "…help join up public services more effectively and allow greater flexibility for local solutions to local circumstances."[101] LAAs were initially structured around three blocks – children and young people, safer and stronger communities, and healthier communities and older people. A fourth priority area has since been added – economic development and enterprise.

LAAs were launched in the 2004 Spending Review and initially piloted in 21 areas, one of which was a 'single pot' pilot where there were no barriers between the funding blocks. Round 2 announced in 1995 saw 66 areas negotiating agreements, of which 13 operated as 'single pots.' It was also announced that LAAs would be rolled out to all 'top tier' authorities (i.e. county and unitary councils) by April 2007. Further information on LAAs is given in a Library standard note[102] and departmental guidance document.[103]

The local:vision document *Vibrant local leadership*,[104] published in early 2005, discussed the role of councils as leaders of their localities. The paper emphasised the importance of LSPs in this process and noted, too, the value of LAAs as catalysts for bringing partners together to identify an increasingly common set of outcomes. In principle, the paper argued, a strong collective partnership might oversee the totality of public expenditure in the locality. The document also flagged up the Government's agreement with the Egan Review of Skills for Sustainable Communities that community strategies should become *sustainable* community strategies, providing a long-term view and integrating social, economic and environmental priorities such as an ageing population.

These issues were taken up in a consultation paper – *Local Strategic Partnerships: shaping the future* - published in December 2005.[105] The paper offered the following vision:

> **We want LSPs…**
>
> 1. To be the partnership of partnerships in an area, providing the strategic co-ordination within the area and linking with other plans and bodies established at the regional, sub-regional and local level.

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101 ODPM, *Factsheet 5: Local area agreements*, 31 January 2005, available at: http://www.communities.gov.uk/index.asp?id=1122936

102 *Local Area Agreements*, SN/PC/3168

103 ODPM, *Local Area Agreements: Guidance for Round 3 and Refresh of Rounds 1 and 2*, 31 March 2006, http://www.communities.gov.uk/index.asp?id=1161635

104 ODPM, *Vibrant local leadership*, January 2005, http://www.communities.gov.uk/index.asp?id=1163150

105 http://www.communities.gov.uk/index.asp?id=1504145

> 2. To ensure a Sustainable Community Strategy is produced that sets the vision and priorities for the area agreed by all parties, including local citizens and businesses, and built on a solid evidence base.
> 3. To develop and drive the effective delivery of their Local Area Agreements.
> 4. To agree an action plan for achieving the Sustainable Community Strategy priorities, including the LAA outcomes.
>
> In two-tier areas we expect:
>
> *County-level* LSPs to agree the LAA and relevant action plan, taking into account priorities identified by District local authorities and LSPs in their Sustainable Community Strategies.
> *District-level* LSPs (and their Sustainable Community Strategies) to be fully considered and involved in the drawing-up and implementing of the county-wide Sustainable Community Strategy and LAA. Relevant LAA outcomes should also be reflected in the District LSPs' action plans and future iterations of all District-led plans, including Local Development Frameworks.

2. A statutory obligation to co-operate

Research into the operation of LSPs had shown a wide variation in the extent to which LSPs had been successful in engaging partners, including public sector partners, and problems of aligning the aims of partner organisations with the aims of the LSP.[106] The consultation paper cited above suggested that, in order to increase the effectiveness of LSPs, it might be appropriate to place obligations on key partner agencies to participate. It was also suggested that there might be a parallel duty on local authorities to involve the business, voluntary and community sectors.

Sir Michael Lyons strongly supported the introduction of a statutory duty to co-operate in his report on the role and functions of local authorities (May 2006). He said:

> In practice, local authorities are often already considered the 'first among equals' in convening and delivering effective action across a range of issues within their local area. That is a role for which they are uniquely well-placed…It may help if this position is formally recognised by the Government. I believe that local authorities require real power to influence partners if their convening role is to be credible and to have real effect. I therefore support the proposal in the Government's recent consultation on Local Strategic Partnerships to introduce a statutory duty on other local agencies to cooperate with the local authority.[107]

The LGA had argued in its *Closer to people and places* for LAAs to be developed as a mechanism for overseeing all public sector funding in a given area. And it favoured the introduction of a duty to co-operate on LAA public service partners. This would "...strengthen accountability to local people and allow national agencies to challenge their parent department on constraints imposed from Whitehall that may detract from local solutions."

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[106] DCLG, *Evaluation of Local Strategic Partnerships: Final report*, January 2006, and DCLG, *LSP Evaluation: interim report*, August 2005, available with other research reports at: http://www.communities.gov.uk/index.asp?id=1136876

[107] Lyons Inquiry, *National prosperity, local choice and civic engagement*, May 2006, para 4.24

Stephen Cirell and Professor John Bennett of Eversheds have argued for some time that LAAs should be given a statutory basis, citing (1) the operation of Suffolk County Council's LAA which was adjudged to be contravening public law and, more recently, (2) the withdrawal at short notice of certain primary care trusts from LAAs on account of NHS funding difficulties. Dick Sorabji of New Local Government Network had opposed legislation stating that:

> ...the last thing Local Area Agreements need is new law adding to an already growing tendency for over-prescription...Dig beneath calls for another legal opinion and one always finds low-trust partnerships. High-trust collaboration is the first step to high-performing local partnerships.[108]

Cirell and Bennett responded:

> ...looking at the role that these bodies are supposed to perform – and the level of monies that could be running through them, often tens of millions of pounds – it seems odd that they should be left to the vagaries of informal agreement. So if LAAs are not to be legally underpinned, what is the required status to assist them to perform that role properly? If further legal complexities are likely to arise, there is only one way to guarantee an easier path and that is for the Government to put LAAs on a secure statutory footing.[109]

3. The white paper

The white paper's regulatory impact assessment set out the rationale for Government intervention in this area as follows:-

> Although much has already been achieved in putting LSPs, LAAs and Community Strategies at the heart of local partnership working and the setting and delivery of objectives, evidence has shown that partnership working is not always effective or comprehensive. Lines of accountability for achieving targets are often unclear. Community Strategies are not always underpinned with a firm evidence base and are often disjointed from delivery mechanisms. These shortcomings need to be addressed for LSPs, LAAs and Community Strategies to achieve their full potential.[110]

Two options (other than do nothing) are proposed:

- put LAAs on a statutory footing, requiring upper tier councils to produce an LAA and consult and seek the participation of named partners, whilst also placing a duty on upper tier authorities and all local public sector partners to co-operate with each other in agreeing LAA targets. Public bodies in the LSP will also be under a duty to have regard to particular targets in the LAA; or

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[108] Dick Sorabji, "Letter: LAAs need more trust, not laws", *Public Finance*, 27 January 2006, p17

[109] Stephen Cirell and John Bennett, "LAA law – the story continues", *Public Finance*, 2 June 2—6 p19

[110] DCLG, *Regulatory impact assessment*, October 2006, pp45-6, http://www.communities.gov.uk/index.asp?id=1504070

- transform LSPs into formal statutory bodies, with the power to take decisions as a corporate body and directly commission services.

The RIA says that the first proposal will reinforce partnership working where it is already effective (without creating additional costs); and where partnerships are not currently effective, these proposals will encourage local authorities to convene partnerships in order to achieve significant benefits that will flow to local communities in the form of more joined-up planning and service delivery. The second proposal is thought to be likely to result in heavier costs: transforming LSPs into legally constituted bodies could increase calls for significant central expenditure on staff and administration. In addition, the first option is said to have the advantage that individual agencies can be assigned to the delivery of particular targets, thereby increasing their accountability. This would not be legally possible if the LSP were to be a single statutory organisation.

The white paper sets out the Government's view that LAAs should be the "delivery plan" for the sustainable community strategy (p 102) and the latter is to be "at the heart of" what local authorities do through the new performance framework (p 20). An authority's principal improvement targets are to be negotiated within its LAA. Some 35 of these targets will relate to the new national indicator set and an authority and its partners may set additional local priority targets. LAA targets are specific to the locality and are outcome-based so that, while central government is interested in what is delivered, it is up to local partners to decide how to do it. The white paper proposes:

- a duty for the local authority to prepare the Sustainable Community Strategy in consultation with others as set out in section 4 of the Local Government Act 2000;
- the Sustainable Community Strategy and other local and regional plans to be drawn up with regard to each other;
- a new duty for the upper-tier local authority (in two-tier areas) or unitary authority to prepare a LAA in consultation with others;
- a new duty for the local authority and named partners (listed below) to cooperate with each other to agree the targets in the LAA; and
- a new duty for the local authority and named partners to have regard to relevant targets in the LAA – as set out by the relevant Secretary of State in directions (para 5.26).

4. The Bill

Chapter 1 of part 5 relates to LAAs and, again, readers may wish to refer to the explanatory notes for a detailed explanation of each clause. **Clause 78** defines the 'responsible' (upper tier) local authorities which are to prepare LAAs. **Clause 79** lists partner authorities including: district councils (those which are not the 'responsible authorities'), fire and rescue authorities, national park authorities, Broads Authority, police authorities, chief officers of police, waste disposal authorities, metropolitan passenger transport authorities, primary care trusts, regional development agencies, local probation boards, youth offending teams, and other specified bodies and persons listed in subsection (3).

Clause 80 defines a local improvement target as "a target for improvement in the economic, social or environmental well-being of the responsible local authority's area". Such a target must relate to the authority and/or one or more partner authorities and/or one or more other persons. **Clause 81** places a duty on the responsible local authority to prepare and submit for approval a draft LAA when directed to do so by the Secretary of State. **Clause 83** places a duty on the responsible authority and each partner authority to have regard to every local improvement target when exercising its functions.

Clause 84 introduces the concept of designated targets. The Secretary of State may designate any local improvement target. The explanatory notes state that "…it is envisaged that the designated targets will be those which have been identified as priorities…and which relate to the national indicator set for local government, as determined through Public Service Agreements." As stated in **clause 85**, designated targets may not be amended or removed except through the revision process set out in **clauses 86 and 87**. Other local improvement targets may be added, changed or removed by agreement with the partner authorities to which the target relates, and after consultation with other appropriate persons.

Clause 89 amends section 4 of the *Local Government Act 2000* by specifying that partner authorities must be consulted, and their participation sought by responsible local authorities, in the development and modification of the community strategy.

5. Reactions

The Local Government Association indicated concern that there was no upper limit on the number of LAA targets that may be designated, and that the processes for revision and addition of improvement targets could prove cumbersome. But it welcomed the strengthening of the hand of councils in being able to ensure that partner authorities are accountable and measured on their ability to deliver relevant components of LAAs.[111]

Following the white paper, Amelia Cookson, a policy analyst with the Local Government Information Unit (LGIU) wrote in the *Local Government Chronicle*:

> Time will tell but what we now have is the prospect that LAAs and the rest of the new performance system may create a culture wherein individual Whitehall departments no longer feel able to create their own performance requirements for local government...For the first time central departments will have to make a case for changes to the performance requirements for both councils and local public sector partners. Performance requirements outside the system would need to justify their existence in a way they never had to before. And that could feel like very real devolution.[112]

However, an LGIU briefing paper on the Bill indicated concern about the degree of control exercised by the Secretary of State over LAA targets:

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[111] *LGA briefing on the Local Government and Public Involvement in Health Bill*, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?lsection=0&id=SXA4B3-A783EC78

[112] *Local Government Chronicle*, 23 November 2006, p9

> In the white paper it was clear that central government would only consider and negotiate the 35 targets that related to the central departments' priorities. All other targets would be purely for local negotiation. It now appears that the Bill could allow the Secretary of State to treat any target, whether central or local, in the same way and 'designate' it. Designation means that a target cannot be changed except by going back to the Secretary of State for approval. It may be in practice that the Secretary of State will only designate centrally negotiated targets, but it is unhelpful that the legislation allows for interference in targets that are entirely local.[113]

The New Local Government Network said:-

> At long last this legislation will begin to put Councils in the driving seat across most local public services, especially as all other local agencies will have to have regard to the Council's Community Strategy document in shaping their own activities in future. The 'duty to cooperate' is, of course, broadly defined, and the test will be when PCTs or Police Authorities or RDAs have strongly diverging opinions with Councils on local policies and priorities.[114]

District councils are required to be the main partner of county councils in two-tier areas. A briefing paper from one such council, Basingstoke and Deane BC, commented on the "upper-tier perspective" of the white paper. It added:

> The duty to co-operate is a significant challenge in two tier areas. Enhanced work with county council is essential. Most of the power, funding and influence is potentially vested with the county level, unless the districts are fully and properly engaged.[115]

Philip Bostock, Chief Executive of Exeter City Council, has said that the "relentless growth" of LAAs is a significant factor in the decision of cities such as Exeter to seek unitary status:

> As more central funding streams are diverted to the county-wide pot, so local power, influence and accountability ebbs away. This is potentially damaging for any district, but for cities like Exeter, it will seriously undermine their ability to do what they do best – deal with the complexity of uniquely urban issues and drive economic growth for the wider region.[116]

The National Council for Voluntary Organisations has said:

> We welcome measures set out in the Bill in relation to partnership working and LAAs. Often VCOs have a more holistic view of the activities undertaken by public sector organisations in an area, and thus the proposed duty on public sector bodies to cooperate is welcome. However, it is also important to ensure

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[113] Hilary Kitchin, *Local Government and Public Involvement in Health Bill: an initial report*, LGIU, 15 December 2006

[114] NLGN, "Local government kicks off crucial 12 months for local government", *Press release*, 13 December 2006, http://www.nlgn.org.uk/nlgn.php

[115] Basingstoke & Deane BC, *Briefing paper: local government white paper: local government as strategic leader and place shaper*, 30 October 2006, www.basingstoke.gov.uk

[116] Philip Bostock, "The joys of being single", *Municipal Journal*, 30 November 2006, pp12-13

> that local government consults effectively with residents and communities: non-statutory partners can bring a different perspective, expertise and knowledge to discussions and must not be excluded from the decision making process.[117]

B. Overview and scrutiny

1. Background

Section 21 of the *Local Government Act 2000* required councils to establish overview and scrutiny committees. These would question and evaluate the impact of executive decisions and actions as well as investigate policy issues, advise the executive and consider budgetary and other documents. Detailed implementation of scrutiny arrangements was a matter for individual local authorities. In 2002, the then Transport, Local Government and the Regions Select Committee drew attention to the general weaknesses of scrutiny arrangements in its report on how the 2000 Act was working.[118] In 2004, Ashworth and Snape wrote that scrutiny was still "...struggling to become an effective element of the new council constitutions. Every piece of research draws this conclusion."[119] Nirmala Rao and others have contrasted the powers and resources available to parliamentary select committees with those available to local authority committees.[120]

The research findings, cited by the Government in the white paper, point to areas where scrutiny is effective and where not but acknowledges that:

> The evidence on scrutiny arrangements is mixed partly due to the introduction of an entirely new role, partly due to the reluctance of councillors in power to challenge their parties' executive decision-making, and partly due to a structural imbalance in the level of officer support for scrutiny compared to executive functions (Stoker et al. 2004: 58)[121]

The Government's 2005 local:vision document, *Vibrant local leadership*, said:

> There is evidence that new governance arrangements are at their most powerful where strong executives are matched by strong scrutiny, with a clear separation and independence between the two.

The paper identified the following separate aspects of scrutiny:

- Overview – holding the executive to account
- External review – holding a range of other agencies including local partners to account for the way that services are being secured for the locality

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[117] NCVO, *Briefing on Local Government and Public Involvement in Health Bill 2006*, http://www.ncvo-vol.org.uk/policy/localgovernment/index.asp?id=3769

[118] DTLR Select Committee, *How the Local Government Act 2000 is working,* HC 602 2001-02, conclusions para 17.

[119] Rachel Ashworth and Stephanie Snape, "An overview of scrutiny: a triumph of context over structure", *Local Government Studies*, Vol 30 No. 4, Winter 2004, pp538-556

[120] Nirmala Rao, "Modernising local government", *Economic Affairs*, Vol 26, No. 1, March 2006, pp18-24

[121] DCLG, *New council constitutions: a summary of the ELG research findings*, p11, http://www.communities.gov.uk/index.asp?id=1504087

- Policy development – challenging assumptions and suggesting improvements in the way issues are dealt with
- Performance reviews – considering the council's performance against targets

The paper noted that currently "these roles are not given the profile they deserve" and it sought views on ways in which more effective scrutiny could be facilitated, for example, by a formal requirement for executives to act on scrutiny findings and by extending the formal scrutiny remit (as with health) to other aspects of the community leadership role.

Sir Michael Lyons highlighted the importance of scrutiny in his discussion of the backbench councillor's role in his interim report on the role and functions of local authorities. He acknowledged that the effectiveness of scrutiny varies across different areas and services and favoured an extension of the roles and powers of scrutiny committees to "look more widely across the work of local public services and other agencies as part of local government's convening role."[122]

2. The white paper

The 2006 white paper, *Strong and prosperous communities*, proposes an extension of scrutiny powers in the context of two main policy areas. Firstly, the 'place-shaping role' of a council whereby an authority will be able to oversee relevant aspects of the work of named agencies which are covered by the statutory duty to co-operate; and (2) a councillor's community leadership role whereby he/she will be able to refer a community call for action to overview and scrutiny committees. This mechanism is discussed below.

The white paper says:

> 3.34 Overview and scrutiny committees currently have the power to compel members of the council executive and council officers to appear before them and provide information. PCTs and certain other local NHS bodies are already under a duty to co-operate with overview and scrutiny. The police are accountable to Police Authorities and there are new proposals in the Police and Justice Bill for strengthening the scrutiny of police and their community safety partners. But there is currently no general requirement on those outside the authority, who have been the subject of a committee's recommendation, to provide information to the committee. Nor can the committee take any further action if matters do not improve.

The Government proposes that:

> - those public service providers (other than the police who will instead be subject to the new scrutiny arrangements set out in the Police and Justice Bill), covered by the duty to co-operate...either to appear before the committee or provide information to the committee within 20 working days, insofar as their actions relate to functions or service delivery connected with the authority;

[122] Op cit, para 4.48

- overview and scrutiny committees to copy to public bodies recommendations affecting them;
- those bodies to have regard to those recommendations when exercising their functions, to the extent that the recommendations are within the duty to co-operate;
- the council to consider and publicise their response to overview and scrutiny recommendations as soon as possible and no later than two months (para 3.35).

3. The Community Call for Action

The "community call for action" (CCfA) is a mechanism for strengthening the hand of local councillors in dealing with persistent local problems that cannot easily be resolved. Along with changes to parish arrangements and the proposed best value duty to secure local participation in service design and delivery, it is a community empowerment measure outlined in chapter 2 of the white paper.

By way of background, the 2004 police reform white paper, *Building communities, beating crime*, proposed that, where there was a particular problem with crime or anti-social behaviour, there should be a formal way for local communities to trigger local action by the police, local authorities and others. Such a mechanism should be an "avenue of last resort rather than a mainstream way of doing business." Further details of the CCfA were given in the Government's *Respect Action Plan*, launched in January 2006 as part of the Government's cross-cutting drive to tackle bad behaviour. The CCfA procedure in regard to crime and disorder matters was introduced as part of the *Crime and Justice Bill 2005-06* and is discussed in a Library research paper on that Bill.[123]

David Miliband, as Minister of Communities and Local Government, singled out the neighbourhood policing approach involving CCfA as one method by which communities could gain more influence in their local area. His successor, Ruth Kelly, indicated in a speech in July 2006 that extension of CCfA to non-policing matters was under consideration:

> We are developing something called the Community Call for Action. People raise issues with ward councillors, and ward councillors either sort them out or have the power to go direct to the whole council for resolution. This guarantees discussion and a response. The answer may still, on some occasions, be 'no', but concerns will have been considered and taken seriously.[124]

The 2006 white paper said that councillors would continue to resolve issues informally through discussion, and it was desirable that councils should enhance their ability to

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[123] *The Police and Justice Bill*, RP 06/11, 27 February 2006, pp59-62, http://hcl1.hclibrary.parliament.uk/wdw/rp/rplist.asp

[124] DCLG, "Devolution to and from the town hall: speech by Ruth Kelly to Bellingham Neighbourhood Seminar", 11 July 2006

solve more intractable problems by delegating powers or budgets. But the existence of a CCfA would strengthen their hand. It would work thus:

- As for crime and disorder matters, councillors would be able to refer issues to their overview and scrutiny committees. This would be particularly appropriate for the more intractable or strategic issues on which councillors will need to work with colleagues and take a broader view;
- Committees might choose to make recommendations to the executive and relevant service providers after, if necessary, conducting an investigation of their own;
- Relevant public bodies would be required to respond to the committee's recommendations;
- They could respond positively or negatively, but their responses will be publicised.

The CCfA procedure would not be available for those matters where there is already a statutory appeals process, for example, planning, licensing, council tax and non-domestic rates.

4. The Bill

The following refers to selected clauses only and readers may wish to refer to the Bill's explanatory notes for a fuller explanation.

Clauses 92 and 93, taken together with clauses 166 and 167, relate to the Community Call for Action (CCfA). **Clause 92** inserts a new section 21A into the *Local Government Act 2000* requiring an authority to ensure that its overview and scrutiny (O/S) arrangements provide for any member of the authority to refer a matter to the relevant O/S committee. Such matters must relate to the work of the local authority (other than crime and disorder and other "excluded matters") and affect the area for which the member is elected. Excluded matters may be specified by order and would presumably include those policy areas mentioned in the white paper which already have an appeals process (planning, licensing etc). The committee may choose not to take a CCfA further but, if so, they must let the member know the reasons for their decision.

Clause 166 provides that an authority can make arrangements for an individual councillor to exercise functions of the authority in relation to his/her ward. Councillors may thus be empowered to sort out persistent minor problems themselves as part of the CCfA process. **Clause 167** is concerned with ensuring that a publicly-available record of decisions made or action taken in the CCfA process is made. **Clause 93** allows O/S committees to require councillors exercising the above functions to be questioned on such matters.

Clause 94 provides for the Secretary of State to make regulations determining what information relevant partner authorities must provide to the O/S committee of an upper-tier authority (i.e. an authority charged with drawing up an LAA). 'Relevant partner authorities' are those listed in clause 79 excluding police authorities and chief officers of police.

Clause 95 inserts new sections 21B to 21D in the 2000 Act and these widen and strengthen scrutiny powers:

- 21B empowers an O/S committee to publish a report or recommendations (other than on a crime and disorder matter) and to give notice in writing, requesting the authority or executive to consider the matter and to respond within two months giving notice of action (if any) to be taken;
- 21C applies where a committee makes a report or recommendations relating to a local improvement target which relates to a relevant partner authority. The committee may by written notice require that the partner authority have regard to the report or recommendations in exercising its functions.
- 21D relates to the exclusion of confidential or exempt information from a report or recommendations or from a council response.

5. Reactions (I): overview and scrutiny

The Local Government Association said:

> We support the proposed enhancement of the powers of scrutiny and individual councillors to represent the interests of their constituents. However, separate and different arrangements for crime and disorder from all other local issues will be difficult to operate and lead to confusion for local people, councillors and councils. We are disappointed that the opportunity has not been taken to bring in a single system for all local issues.[125]

Simon Parker, Head of Public Services at Demos, has identified the new scrutiny arrangements, along with the locally-driven targets of the new performance regime, as the key to a genuinely new and more equal partnership between central and local government:

> If councils can make good use of the newly empowered overview and scrutiny committees, and find new ways to involve people in strategy design and service delivery, then they have a fighting chance of creating a legitimacy which enables them to take an ever more significant role in co-ordinating all local services.[126]

A Local Government Information Unit briefing on the Bill says:

> The extension of overview and scrutiny powers is welcome, but, disappointingly, it is more limited than anticipated. Councils will have right to require partner organisations to respond to overview over LAA targets but not on other issues of local concern. The Community Call for Action itself is focused on local government matters. It is not backed by any provision to require external

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[125] *LGA briefing on the Local Government and Public Involvement in Health Bill*, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?Isection=0&id=SXA4B3-A783EC78

[126] Simon Parker, "A trustworthy start", *Municipal Journal*, 9 November 2006, p15

> agencies to respond to scrutiny investigation which might be made as a result of the Community Call for Action.[127]

The Government promised in the white paper to work with local authorities to develop new best practice guidance on overview and scrutiny, focusing in particular on area-based scrutiny arrangements. Ultimately, it is for individual authorities to establish their own scrutiny arrangements and to ensure that they are effective. In this context, Ashworth and Snape noted in 2004 that "...a whole library of good practice guides has been produced to support local implementation."[128]

Baroness Scott of Needham Market, Liberal Democrat Spokesperson in the Lords, voiced concern at the emphasis on the scrutiny role for councillors in a Queen's Speech debate:

> Back-bench councillors are now told that they have to concentrate on scrutiny. That worries me because scrutiny is essentially a backward-looking process. It very easily becomes an entirely negative process, looking at what has gone wrong with something. Would it not be better for the energy of councillors to be harnessed in the development of policies and in decision-making from the outset rather than having to look back? No wonder fewer people vote. Why on earth should one bother to vote for a councillor whose main role in life is to scrutinise the decisions of a very few people in a council?[129]

6. Reactions (II): Community Call for Action

The New Local Government Network said in its response to the white paper:

> In helping to clarify the role for councillors outside the executive, this White Paper opens a world of new opportunities for democratic accountability across all local public services, giving neighbourhood representatives a real chance to fight for their constituents. Combining these extended scrutiny powers with opportunities for individual councillor budgets, new rights through the Community Call To Action and autonomy over local byelaws should make the role of councillor more attractive, but could well also demand more activism.[130]

Lord Bruce-Lockhart, Chairman of the Local Government Association, commented as follows on the white paper's proposals for CCfA:

> A 'community call for action' is nothing new. For years, good local authorities have been encouraging frontline councillors to take up problems on behalf of the communities they represent. But enshrining these good practices in law will help members put local people first. The ability of frontline councillors to take effective

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127 Hilary Kitchin, *Local Government and Public Involvement in Health Bill: an initial report*, LGIU, 15 December 2006

128 OP cit, p539

129 HL Deb 16 December 2006 c30

130 NLGN, "A good day for leadership says New Local Government Network, welcoming today's white Paper", 30 October 2006

> action on behalf of their constituents would be further boosted by the DCLG's proposal to broaden and strengthen scrutiny.[131]

The white paper emphasised that overview and scrutiny committees must act as 'gatekeepers' to ensure that issues considered are of genuine interest to the community. Lynne Featherstone had commented in second reading of the *Police and Justice Bill* on the danger of CCfA procedure being hijacked by "...those who shout the loudest."[132] Similar fears have been voiced by others:

> A county council chief executive told delegates at a conference on the local government white paper that the measure, designed to make councils accountable for failing public services, could be commandeered by small but vocal minority interest groups campaigning against council policies.
>
> Speaking at the New Local Government Network event, East Sussex Council chief executive Cheryl Miller, said: 'I predict now that the community call for action will be impossible to manage.' She also voiced her expectation that safeguards designed to stop councillors and the public from behaving 'mischievously' would fail.[133]

VII Byelaws

Local authorities (including parish councils) have powers under various Acts of Parliament to make byelaws which are local laws used to address specific local problems. Byelaws must be confirmed by a Secretary of State – originally the Home Secretary but now, in most cases, the Secretary of State for Communities and Local Government.

One general byelaw-making power given by section 235 of the *Local Government Act 1972* is the power to make byelaws for "good rule and government" of the whole or any part of the district or borough and for the prevention and suppression of nuisances. Other byelaws within DCLG jurisdiction include those relating to use of the seashore and promenades, (by regulating fishing, horse riding, interference with life-saving equipment etc), public walks and pleasure grounds, amusement premises and regulation of local markets. Certain other types of byelaw require confirmation by ministers in other departments. In particular, DEFRA has responsibility for byelaws on common land, town and village greens and landscape protection, including national parks.[134]

The DCLG has various sets of model byelaws which contain an appropriate wording for laws on a number of different subjects. The use of model byelaws is not mandatory, but can help to ensure that byelaws introduced by a local authority are correctly worded and within the authority's powers, thus reducing the risk of legal challenge. Where the precise form of words used in a model byelaw is adopted locally, DCLG has offered a

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131 Lord Bruce-Lockhart, "Our view of the White Paper", *Municipal Journal*, 2 November 2006, p13

132 HC Deb 6 March 2006 c634

133 "Activists may hijack community call for action, minister told", *Newstart Online*, 8 November 2006, http://www.newstartmag.co.uk/news1034.html

134 See DEFRA, *Byelaw powers for local authorities*, http://www.defra.gov.uk/wildlife-countryside/issues/byelaws/index.htm

"fast track" procedure to enable the byelaw to be confirmed swiftly. Further information on byelaws can be found in a Library note – *Local authority byelaws* (SN/PC/1817) – and on the Department's website.[135]

A. Government proposals

A local:vision document published in January 2005, *Citizen engagement and public services: why neighbourhoods matter*, singled out byelaws as an effective 'conduit' by which neighbourhoods could work with councils to enforce standards of behaviour in a particular area. The paper advocated use of model byelaws that could be tailored to an individual neighbourhood. It then went on to suggest that certain 'neighbourhood bodies' might be empowered to levy fixed penalty notices and to apply for ASBOs.[136]

In April 2006 the then ODPM issued *Local authority byelaws in England: a discussion paper*[137] which set out the current arrangements for byelaws and sought views on several key issues including possible alternatives to byelaws. The paper contrasted new 'streamlined' procedures for regulating unacceptable behaviour such as 'alcohol control zones' whereby a local authority designates areas where public consumption of alcohol is to be restricted and police have powers of confiscation and enforcement within it. Another example given was dog control orders, made under the *Clean Neighbourhoods and Environment Act 2005*, which do not require confirmation by the Secretary of State and are enforceable through a fixed penalty system. The paper asked whether a single 'community respect order' might replace the current range of byelaws which are available to tackle anti social behaviour.

Other key issues raised were as follows:-

- Scaling back the Secretary of State's role - The paper noted that the vast majority of local authority byelaws were relatively uncontroversial and addressed very localised and specific issues. Withdrawing the Secretary of State's confirming role would emphasise local ownership of the process. Authorities would be responsible for ensuring that they were acting *intra vires* and that their byelaws were properly drafted and made.
- Guidance and capacity building - If the Secretary of State's role were to be repealed, existing model byelaw sets could be maintained, updated and supplemented with guidance on good consultation practice. Local authorities would need to build up skills and capacity through cooperative and joint working.
- Local consultation - There is currently no statutory requirement for local authorities to consult on proposed byelaws. The paper stated that, if the Government's role were to be reduced or removed, thorough consultation should precede the introduction of any new byelaw.

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[135] DCLG, *Local government legislation: byelaws*, http://www.communities.gov.uk/index.asp?id=1133678

[136] ODPM, *Citizen engagement and public services: why neighbourhoods matter*, January 2005, http://www.communities.gov.uk/index.asp?id=1163148

[137] ODPM, *Local authority byelaws in England: a discussion paper*, April 2006, http://www.communities.gov.uk/index.asp?id=1165301

- Disputes and appeals - The paper sought views on appeal mechanisms (other than the Secretary of State) in those instances where a byelaw proved to be controversial or have wider ramifications. It suggested that appeals against parish byelaws might be heard by a principal authority, by another parish or by a sub-committee of the byelaw-making authority itself.
- Enforcement - Byelaws are currently enforced through the Magistrates Courts but the paper opined that the low level of cases brought suggested that they were not being enforced rigorously and effectively. Enforcement of byelaws through fixed penalty notices would be simpler and might lead to more effective enforcement if authorities were allowed to retain the receipts from fines.

The white paper affirmed that byelaws allow communities, through their elected councillors, to improve the quality of their environment and create "...pleasant, safe local public places which can be enjoyed by all." The Government said that it would:

- End the Secretary of State's role in confirming byelaws, thus reducing bureaucracy and shortening the time it takes to make byelaws;
- Make it possible for councils to enforce byelaws through fixed penalty notices instead of imposing fines through the magistrates' courts. This will increase the effectiveness of byelaws as a means of enforcing standards of behaviour in public (para 3.14).

B. The Bill

The explanatory notes state:

> 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...

Clause 97 inserts a new section 236A into the *Local Government Act 1972* giving the Secretary of State the power, in relation to England, to make regulations prescribing classes of byelaws which can be made by an alternative procedure from that set out in section 236. The regulations are to cover, in particular, consultation procedures and publicity to be given to a new byelaw.

Clause 98 of the Bill relates to the levying of fixed penalties for byelaw offences. A full explanation is given in the explanatory notes. **Clause 99** requires an authority to have regard to the desirability of using its fixed penalty receipts for the purpose of combating any relevant nuisance. **Clause 100** gives the Secretary of State power to issue guidance relating to the above matters. **Clause 101** concerns the issuing of fixed penalty notices by community support officers. **Clause 102** deals with revocation of byelaws.

C. Reactions

The Local Government Association reacted favourably to this proposal:

> This is sensible devolution of powers to councils. It makes far more sense for councils themselves to create bye-laws. They have more understanding of what issues in their area require bye-laws than a Minister in central government. Similarly, fixed penalty notices will give councillors powers to protect local residents and help improve the quality of life.[138]

Professors Jones and Stewart wrote in the *Municipal Journal*:

> The important proposal to give local authorities powers to make bye-laws without the necessity for approval by the Secretary of State expresses the role of local authorities as local government with quasi-legislative powers rather than as mere agents of central government. The power to make bye-laws should belong to the council and not to the mayor and or leader alone, since they are not executive but legislative powers.[139]

Caroline Spelman, Conservative Shadow Communities Secretary, said in a debate on the Queen's Speech:

> We welcome measures to give parish councils more powers to pass by-laws enabling them to take action on antisocial behaviour and graffiti, but several questions remain unanswered. What calculations have been made of the cost of policing on-the-spot fines and of putting community support officers on the streets, and of the working capacity of the councils that will implement and manage those schemes? How far down the road of summary justice are we prepared to go? Of course we need to come down hard on problems such as graffiti and antisocial behaviour, but are there sufficient safeguards in place? Already, people who mix up their recycling or accidentally put their dustbins out on the wrong day are being fined. Surely we should be looking to the magistrates' courts as the means of delivering prompt local justice, with the safety net of giving defendants a fair say. That was the courts' original purpose, and the Government should be trying to restore that role.[140]

Andrew Stunell, responding on behalf of the Liberal Democrats to the statement on the white paper, welcomed the new powers for parish and district councils to make byelaws

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[138] *LGA briefing on the Local Government and Public Involvement in Health Bill*, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?lsection=0&id=SXA4B3-A783EC78

[139] George Jones and John Stewart, Will they learn to listen? *Municipal Journal*, 9 November 2006, p18

[140] HC Deb 20 November 2006 cc270-1

whilst pointing out that councils had already been given enhanced enforcement powers in respect of offences under the *Clean Neighbourhoods and Environment Act* 2005.[141]

VIII Best value: duty to secure participation etc

Reform of the best value regime is of significance in two areas of the white paper. The proposed new duty to secure local participation in service design and delivery is an aspect of community empowerment along with parish arrangements and the introduction of the community call for action. The removal of the requirement for best value plans and reviews is a significant part of the proposed rationalisation of the performance framework.

A. Background

Best Value replaced Compulsory Competitive Tendering (CCT) which had been introduced by the Conservative administration in the 1980s and 1990s and extended to a wide range of local authority functions. Labour's 1997 manifesto said of CCT:

> Councils should not be forced to put their services out to tender, but will be required to obtain best value. We reject the dogmatic view that services must be privatised to be of high quality, but equally we see no reason why a service should be delivered directly if other more efficient means are available. Cost counts but so does quality.

The *Local Government Act 1999* placed a duty on local authorities to achieve best value, defined as the duty "…to secure continuous improvement in the exercise of all functions undertaken by the authority, having regard to a combination of economy, efficiency and effectiveness." The Act requires that services are (1) responsive to the needs of citizens, (2) of a high quality and cost-effective, and (3) fair and accessible to all who need them.[142]

Best value came into force in April 2000. It applied to various types of authority, for example, police and fire authorities, and also covered the largest parishes. Its main features were:

Best value reviews - all services had to be subjected to a fundamental review over a five year period. In carrying out such reviews, authorities were required to apply the 'four Cs':

- Challenge why, how and by whom a service is being provided;
- Compare their performance with others across a range of relevant indicators, taking into account the views of both service users and potential suppliers;
- Consult with local stakeholders as to their experience of local services and their aspirations for the future;

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[141] HC Deb 26 October 2006 c1663

[142] See ODPM circular 03/2003, *Local Government Act 1999: Part 1, Best value and performance improvement*, available at http://www.communities.gov.uk/index.asp?id=1163718

- Compete wherever practicable in a fair and open manner as a means of securing efficient and effective services.[143]

Best value performance plans – These would set out an authority's current performance as measured by national and locally-determined best value performance indicators (BVPIs), and also future targets for all services. They were to be the main instruments by which authorities would be judged for the efficiency and effectiveness of their services.

Inspection – The process was to be subject to comprehensive audit and inspection. Auditors audit the BV performance plan for compliance with statutory requirements and guidance, and inspections by the Audit Commission check on BV reviews and on performance targets.[144] Comprehensive Performance Assessment (CPA) was introduced in 2002 and is described in a later section on performance and inspection.

Failing authorities – The Government has wide powers of intervention where it has concerns about the way in which an authority is providing a service. Ultimately, the Secretary of State can transfer the running of a service to a third party.

B. Operation of the BV regime

Best value, in common with other modernisation initiatives, has been evaluated over a period by a team of academics. The final evaluation report concluded that most authorities had implemented the key elements of BV, that it had had a significant impact on the organisational characteristics and management practices of English local authorities and that that there was strong evidence of a positive association between service performance and changes encouraged by the BV regime. Less favourable conclusions concerned the burden on authorities, in terms of time, effort and cost, of the performance and inspection regime, and the fact that policies were not sufficiently attuned to the different circumstances of different authorities.[145]

Changes in the performance framework in 2002 and 2003 removed the need for all functions to be reviewed within a five year period and allowed authorities to prioritise areas for review in the light of CPA assessments. The evaluation report states that this has prompted many to switch away from service based reviews in favour of "corporate processes of improvement." In its analysis of BV reviews, the survey found a declining level of user focus in recent years, and evidence from a number of reviews of consultation with users "simply in order to tick the consultation box." It added:

> The evidence suggests that, in order to be useful in driving improvement, consultation with users needs to be carefully targeted and seen as part of a genuinely challenging process of seeking ways of improving existing approaches to service delivery.[146]

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[143] Ibid, p13
[144] IDeA, *What is best value?*, 2004
[145] Centre for Local & Regional Government Research, University of Cardiff, *The long-term evaluation of the Best Value regime: final report*, DCLG, November 2006, http://www.communities.gov.uk/index.asp?id=1504566
[146] Ibid, p103

The local:vision document, *Securing better outcomes: developing a new performance framework*,[147] referred to this trend, suggesting that use of the 4 Cs in service review might be retained and strengthened, but that it would consider whether to continue with BV reviews and performance plans. A renewed focus on people was to be the first principle of a rebalanced performance framework. Sir Michael Lyons had commented in his interim report (May 2006) on the importance of shaping services around users, and had referred to a CPA finding that that one third of single or upper tier authorities had poor or outdated systems of consultation.

C. The white paper

Section 2 of the white paper's regulatory impact assessment sets out the rationale for government intervention in this area, citing a range of recent survey findings which show, for example, that a high proportion of citizens (61%) feel that they have little or no influence over decisions affecting their local areas; only one third of the population votes in local elections; only 8% of the population is involved in local decision making; residents in the most deprived areas have the highest level of alienation from the political system.[148]

The white paper contained commitments to reform aspects of the BV regime:

> The Government will:
>
> - Require BV authorities (except police authorities) to take steps, where appropriate, to secure the participation of local people in their activities;
> - Remove the requirement for BV authorities to prepare annual Best Value Performance Plans and to conduct BV reviews;
> - Exempt all parish councils from best value (paras 6.23 to 6.24).

The white paper says that it will be for individual authorities to determine precisely how to implement the duty to secure citizen participation but that such a duty would include steps to:

- inform citizens as to how services are performing;
- consult on the shape of local services and policies;
- involve citizens in design, delivery or assessment of services;
- devolve responsibility for delivery of a service.

One piece of statutory guidance is promised which will place citizens and users 'at the heart' of service commissioning. The Government will work with local authorities in testing practical methods of user involvement. It will also encourage local authorities to obtain more systematic intelligence on local people's needs, and to work with the Audit

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147 ODPM/Treasury, *Securing better outcomes: developing a new performance framework*, March 2005, http://www.communities.gov.uk/index.asp?id=1163152

148 DCLG, *Regulatory Impact Assessment*, October 2006, p18

Commission on ensuring that the new audit arrangements take full account of citizens' views.

D. The Bill

Clause 104 removes parish councils (and community councils in Wales) from the definition of best value authorities. As described in the explanatory notes, an order made by the Secretary of State under section 2 of the *Local Government Act 1999* had exempted all English parish councils with a budgeted income of under £500,000 from the BV regime. An order made by the National Assembly for Wales had in practice exempted all community councils there. This provision will disapply best value duties for the 41 larger parish councils in England.

Clause 105 confers "a more general power" than that existing at present, to issue statutory guidance to best value authorities about how to fulfill that duty. **Clause 106** relates to local participation. It inserts a new section 3A into the 1999 Act which places a specific duty on best value authorities (apart from police authorities and Welsh BV authorities) to involve representatives of local persons in the exercise of that authority's functions where appropriate. The three aspects of participation - informing, consulting and involving – are spelt out in subsection 1.

Clause 107 amends sections 4 and 6 of the 1999 Act so that they no longer apply to best value authorities in England (including police authorities) and to police authorities in Wales. It has the effect of removing the power of the Secretary of State to specify BV performance indicators and standards for BV authorities, and the requirement for those authorities to meet such standards and to publish BV performance plans. The National Assembly of Wales will be able to amend or replace these provisions using the framework powers contained in schedule 14. **Clause 108** removes the requirement for BV authorities to undertake BV reviews.

Clauses 109 and 110 are concerned with the powers of the Secretary of State to modify enactments obstructing compliance with best value and, in particular, their application to Wales. The explanatory notes provide detailed information.

Clause 111 provides the power for a minister to pay a grant to persons for the purpose of improving the performance of best value authorities. This would provide flexibility to make grants to a non-local authority body (for example a voluntary organisation or private company) where it is judged that a service can be provided more efficiently by that body. The Bill's regulatory impact assessment[149] explains that existing grant-making powers do not provide sufficient flexibility in this regard. Section 31 of the *Local Government Act 2003* permits payment of grant only to local authorities; section 78 of the *Local Government Finance Act 1988* does allow payment of revenue support grant to local authorities 'specified' bodies, but RSG settlements are moving to a three-year cycle which may not coincide with the need to make the payments envisaged here.

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[149] DCLG, *Local Government...Bill: Regulatory Impact Assessment*, pp28-34, October 2006, http://www.communities.gov.uk/index.asp?id=1504070

E. Reactions

A Local Government Information Unit briefing says:

> It will be of little surprise to anyone that the White Paper signals the end (to some extent) of Best Value. It will survive to some extent in a promised piece of statutory guidance, but the plans and reviews are going. That said, it could be argued that the legislation has done its work. It is hard to imagine that local authorities will abandon the idea of performance planning or of reviewing services. Certainly the evidence suggests that top CPA-rated authorities who were exempt from BVPP requirements continued to produce them. A performance culture has been sufficiently embedded in local government that the principles of planning and review will not disappear with the guidance. But the removal of the legislative requirements does represent a welcome letting go and marker of trust.[150]

The Local Government Association welcomed the white paper's proposals on BV:

> Removal of the requirements on best value performance plans will help councils to tailor their reports to residents more closely to local circumstances. Likewise, removing the prescription governing best value reviews will provide valuable freedom to develop local approaches to innovation and improvement. [151]

The Young Foundation considered best value reform a "significant step forward" that could create genuine opportunities for local involvement in the improvement of services. It added:

> It remains to be seen how this reform will work in practice, and how far local government will go to push beyond consultation to really involve residents and communities in new forms of participation. Its success will be strongly determined by the quality of the Best Value Statutory Guidance.[152]

Ben Page, Chairman of Ipsos MORI Social Research, has written of the challenges involved in securing greater public involvement:

> Real effort will need to go into publicising these new responsibilities for the public to ensure those who might use them know they exist. As a survey researcher, publishing and giving more weight to satisfaction data is something I applaud, but the public tends to find this material rather less interesting…And the Audit Commission will have a real challenge in weighing up public perception against professional judgments…[153]

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[150] Amelia Cookson, *White Paper 2006: implications for performance management*, LGIU, 31 October 2006

[151] LGA, *White Paper: On the day briefing*, 26 October 2006, http://whitepaper.lga.gov.uk/

[152] Young Foundation, "How far does the white paper go towards freeing up local government and empowering neighbourhoods?", 26 October 2006

[153] Ben Page, "But what will the public make of it?" *Local Government Chronicle*, 2 November 2006, p2

IX Performance and inspection

A. Background

The existing performance framework has developed from:

- Best value principles (see previous section). Councils measure their performance through performance indicators (many of which are set by central government), review their services and set targets for improvement.
- Local public service agreements (LPSAs) which are voluntary agreements negotiated between a local authority and the Government. The overall aim of LPSAs is to improve the delivery of local public services by focusing on targeted outcomes with support from Government.

Comprehensive performance assessment (CPA) was announced in the 2001 white paper, *Strong local leadership: quality public services*, and given a statutory basis in the *Local Government Act 2003*. It was to build on BV and LPSAs and to be a "…comprehensive and integrated performance framework to help councils deliver better services for their communities". CPA has always involved a 'corporate assessment' of the whole council as well as an appraisal of its performance in core service areas. The new 'harder test' CPA involves:-

- Service assessments – which concentrate on housing, environment and cultural services, drawing on a combination of performance indictors and inspection evidence;
- Corporate assessments – which focus on a council's community leadership role and charts its achievements in five key areas – sustainable communities and transport; safer and stronger communities; healthier communities; older people; and children and young people;
- Direction of travel – where a council's efforts to achieve outcomes and to secure improvement in performance are taken into account. The labels are: (1) Improving strongly, (2) Improving well (3) Improving adequately, (4) Not improving adequately or Not improving.
- Use of resources – where a council's ability in terms of financial management and reporting, its financial standing and achievement of value for money are all assessed.

All councils are given a star rating from 0 (lowest) to 4 (highest). All top tier authorities, that is counties and unitaries, receive an annual CPA assessment. All district councils were assessed between June 2003 and December 2004 and, following consultation, the Audit Commission started a more selective programme of district assessments in 2006. Further information on CPA can be found on the Audit Commission's website[154] and in a Library note - *Comprehensive Performance Assessment* (SN/PC/1931).

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[154] Audit Commission, *CPA – the harder test explained*, December 2005, http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=AD2B52AC-E4C1-4ebb-A7F6-E1074E76B7F4

1. Shortcomings of the system

The local:vision document *Securing better outcomes: developing a new performance framework*, published jointly by the ODPM and Treasury in March 2005, commented that, while the present performance and inspection system had proved powerful in helping to drive improvements, there were some "significant problems" with it. In particular it:

- Fosters compliance rather than innovation with a greater focus on accountability to central government rather than to local people [an increased level of central control was one of the problems identified by an independent study of service improvement under the Local Government Modernisation Agenda].[155]
- Is increasingly rigid, complex, process heavy and resource hungry;
- Focuses on extremes of performance;
- Provides a limited range of incentives to engage citizens.

The need to secure a greater degree of user participation in the shaping and delivery of services is discussed in section VIII of this paper. Other drawbacks included:

a. Central control and targets

The local:vision document referred back to the findings of an earlier Treasury review[156] in its discussion of the problems caused by the plethora of targets, set and monitored centrally by different government departments and using different definitions, timescales etc. Targets, it acknowledged, would need to be "...better co-ordinated, more strategic and developed with better involvement of local deliverers." The LGA manifesto *Independence, opportunity, trust*, published in September 2004, had said that "National government should restrict its attention to a small number of objectives that must be tackled nationally." Sir Michael Lyons, too, in his interim report of May 2006, called for a more focused approach from central government through defining a "…smaller set of key objectives and requirements which it seeks to enforce and monitor in all parts of the country."

b. The inspection burden

Wilson and Game have written:

> There is obvious potential value, as most people in local government will concede, in having independent and impartial inspection of public services. It provides external challenge and assurance, and can be an important stimulus to improvement. That recognition, however, is accompanied by almost unanimous criticism of the scale, the overlap, the inflexibility, the overwhelming centralism, and, above all, the phenomenal cost and burden of the present regime. A 2004

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[155] Steve Martin and Tony Bovaird, *Meta-evaluation of the local government modernisation agenda: progress report on service improvement in local government*, ODPM, March 2005, p 15

[156] Treasury/Cabinet Office, *Devolved decision making 1: delivering better public services: refining targets and performance management*, 2004, http://www.hm-treasury.gov.uk/budget/budget_04/associated_documents/bud_bud04_addevolved1.cfm

> survey of county councils found that each county was 'spending almost £500,000 a year and an average of 2,555 days handling inspections, the equivalent of 12 full-time staff'. Across all 36 counties, that equated to well over 400 (mainly senior) staff working full-time on inspection at a cost of £15.7 million (Marinko, 2004, p5). The whole inspection industry is estimated to cost over £600 million (Hetherington, 2004) – which, a sceptic might think, is rather a lot to divert from serving the local public to serving national inspectors, especially when a principal outcome of all this diverted time and energy can be damaging to staff morale.[157]

In September 2004, the ODPM Select Committee had recommended:

> …that the Government dramatically reduce their inspection regimes on local authorities. In particular the Government should consider the concerns of smaller local authorities and ensure their inspection regimes are proportionate to their size and responsibility.[158]

The LGA manifesto, published in the same month, sought a rationalisation and reduction in the burden of audit and inspection, "halving the £730m currently spent on inspecting councils within three years…" Lyons, too, called for a reduction in the "industry of supervision".

2. A new performance framework

Some of the main components of the new performance framework were sketched out in the local:vision document cited above. These included a greater focus on user satisfaction, developing more effective information systems, a better balance of national and local targets and peer and partner review. The LGA and IDeA published their proposed local performance and accountability framework in early 2006 and this placed strong emphasis on peer challenge and sector-led intervention and support.[159]

The main features of the new performance framework, as set out in the white paper and its regulatory impact assessment, are:

- Reform of best value including: (1) removing the requirement for authorities to produce BV performance plans and to carry out BV reviews, and (2) exempting parish councils from BV.

- A framework for the collection and publication of performance information including an expectation, set out in statutory guidance, that local authorities report regularly to their citizens.

- A single streamlined framework of national outcomes, indicators and targets. [A reduction in the number of national *indicators* against which all

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[157] David Wilson and Chris Game, *Local government in the United Kingdom*, Palgrave Macmillan, 4th ed, 2006, p168

[158] ODPM Select Committee, *Local government revenue*, July 2004, HC 402 2003-04, para 92

[159] LGA/IDeA, *Driving improvement: a new performance framework for localities*, February 2006, http://www.idea-knowledge.gov.uk/idk/core/page.do?pageId=71247

areas report from 600-1,200 to 200. *Targets* to be in the local area agreement, negotiated between central government, local authorities and partners, and limited to around 35 in number plus locally agreed improvement targets].

- A more proportionate and risk-based approach to external challenge through: (1) moving to a system based on a combination of risk assessment, audit, performance against national indicators and risk-triggered inspection activity, and (2) focusing more on citizens' experiences and perspectives.

- Development of a range of options to respond to under-performance including increased peer and sector support, targeted inspections, formal intervention by the Secretary of State (RIA, pp 53-4).

B. Nature of inspections

The Government's proposed reforms of inspection fall into two main areas: (1) changes in the nature of inspections, and (2) rationalisation of, and increased co-operation between, inspectorates. Both issues were discussed in the local:vision document *Securing better outcomes: developing a new performance framework* (March 2005) and they formed the main two sections of a consultation paper, *Inspection reform: the future of local services inspection*, published in November 2005.[160] A synopsis of responses to the paper, and policy decisions by the Government, was published along with the white paper in October 2006.[161]

1. Risk-based assessment

The Hampton Review, *Reducing administrative burdens: effective inspection and enforcement*, published at the time of the 2005 budget, recommended the use of risk-based assessment as a means of directing regulatory resources where they would have the maximum impact on outcomes. The use of risk in the context of local authority inspection was explained in the performance framework developed jointly by LGA and IDeA:

> ...inspection resources should be concentrated solely on areas where public safety is an issue and where failure in performance could cause loss or harm to end users who rely on services. It is in precisely these sorts of areas that inspection first originated in the mid-19th century. These are areas where citizens and users have a legitimate right to expect certain minimum standards and where independent, professional challenge is the best way of ensuring these standards are met. Such areas could include:
> • services to vulnerable individuals

[160] Available at: http://www.communities.gov.uk/index.asp?id=1504150

[161] DCLG, *Inspection reform: the future of local services inspection - an analysis of consultation responses and summary of policy decisions*, October 2006, http://www.communities.gov.uk/index.asp?id=1504150

> • residential settings for people of all ages, including foster care
> • schools and other educational settings for vulnerable children and young people
> • criminal justice situations where there may be a need for assurance that people's safety and human rights will be secure.

80% of the respondents to the November 2005 consultation exercise supported a move towards triggered inspection, the principal triggers being specific evidence of risk and/or poor performance. There was also very strong agreement (71%) for inspection of joined-up outcomes across organisations and partnerships, particularly outcomes for local people including the vulnerable or where there is serious concern. And there was significant opposition (70%) to the idea of random or unannounced inspection.

The 2006 white paper gave details of a new performance and assessment regime to be introduced from April 2009:

> The new system, to be known as "Comprehensive Area Assessment", to be based on risk assessment, largely risk-triggered inspection and audit. Children's Services Joint Area Reviews and Annual Performance Assessments, and social care star ratings will not continue beyond March 2009.
>
> Alongside annual publication of performance against the [200 or so] measures in the national indicator set, there will be:
>
> - An annual risk judgement to determine when inspection is needed;
> - A judgement on Direction of Travel (as now);
> - A judgement on Use of Resources (as now);
> - Judgement from any inspection activity flowing from the risk assessment.
>
> The Audit Commission will be asked to ensure that audit and inspection have a greater focus on citizens' experience and perspectives, and that the results of audit, assessment and inspection become more publicly accessible (paras 6.46 to 6.48).

C. A Local Services Inspectorate

1. Background

The Chancellor had announced in the March 2005 Budget that, building on the approach of the Hampton Review which had recommended drastic reduction and consolidation of the regulatory bodies overseeing the business sector, there should be similar rationalisation within the public sphere. The reasoning is set out on the website of the Benefit Fraud Inspectorate as follows:-

> It is widely acknowledged that the cost and amount of public service inspection has risen significantly since 1997. The current inspection regimes were designed and introduced when many public services were not being delivered to acceptable standards. However, more recently there have been vast improvements in performance making the rolling programmes of inspection undertaken by some inspectorates wasteful and costly. That has led to a need to reduce the number of inspectorates and the amount of inspection.

> In the March 2005 Budget the Government announced a major improvement strategy for public services inspection. The principal aims of the strategy are to:
>
> - reduce the amount of inspection activity and burden generated
> - rationalise and manage better the complex pattern of multiple scrutiny
> - refocus inspection on what is relevant to the people who use public services and the outcomes that they experience.[162]

It was announced that the eleven existing public sector inspectorates would be reduced to four with single inspectorates for:

- Local services
- Children and learning
- Health and social care
- Justice and community safety.

The local services inspectorate would bring together the remits of the Audit Commission and the Benefit Fraud Inspectorate (in relation to its inspection of English local authorities).

2. Merger of the Audit Commission and Benefit Fraud Inspectorate

The Audit Commission was established in 1983 as an independent statutory non-departmental public body (NDPB). Its primary function was to secure audit for local public sector bodies but that role was expanded to take in inspection in regard to local government following the passage of the *Local Government Act 1999*. The Benefit Fraud Inspectorate (BFI) was launched in November 1997 as part of the Government's initiatives to reduce fraud within the social security system. It inspects the effectiveness and security of benefits administration within the Department for Work and Pensions (DWP) and local authorities. It is part of the DWP but operates independently of those responsible for administering benefits and reports directly to the Secretary of State for Work and Pensions.

The Government's consultation paper, *Inspection reform: the future of local services inspection* (November 2005) discussed the options of (1) creating a completely new local services inspectorate, or (2) amending the Audit Commission's powers, duties and structures. The Government considered there were strong reasons for preferring the second option including the fact that the Commission was a "strong brand" with a good reputation for independence, impartiality and effectiveness. Additionally, it did not seem sensible to abolish an existing body simply to create another with similar functions, duties and powers. It therefore proposed retention of the Commission as an executive NDPB but with amended functions and powers. Other points discussed were the scope of the Commission's new responsibilities and funding arrangements for audit and inspection.

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[162] Benefit Fraud Inspectorate, *The future of benefits inspection*, http://www.bfi.gov.uk/about/future.asp

In May 2006 the Government announced that the BFI's remit in relation to housing benefit and council tax benefit in England would merge with the Audit Commission in April 2008.[163] It was also announced that the DWP was working with the devolved administrations on the feasibility of the BFI's work in Scotland and Wales being undertaken by the relevant audit bodies there from April 2008. It was envisaged that other work performed by the BFI, such as direct consultancy work for local authorities, would remain with the Department.

3. Co-operation and the gatekeeper role

The consultation document stated that measures would be needed to secure effective co-ordination and collaboration between inspectorates. Each of the public service inspectorates would be charged with a specific duty to co-operate. This would involve information sharing (including best practice), consultation over programming priorities, co-ordination of activities and refraining from unnecessary inspection. 94% of respondents to the consultation paper supported the introduction of a general duty to co-operate.

"Gatekeeping" is intended to rationalise the total burden of inspection on inspected bodies and to facilitate inspection of shared activities ("cross-cutting inspection"). The main elements of the gatekeeper role are:

- Co-ordination of forward programming of inspection. The gatekeeper's agreement would be required for any inspection activity of institutions within his responsibility;
- Information brokering. The gatekeeper would be responsible for ensuring that available information on institutions is shared and used effectively in order to minimise requests for the same.

The consultation paper said that, where an inspectorate and gatekeeper failed to reach agreement, the matter would be decided by ministers who would also retain power to direct an inspection in exceptional cases. Each of the four new public service inspectorates was to have a gatekeeping role in respect of the institutions for which they have the best overview. The Audit Commission was proposed as the gatekeeper for:

- Local authorities;
- Fire and rescue authorities;
- Housing associations and registered social landlords;
- Local partnerships where appropriate.

97% of respondents agreed with the proposed gatekeeper role and that the Audit Commission should be the gatekeeper in respect of these bodies. The Government declared said that it would legislate for this role and that this would follow the models set out in the *Police and Justice Act 2006* and *Education and Inspections Act 2006*. The

[163] HC Deb 25 May 2006 c2029W

need for any additional gatekeeping in relation to local partnerships would be considered and determined in secondary legislation.[164]

D. The Bill

The following is a brief and selective summary and readers are referred to the explanatory notes which accompany the Bill for detailed information on clauses. **Clauses 113 and 114** relate to the membership of the Audit Commission and changes to its full name in recognition of the fact that it has virtually no role in Wales. **Clause 115, 116 and 118** concern the merging of the BFI's functions with those of the Audit Commission.

Clause 117 introduces **schedule 11** which inserts a new schedule 2A into the *Audit Commission Act 1998*. This relates to the Commission's interaction with other inspection authorities and public bodies. It therefore covers the duty to co-operate and the Commission's gatekeeping role (see paragraph 5 of the schedule).

Clause 119 clarifies the powers of auditors and inspectors to obtain access to documents and information, including documents kept in electronic form on computers. **Clause 120** enables the Commission to carry out general inspections of the performance of best value authorities. **Clause 121** requires the Commission to consult government departments on its national studies programme, while **clause 122** removes the Commission's powers to undertake improvement work on a fee basis. Both matters featured in the consultation exercise.

Clauses 123 to 125 relate to the new performance framework. Clause 124 enables the Audit Commission to produce three types of report on English local authorities, namely: a) reports on the risk that authorities may fail to perform their functions, b) reports on the rate at which authorities' performance is improving (i.e. direction of travel), and c) reports on use of resources. Reports may relate to individual authorities, all authorities or groupings thereof. And they may relate to specific functions. Clause 125 amends section 99 of the *Local Government Act 2003* which requires the Commission to categorise authorities by reference to performance. The Commission will only have to do so if required to by the Secretary of State.

Clause 126 removes the right of local government electors to attend in person before the auditor to make objections to accounts. **Clause 129** amends the restriction on the disclosure of information obtained by an auditor or the Audit Commission to a presumption in favour of disclosure except in certain circumstances. **Clause 130** makes equivalent provision for the Auditor General for Wales and an auditor under the *Public Audit (Wales) Act 2004*.

E. Reactions

The white paper's commitment to reform the performance and inspection framework met with widespread approval. The Local Government Association welcomed the move to a

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[164] DCLG, *Inspection reform: the future of local services inspection - an analysis of consultation responses and summary of policy decisions*, October 2006, http://www.communities.gov.uk/index.asp?id=1504150

more risk-based approach to inspection and a reduction in inspection overall. It promised to work with the Government, Audit Commission and inspectorates to fine tune the various aspects of Comprehensive Annual Assessment. In its briefing on the Bill, the LGA said that it:

> ...would have preferred a more forward looking approach with the Audit Commission working with the other inspectorates to set out a forward programme of inspections of a locality over a 2/3 year period.
>
> We welcome the removal of the duty on the Audit Commission to report on categorising councils...but we are concerned about the new powers conferred upon the Secretary of State to direct the Audit Commission to do so again in the future.[165]

Councillor Sir Simon Milton, Chair of the LGA Improvement Board and Leader of Westminster City Council has written:

> ...it was good to see a commitment in the white paper to a more 'risk-based' approach, with fewer inspections. Nobody would deny that there are services of universal concern that should be subject to regular inspection, such as schools and care homes, but there is no reason why other services, such as libraries and other recreational activities, require the same level of inspection.[166]

Caroline Spelman, for the Conservatives, has said in debate:

> Rationalising the inspection regimes, cutting Government targets, scaling back best value and the comprehensive performance assessment will not be met with opposition from us, mainly because we have been campaigning for so long to scrap those procedures, although we shall wait and see if the replacement, the comprehensive area assessment, which sounds suspiciously like "son of comprehensive performance assessment", merely results in more red tape under a different guise.[167]

X Standards of conduct

A. Background

Part III of the *Local Government Act 2000* introduced a new ethical framework for local government. The main features of this system were:-

- A statutory Code of Conduct for councillors.
- Standards committees for each principal local authority. Their general functions are to promote and maintain high standards of conduct within the local authority and assist members to observe the authority's code of conduct.

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[165] LGA briefing on the Local Government and Public Involvement in Health Bill, 13 December 2006
[166] Sir Simon Milton, "D-day for local government", *Public Finance*, 24 November 2006, p17
[167] HC Deb 20 November 2006 c270

- The Standards Board for England: an independent non-departmental public body funded by the DCLG, whose officers investigate alleged breaches of the Code and which also provides advice and guidance to authorities and councillors.
- The Adjudication Panel for England, established independently of the Standards Board in order to maintain the separation between investigation and adjudication of cases. The Panel determines the more serious cases referred to it by the Board's Ethical Standards Officers.

The ethical framework was introduced following recommendations by the Committee of Standards in Public Life.[168] However, the Government departed in one important respect from the Committee's recommendations in that prime responsibility for enforcing standards was placed with the Standards Board and not with local authorities.

B. Criticism of the Standards Board and system

Criticism of the Standards Board and of the way in which the standards regime has been operating have been made in parliamentary debate, in the media and in evidence given to inquiries undertaken by the Committee on Standards in Public Life (the Graham Committee) and the then ODPM Select Committee[169]. Macaulay and Lawton, writing in *Parliamentary Affairs*, point to the relatively high standards of conduct which have prevailed in local government for many years, and to recent opinion poll evidence showing continuing public distrust of councillors and officers, and they suggest that "…significant reforms have been implemented, with seemingly little effect on public perceptions, to solve a problem that did not appear to exist in the first place."[170]

Specific criticisms of the Board and the system have included the following:-

1. Delays in investigations

The ODPM Select Committee, reporting in April 2005, noted that the most common criticism from witnesses was the length of time between the receipt of a complaint and the completion of any resulting investigation. This could have a prolonged detrimental impact on a councillor's reputation and possibly his/her chances of re-election. A number of factors contributed to this problem including the delayed introduction of regulations allowing the Board's officers to refer a complaint to the relevant local authority and the fact that more than half of investigations related to parish councillors and such investigations could be "quite tricky and quite personalised."[171]

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168 Committee on Standards in Public Life, *Third report: Standards of local government in England, Scotland and Wales*, 1997, http://www.public-standards.gov.uk/publications/3rd_report.aspx

169 ODPM Select Committee, *The role and effectiveness of the Standards Board for England,* April 2005, HC 60-I, 2004-05

170 Michael Macaulay and Alan Lawton, "Changing the standards? Assessing the impact of the Committee for Standards in Public Life on local government in England", *Parliamentary Affairs*, Vol. 59 No. 3, July 2006, pp474-90

171 ODPM Select Committee, *The role and effectiveness of the Standards Board for England,* April 2005, HC 60-I, 2004-05, para 37

The Board has made significant strides in speeding up its processes and reported in 2005-06 that it was now achieving its target of completing 90% of cases within 6 months. Nevertheless, there was adverse publicity in January 2006 when an investigation was finally completed after three and a half years into the conduct of the Leader of Islington LBC and four councillors in recruiting a Chief Executive. Tony Travers wrote that the Board, rather than being an effective and light touch regulator had "…on occasion proved to be both heavy and slow."[172]

2. Vexatious, frivolous and malicious complaints

Evidence submitted to the Graham Committee suggested that a significant proportion of the complaints made about parish councillors were trivial, vexatious or politically or personally motivated.[173] In January 2004, Nick Hawkins spoke in debate about the lack of a "...proper filter to get rid of complaints that should be seen from the outset as factually erroneous, trivial, vexatious or purely politically motivated."[174] A year later, Peter Bradley protested about "petty point scoring" and complaints made during the run-up to local elections.[175] The ODPM Committee condemned the activities of those who knowingly made such complaints but did not support the imposition of penalties for doing so. In July 2006, Phil Woolas, Local Government Minister, reported that the Board was exceeding its target of filtering out such cases within 10 working days.[176]

3. Constraints on the representative role of councillors

Paragraph 10 of the Code of Conduct for councillors provides that:-

> A member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgment of the public interest.

Paragraph 12 states that a member with a prejudicial interest in a matter must withdraw from meetings where that matter is under discussion and not seek improperly to influence a decision about that matter. The constraints which this provision has placed on local councillors from speaking out on major developments which affect the communities which they represent have been aired in Commons debates, initiated by Steve Webb and Andrew Lansley[177], and in press articles.[178] Additionally, the Code has, in practice if not in intention, prevented councillors who are also members of another relevant authority, or who are appointed or nominated by their authority to another public body, from participating in discussions about that body.

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[172] Tony Travers, "Chickens come home to roost for the Standards Board", *Local Government Chronicle*, 12 January 2006, p5
[173] Op cit, p57
[174] HC Deb 14 January 2004 c290WH
[175] HC Deb 1 February 2005 c214WH
[176] HC Deb 14 July 2006 c2103W
[177] HC Deb 8 November 2005 c64WH-; HC Deb 15 May 2006 c821-
[178] See, for example, articles by Christopher Booker relating to Councillor Alex Riley in the *Daily Telegraph*, March 5 and 12, April 23 and May 21 2006

C. Tenth report of the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Graham Committee), published its tenth report in January 2005 and this included a number of recommendations on the ethical framework for local government.[179] The report drew upon experience of the standards regimes in Northern Ireland, Scotland and Wales. The accompanying press release summarised the Committee's conclusions:-

> The report concludes that the Standards Board for England, a relatively new regulator, has struggled to perform a strategic role within the existing legislative framework. It has been preoccupied with trying to handle **all** complaints made against councillors in England irrespective of the seriousness of the complaint made. This is a role imposed on the Board by legislation but, in the Committee's view, this is not sustainable and will, if unchecked, erode confidence in the ethical framework itself.
>
> **'The Standards Board for England** needs to radically transform itself into a strategic regulator focussing on those most serious allegations that pose a high risk to the reputation of local democracy. The legislative framework needs to change to a locally-based system where the initial handling of complaints is done by existing independent local Standards Committees. This, and other measures we propose, will address the large number of minor, vexatious and politically motivated complaints that have created a significant backlog of national investigations, leaving many councillors with allegations hanging over their heads for long periods of time. This should also enable the Standards Board to make significant savings in its current budget of £9 million per year.'[180]

The Graham Committee saw locally-based arrangements as the answer to many of the criticisms which had been voiced regarding the Board and the standards regime. Local standards committees would sift, investigate and determine all but the most serious cases of alleged misconduct. The Committee acknowledged the possible dangers in introducing a system of this nature, notably:-

- A loss of consistency in the treatment of complaints currently provided by the Standards Board performing this role;
- A risk that monitoring officers or Standards Committees may not be impartial in their assessment of a particular complaint, either because of political affiliations or pressure or because the underlying culture is to 'keep problems in house';
- A risk to public confidence in the system if the assessment of whether or not to investigate is taken at a local level, rather than by the independent, national body (Standards Board);

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[179] Committee on Standards in Public Life, *Tenth report – Getting the balance right: implementing standards in public life*, Cm 6407, January 2005
http://www.public-standards.gov.uk/publications/reports/10th_report/index.asp

[180] Committee on Standards in Public Life, "Getting the balance right...tenth inquiry report published", *press notice 166*, 19 January 2005,
http://www.public-standards.gov.uk/publications/news_release/2005/PN166.asp

- A lack of resources for some monitoring officers and Standards Committees to deal with the volume of complaints, particularly in areas with a large number of parish councils.

It answered these points as follows:-

Consistency: The Committee believed that the new role of the Board as a strategic regulator, setting and monitoring a national framework, should enable standards committees to achieve a level of consistency and ensure fairness and confidence in the system.

Impartiality of standards committees/ public confidence: This particular danger had been emphasised by Nick Raynsford, the then Local Government Minister, in his evidence to the Committee.[181] He said: "I think there is serious risk that it would not command the confidence of the public if there was any doubt about the integrity of the Standards Committee." The Committee recommended the following:-

- that the system in force in Wales should be adopted whereby at least half of the members of standards committees are independent and each should have an independent chairman. This was said to be a 'critical element' in its proposals. [At present, the 2000 Act requires that standards committees be made up of at least three people, one of whom must be independent of the authority. Regulations require that where a committee has more than three members, at least 25% must be independent members.[182]]
- that the power of local standards committees to investigate complaints should be a delegated power, subject to satisfactory operation of the system; the Board to audit performance; standards committees to be required to produce an annual report and agree performance targets.

Resources: The concerns of local authorities in heavily parished areas were addressed by Sir Alistair Graham in a speech in September 2005. He said:

> While it is true that the initial handling of complaints now done centrally will shift to each of the 450 or so principal authorities we do not believe this will constitute an unreasonable burden. First, the evidence we received suggests that currently Standards Committees are under-used and in danger of falling into disrepair. Secondly if complaints were spread evenly across the country this would mean each authority having to deal with less than 10 complaints per year. Of course the spread is not even, but there are already provisions allowing for a wide range of assistance and joint working by neighbouring authorities. This is an area that could be developed further for those smaller authorities with large numbers of parishes. [183]

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[181] Op cit, p59

[182] The *Relevant Authorities (Standards Committee) Regulations 2001*, SI 2001/2812

[183] Sir Alistair Graham, speech to the fourth annual assembly of standards committees, ICC Birmingham, 5 September 2005

He added that local standards committees were ideally placed to "ake a robust line" with minor, vexatious and politically motivated complaints and that this would reduce the overall burden. The Committee's report also recommended changes to the code of conduct to "…make it more accessible to councillors and the public; to remove unnecessary restrictions on councillors representing their constituents; and to make a clearer distinction between private and official conduct."[184]

D. The Government's proposals

The then ODPM published a discussion paper entitled *Standards of conduct in English local government: the future* in December 2005 which set out the Government's proposals for change.[185] It incorporated the Government's response to the Graham Committee's report, the report of the ODPM Select Committee and the recommendations of the Standards Board following a consultation exercise on changes to the Code of Conduct, early in the same year.[186] Phil Woolas, Local Government Minister, said in a Commons written statement:-

> We have largely accepted the recommendations of the Graham Committee; in particular its central recommendation for a more locally based decision-making process for the conduct regime. Accordingly, we have not accepted the recommendation of the ODPM Select Committee to maintain the present centralised regime for handling allegations of misconduct by members. We have, however, largely accepted the other recommendations made by the Select Committee.[187]

The proposals concerning the standards regime for councilors were as follows:-

- Initial assessment of all misconduct allegations to be undertaken by standards committees rather than the Standards Board;
- Local monitoring officers to investigate most cases and standards committees to determine most cases;
- All chairs of committees to be independent and committees to include independent members who reflect a balance of experience [the Government did not accept the "critical" recommendation of the Graham Committee that committees should have a majority of independent members];
- The Standards Board only to investigate the most serious cases. The Board's role to be redefined as supporting, monitoring and overseeing authorities' performance in dealing with allegations
- Intervention powers for the Board when it considers that committees are not operating effectively;

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184 Press release 166, cited above

185 ODPM, *Standards of conduct in English local government: the future*, 15 December 2005, http://www.communities.gov.uk/index.asp?id=1162582

186 Standards Board for England, *A code for the future: a consultation paper on the review of the code of conduct for members*, February 2005; NB the Board's recommendations were set out in the Government's discussion paper (next item)

187 HC Deb 15 December 2005 c163WS

The white paper, *Strong and prosperous communities*, reiterated the Government's intention to remodel the standards regime. It promised to legislate to deliver:-

- A more locally-based regime, with local standards committees making initial assessments of misconduct allegations and most investigations and decisions made at local level;
- A revised strategic regulatory role for the Standards Board to provide supervision, support and guidance for local authorities and ensure consistent standards.
- A clearer, simpler and more proportionate code of conduct for local authority members and a new code for employees. Changes to the members' code will include amending the rules on personal and prejudicial interests to remove the current barriers to councillors speaking up for their constituents or for the public bodies on which they have been appointed to serve (paras 3.48 to 3.49).

E. The Code and official and private conduct

The Government had welcomed the recommendations of the Standards Board concerning the Code of Conduct and agreed that amendments should be made along the lines suggested. In doing so, it rejected a significant recommendation of the Graham Committee. The Committee's report had discussed the fact that, in England and Wales, the codes of conduct apply mainly to members acting in their official capacity but, in part, appear to concern conduct in private life. The Committee pointed out that this raised difficult and contentious issues but recommended that the phrase "in any other circumstances" should be removed from the model code in England.[188] The Government responded as follows in its discussion paper of December 2005:

> We believe that councillors should set an example of leadership to their communities, and that they should be expected to act lawfully even when they are not acting in their role as members. We do not agree therefore that the code should be amended so as only to refer to actions by members in their official capacity and not their private lives. Following its review of the code, the Standards Board has, however, recommended that the current rule should be amended to provide that **certain behaviour outside official duties should continue to be regulated, but that this should be restricted only to matters that would be regarded as unlawful.** We accept this proposal, since it would balance the need for members to continue to set an example to their communities, and the need to exclude from proscription actions of which certain people might merely disapprove.[189]

The issue arose again in the context of the suspension of the Mayor of London, Ken Livingstone, by the Adjudication Panel in February 2006 for bringing his office into disrepute. Mr Livingstone was alleged to have accused a journalist, who was Jewish, of

[188] Op cit, pp71-2
[189] Op cit, p28

being like a concentration camp guard. The comments were made when he was leaving an official function at City Hall.[190] The Panel's ruling was challenged in the High Court and, in his final judgement delivered on 19 October 2006, Mr Justice Collins quashed the suspension and set aside the Panel's finding that the Mayor had failed to comply with the GLA Code of Conduct.

The Judge accepted the argument that section 52 of the *Local Government Act 2000* refers specifically to the code applying when a member is "performing his functions" whereas Mr Livingstone was off duty at the time and entitled to "express himself within the law as forcibly as he thought fit." The Judge considered that a councillor who shoplifts or is guilty of drunk driving would not be caught by the code if "…the offending had nothing to do with his position as a councillor." He suggested that, if the code was to extend to a member's private life, Parliament should spell out what is to be covered.[191]

F. The Bill

Clause 131 amends relevant sections of the *Local Government Act 2000* to provide that the principles governing the conduct of members and the provisions of the code are not limited to members' conduct in their official capacity. This is in accordance with the commitment outlined in the previous section.

Clause 132 inserts sections 57A-C and new section 58 into the 2000 Act. Section 57A provides for local standards committees to take on the role currently exercised by the Standards Board in terms of assessing written allegations of misconduct and deciding whether to investigate, refer to the Board or take no action. 57B provides a right to request a review of a committees' decision to take no action over a particular allegation. 57C enables the Board to direct that a standards committee's powers under 57A should be suspended and that allegations should be referred either to the Board or to a committee of another authority. New section 58 details the options available to the Board on receipt of an allegation.

Clause 133 requires a standards committee to make available to the Board periodic returns of information on its work. **Clause 134** amends section 53 (4) of the 2000 Act to provide that a standards committee must be chaired by an independent person, i.e. someone who is neither a member nor an officer of the authority. **Clauses 135 to 148** contain amendments to the 2000 and other Acts covering various aspects of the standards regime. Readers are referred to the explanatory notes for detailed information on each clause.

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[190] A case summary is available on the Standards Board website at http://www.standardsboard.co.uk/Casesummaries/Casesummaries/G/GreaterLondonAuthority/Name,3465,en.html

[191] High Court judgement in the case of *Ken Livingstone v The Adjudication Panel for England* (case no. CO/1789/2006). See, in particular, para 30 - http://www.adjudicationpanel.co.uk/index.php?page=Decisionpage&APERef=0317&APEID=662

G. Reactions and party views

The Local Government Association welcomed the proposed reforms of the code of conduct in its briefing on the Bill. In addition, it commented simply:

> The investigation and resolution of conduct issues is best handled in most cases at the local level.[192]

Eric Pickles, Conservative Shadow Minister for Local Government, has called for the Board's abolition:

> With some regret, I have to say that the Standards Board has become the problem, not the solution. It is damaging to the reputation and standing of local government and wastes taxpayers' money on frivolous and malicious complaints. It has done much to undermine confidence in councils and councillors...we believe that the Standards Board should be abolished, and we shall do that in our first month in office. We shall seek to repeal the secondary legislation within the first year. District auditors will continue to play their role in investigating financial impropriety in local government and the local ombudsman will continue to investigate complaints made by the public about administrative failures. The police, the Crown Prosecution Service and the courts will take the lead in investigating and prosecuting any breaches of criminal law...Existing civil law will cover such issues as libel and slander by councillors. We will repeal the codes of conduct for councils and replace them with light-touch advice on declaring personal and prejudicial issues. That will ensure that there is a simpler, straightforward transparency in the conduct of councillors.[193]

Andrew Stunell, Liberal Democrat Shadow Communities Secretary, has said:

> We favour reform of the Standards Board for England and its operation. We also support local councillors regaining the powers to stick up for local residents and communities on key issues such as planning and licensing.[194]

H. Local government employees

Rules under the *Local Government and Housing Act 1989* and associated regulations provide that anyone who holds a politically restricted post in a local authority cannot:-

- become or remain a member of a local authority;
- become a member of the House of Commons, European Parliament or one of the devolved assemblies; or
- take part in certain political activities including canvassing and serving as an officer of a political party.

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[192] *LGA Briefing on the Local Government*...Bill, 13 December 2006, http://www.lga.gov.uk/Briefing.asp?lsection=0&id=SXA4B3-A783EC78

[193] HC Deb 1 February 2005, c 228-9WH. Mr Pickles repeated calls for its abolition in *Municipal Journal*, 20 July 2006, p5, as did Caroline Spelman (HC Deb 20 November 2006 c 276).

[194] HC Deb 20 November 2006 c282

Restricted posts include chief executives, chief and deputy chief officers, monitoring officers, those whose pay is above a prescribed level[195], political assistants and those who regularly brief the media on behalf of the authority. It is possible to claim an exemption from these terms by applying to the Independent Adjudicator who is appointed under section 3 of the 1989 Act. The Government issued two consultation papers in August 2004, canvassing views on possible changes to the rules governing political activities and on a model code of conduct.[196] The first paper also discussed the position of political assistants whose pay is capped at a level which can only be raised by statutory instrument.

The discussion paper, *Standards of conduct in English local government: the future*, contained a summary of responses. Many respondents to the first paper took the view that the existing rules were working well but that there was clear scope for reducing the number of staff covered by the rules on political impartiality. The Government had suggested that the Independent Adjudicator's role might be assumed by the Standards Board or by local standards committees. Responses were divided on the issue with some respondents stating that the Adjudicator guaranteed both impartiality and consistency. Nevertheless, the Government's view was local authorities should take ownership as much as possible for the operation of the rules at local level. It announced that it was minded to:-

- Retain current rules on political restrictions but ensure that such restrictions apply only to the most senior and sensitive posts;
- Abolish the post of Independent Adjudicator and provide for local standards committees to make decisions on exemptions;
- Allow for the pay of political assistants to be permanently linked to a scale between spine points 44 and 49.

Clause 149 of the Bill amends the 1989 Act so that exemptions from political restrictions are a matter for the relevant standards committee rather than the Independent Adjudicator. **Clause 150** enables 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.

XI Valuation Tribunals

Valuation tribunals are the independent appeals system for local taxation matters including council tax and non-domestic rates. They have existed in one form or another for many years although were established in their present form in 1993 following the introduction of council tax. There are 56 tribunals in England, each with its own president, chairman and members. Those who serve on tribunals do so in a voluntary capacity and are appointed by local authorities in their area jointly with the president of

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[195] Currently spinal point 44 on the JNC national scale (= £34,986 p.a. as at 1 April 2006). Fuller information on restrictions is available in a Library note – *Local government: politically restricted posts*, SN/PC/3883

[196] ODPM, *Review of the regulatory framework governing the political activities of local government employees: a consultation paper,* August 2004; ODPM, *A model code of conduct for local government employees: a consultation paper,* August 2004. Available via www.communities.gov.uk

the tribunal. The Valuation Tribunal Service (VTS) was established by the *Local Government Act 2003* as a non-departmental public body to carry out administrative functions for the valuation tribunals including accommodation, staffing, I.T., equipment and training needs.

The VTS Board issued a paper in February 2005, following a request from ministers, which made a number of recommendations regarding valuation tribunals, the structure of the VTS and a revised appeals procedure.[197] Of particular relevance were:

- Structure - The Board questioned the need for 56 separate tribunals and said the current organisation was too 'compartmentalised'. A more unified national service would assist members to achieve greater 'coherence of practice' and would reflect best practice in the tribunal world. It advocated a single national president.

- Appointments - Allowing billing authorities to be involved in the appointment of tribunal members could no longer be considered best practice, given that such authorities could be considered as interested parties in the sphere of local taxation. It recommended an entirely independent appointments process.

The Government issued a consultation document, *Valuation tribunals – modernisation and reorganisation*, in June 2006.[198] It took the Leggatt report,[199] which recommended simplification and unification of the tribunal system, as its starting point as well as the VTS paper. Its key proposals were:

- Structure – The Government was "strongly of the view" that a single unified national service for England was the way forward. "By maintaining a presence in regional centres together with a locally based membership, and by continuing to sit in accessible locations, the Valuation Tribunal for England would continue to provide a local service…"

- President and vice presidents – "One single tribunal covering the whole of England should have a single president." Such a position should strengthen judicial independence and provide an "authoritative voice on judicial issues affecting the tribunal." He should be *ex officio* a member of the VTS board and supported by a small number of vice presidents. The Government expected the president to commit at least one day per week to the job, and vice-presidents 2-3 days per month, and these positions should attract an appropriate level of remuneration.

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[197] VTS, *Valuation Tribunal Service: strategy and development planning 2005-2012: a consultation paper*, February 2005

[198] DCLG, Valuation tribunals – modernisation and reorganisation: a consultation paper, June 2006

[199] Report of the Review of Tribunals by Sir Andrew Leggatt, *Tribunals for users – one system, one service*, March 2001, http://www.tribunals-review.org.uk/

- Appointments - The involvement of both local authorities and tribunal presidents in the appointments process was considered to be contrary to modern tribunal practice. So, too, was the reserve power of the Secretary of State for Communities and Local Government to appoint tribunal members. The Government notified its intention to introduce new arrangements under which appointments of the president, vice presidents, chairmen and members to valuation tribunals are made by the Lord Chancellor after selection by the Judicial Appointments Commission.

A summary of responses and the Government's own conclusions were published in December 2006.[200] Over 69% of respondents agreed with the proposal to create a single tribunal. However, concern about local access and accountability was "a theme running through many of the responses" and a variety of alternative regional structures were proposed. There was also strong support (67%) for changes to the appointments system along the lines indicated. However, views on the presidency were less clear cut. 45% agreed that a president would provide better leadership and advocacy for the service, 16% disagreed and 38% had no firm opinion either way. There was majority support for the proposals that (a) the President should sit on the VTS board and (b) be supported by vice presidents. However, a small majority of respondents (51%) opposed remuneration for these posts. Nevertheless, the Government indicated its intention to proceed with the main proposals outlined in the paper.

Clause 151 of the Bill establishes the Valuation Tribunal for England by giving effect to schedule 12. It also abolishes the 56 existing tribunals and provides for the transfer of jurisdiction. A detailed commentary on **schedule 12** can be found in the explanatory notes to the Bill. **Clause 152** gives effect to schedule 13 which contains consequential amendments relating to the establishment of the VTE. It also empowers the Secretary of State to make regulations which supplement or give full effect to the establishment of the VTE including transitional arrangements for appointing VTE members.

XII Patient and public involvement in health and social care

Part 11 (clauses 153-164) of the Bill would:

- place new duties on local authorities to foster patient and public involvement, both in the NHS and in social services, by entering into contracts for the establishment of Local Involvement Networks (LINks)
- abolish parts of the existing system for patient involvement in the NHS – the Patient Forums and the Commission for Patient and Public Involvement
- clarify the existing duty of NHS bodies to consult users by specifying that the relevant changes and decisions must be *significant* and by defining the meaning of *significant*

[200] DCLG, *Valuation tribunals – valuation and modernisation consultation: summary of responses*, December 2006, *Valuation tribunals etc – the Government's conclusions*, December 2006, http://www.communities.gov.uk/index.asp?id=1505237

- create a new duty for Primary Care Trusts to report on their consultations

This Part of the Bill applies to England only. Reference to Welsh bodies are to exclude them. References in brackets are to the *National Health Service Act 2006*, which comes into force on 1 March 2007. Although the wording may be slightly different in the 2006 Act from in the original legislation, it is a consolidation Act and the effect is therefore intended to be the same.

A. Background

1. User involvement: the NHS and local authorities

Policies to involve users in the NHS have been controversial. The debates have been complicated by the different meanings of involvement and the distinct, but not necessarily conflicting, purposes that it has been considered to serve: individual and/or collective interests; quality of service and/or accountability of decision-makers; national and/or local interests, etc. Such broad categories may themselves contain different elements. For example: involvement of individuals may mean helping them when they need to make complaints and/or encouraging them to be involved in their treatment. Involving collective interests may focus on enabling as many diverse groups as possible to be heard and/or ensuring that those who make decisions answer to a democratically elected body.

Whether user bodies, of whatever kind, are considered to be the most appropriate mechanism has partly depended on what the purpose of involving users has been considered to be. Other mechanisms have in practice also been used. For example, the constitution of Foundation Trusts enables local individuals and staff to be members and to elect at least half the board of governors. Similarly, the Patient Choice policy is designed to allow patients to vote with their feet by choosing where they will receive treatment. [201]

The role of local authorities in providing a "democratic" element has been a recurring issue. Before the NHS was formed, local authorities had responsibility for some hospitals, and, in the early years, putting local government in charge was considered on several occasions. Although this structure was rejected, the idea that local government should have some role in relation to the NHS continued. A large proportion of the membership of Community Health Councils, which were in existence from 1974 to 2003 and were designed to represent NHS user interests, was drawn from local authorities.

[201] For histories of the NHS that contain information relevant to this section, see, for example, Judith Allsop, *Health Policy and the NHS: towards 2000*, Longman Social Policy in Britain Series, Second Edition, 1995; Brian Edwards and Margaret Fall, *The Executive Years of the NHS: the England Account 1985-2003*, The Nuffield Trust, Radcliffe Publishing 2005; Rudolf Klein, *the New Politics of the NHS: from creation to reinvention*, Fifth Edition, Radcliffe Publishing, 2006; Carol Lupton et al. *Managing Public Involvement in Healthcare Purchasing*, OUP Health Services Management Series, Editors: Chris Ham and Chris Heginbotham, 1998; Clive Smee, *Speaking Truth to Power: two decades of analysis in the Department of Health,* The Nuffield Trust, Radcliffe Publishing, 2005.

More recently, local authority Overview and Scrutiny Committees were given the power to scrutinise health services in their area.[202]

Unlike the NHS, social services are the responsibility of local authorities. Historically there has been a divide between the two types of service. The NHS has had a national structure with the Secretary of State for health at the head. Although the Secretary of State's functions have been increasingly devolved to local areas, they have been devolved to local health bodies rather than to local authorities. Over time there have been attempts to encourage joint working between the NHS and local authorities. For example powers to pool budgets were introduced by the *Health Act 1999* and Care Trusts by the *Health and Social Care Act 2001* respectively. The reorganisation in 2006 of Primary Care Trusts, which commission most NHS services, means that many of them have the same boundaries as local authorities - around 70% compared with 44% beforehand.[203] Nevertheless the two services remain distinct and have given rise to different issues.

2. Replacement of Community Health Councils

The Bill deals with three existing aspects of patient and public involvement in the NHS: Patient Forums, the National Commission for Patient and Public Involvement and the "section 11" duty of NHS bodies to consult users. These were all introduced in 2003 as part of a system designed to replace Community Health Councils (CHCs), which had been in existence since 1974.

The Government's intention to abolish the Community Health Councils (CHCs) had been announced in the NHS Plan in summer 2000.[204] The Plan said that it was time to "modernise deepen and broaden" the way that patients' views were represented in the NHS and that CHCs had three distinct functions that did not necessarily have to be performed by the same body:

- supporting individual patients and complainants
- monitoring hospital and community services
- providing a citizen's perspective on service changes

The *Health and Social Care Bill* in the 2000-2001 Parliamentary Session contained provisions to abolish Community Health Councils. The proposals were controversial and were dropped but the Government said at the time that it would return to the issue and that further legislation might be necessary. The *Health and Social Care Act 2001*, did,

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[202] Section 7 of the *Health and Social Care Act 2001* amended section 21 of the *Local Government Act 2000,* to add 'the health service in the authority's area' to the remit of overview and scrutiny committees. This came into effect in 2003. Section 7 and sections 8-10 (now sections 244-247 of the NHS Act 2006) make provision for regulations etc.

[203] Department of Health Press Release 29 September 2006, NHS Chief Executive welcomes new era for Primary Care Trusts: http://www.gnn.gov.uk/environment/fullDetail.asp?ReleaseID=230790&NewsAreaID=2&NavigatedFromDepartment=False

[204] Department of Health, *The NHS Plan: a plan for investment, a plan for reform* Cm 4818, I and II, July 2000: http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4002960&chk=07GL5R

however, contain other measures relating to patient and public involvement, including the extension of local authority overview and scrutiny committee functions to health and a new duty (contained in section 11) for NHS bodies to consult patients and public.

Provisions to abolish Community Health Councils were then included in the *National Health Service Reform and Health Care Professions Bill*, which received Royal Assent in 2002. The Government's proposals remained controversial. Concerns included a fear that the new system might be too fragmented and insufficiently independent and the powers of PCT Patient Forums were, as a result, increased during the passage of the Bill, which also provided the statutory basis of the Commission for Patient and Public Involvement.

The provisions in these two Acts were supplemented by others that did not require legislation. As a result, when Community Health Councils were finally abolished on 1 December 2003, the following bodies had come into existence or were on the verge of doing so, and the following new powers had been introduced.

- Patient Advice and Liaison Services (PALS)[205]
- Independent Complaints Advocacy Services (ICAS) [206]
- Overview and Scrutiny Committees - power to scrutinize health services[207]
- Patient and Public Involvement Forums (PPIFs)
- The Commission for Patient and Public Involvement
- Strategic Health Authorities, NHS Trusts and Primary Care Trusts - new duty to consult patients and public in service planning and operation

Details and developments relating to the last three, which are affected by the current Bill, are described below.

3. Patient and Public Involvement Forums (Patients Forums or PPIFs)

Patient Forums became operational on 1 December 2003 when Community Health Councils came to an end.[208] One was created for every NHS Trust (and later every Foundation Trust) and Primary Care Trust. Their members, who are volunteers, are appointed by the Commission for Patient and Public Involvement (described below) and they elect their own chairs. There are currently around 550 Forums, each one of which

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[205] Based in NHS Trusts, they provide information, advice and support to help patients, families and their carers, especially on-the-spot support. Their work is described on the Department of Health website: http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/PatientAndPublicInvolvement/PatientAdviceAndLiaisonServices/fs/en

[206] Created under section 12 of the *Health and Social Care Act 2001* (and provided under contracts awarded by the Department of Health). Details are on the Department of Health's website: http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/ComplaintsPolicy/NHSComplaintsProcedure/NHSComplaintsProcedureArticle/fs/en?CONTENT_ID=4087428&chk=WoVmTf

[207] See above, including footnote2.

[208] They were formed under sections 15-19 of the *NHS Reform and Health Care Professions Act 2002* (now 237-241 of the NHS Act 2006) and subordinate legislation, in particular: *The Patients' Forums (Membership and Procedure) Regulations 2003*, SI 2003/ 2123.

has an average of eight members. The current system therefore directly involves 4,500 people.[209]

Some of the main functions set out in the primary legislation are listed below. Patient Forums must:

- monitor and review the range and operation of services provided by, or under arrangements made by, the trust for which it is established
- obtain the views of patients and their carers about those matters and report on those views to the trust
- provide advice, and make reports and recommendations about matters relating to the range and operation of those services to the trust (and, in doing so, have regard to views of patients and their carers)
- make available to patients and their carers advice and information about those services

In addition, Forums may be required to carry out functions prescribed in Regulations and has various powers, including the power to refer matters to a relevant Overview and Scrutiny Committee. Regulations enable them to enter and inspect premises and also place requirements on NHS bodies to supply them with information when requested.[210] Similar provisions apply in relation to independent providers.[211] The Forums have to produce an annual report.[212]

A Forum for a Primary Care Trust has extra functions under the primary legislation:

- providing independent advocacy services for patients and individuals in the Primary Care Trust's area
- making advice and information available to patients and their carers about making complaints
- representing the views of members of the public in the Primary Care Trust's area about matters affecting their health to persons and bodies which exercise functions in relation to the area of the Primary Care Trust (including, in particular any relevant overview and scrutiny committee).
- promoting the involvement of local members of the public in consultations, decision-making etc. by NHS bodies and other public bodies on health matters
- make available advice and information to members of the public about such involvement
- advise NHS and public bodies dealing with health matters about encouraging such involvement
- monitor how those bodies are achieving such involvement

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209 Figures given in the Regulatory Impact Assessment on the Bill: http://www.communities.gov.uk/index.asp?id=1505155

210 *The Patients' Forums (Functions) Regulations 2003*, SI 2003 / 2124

211 Secretary of State's directions require Primary Care Trusts to include certain terms in their contracts with independent providers.

212 See http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsLegislation/PublicationsLegislationArticle/fs/en?CONTENT_ID=4083114&chk=mhfhrY

In practice not all of these functions have been brought into play. For example, the Secretary of State has used separate powers to contract out advocacy services to other bodies.

A report on the work of the Forums in 2005/6 is available on the website of the Commission for Patient and Public Involvement, which manages and advises the Forums (see below).[213] The support for PPI forums is provided by around 140 Forum Support Organisations. They are not-for-profit organisations and they work under contract to the Commission for Patient and Public Involvement.

In July 2004, the Government announced that the Commission for Patient and Public Involvement would be abolished (see below). This led it to set in motion a review of alternative means of support for Patient Forums. At the time, Melanie Johnson, then Parliamentary Under Secretary at the Department of Health, said that the Forums were the cornerstone of patient and public involvement: "They will not be abolished, nor will their independence be undermined."[214]

By October 2005, most of the policies that the Government had announced relating to Patient Forums were dropped or put on hold. The Government said that plans to give the NHS Appointments Commission additional responsibilities to appoint members and chairs of Patient Forums would not go ahead; plans to reconfigure Forums around Primary Care Trusts alone would not go ahead in view of the planned reconfiguration of the PCTs themselves; and generally policies in this area had been put on hold pending the results of the strategic review of patient and public involvement. [215]

In January 2006 the Government published its White Paper on the future of primary care and community services, chapter 7 of which set out the broad policy towards patient and public involvement but did not mention specific details.[216] The review into patient and public involvement, which had been started in August 2005,[217] and the recommendations of the expert panel set up to examine the evidence it collected, were published in May 2006.[218]

The proposal to abolish Patient Forums and to replace them with Local Involvement Networks (LINks) was made in July 2006, when the Department published *A stronger local voice: a framework for creating a stronger local voice in the development of health and social care services.*[219] Responses to this consultation document and the

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213 http://www.cppih.org/documents/Nationalsummary.pdf
214 HC Deb 22 July 2004 c582-3
215 See, for example, HC Deb 5 October 2005 c2839W; c2866W and HC Deb 24 October 2005 c170-1W
216 *Our health, our care, our say: a new direction for community services*, Cm 6737, January 2006, http://www.dh.gov.uk/assetRoot/04/12/74/59/04127459.pdf
217 Details of the way the review was working were announced in a Department of Health Press Notice 14 February 2006, "Stronger Voice for Patient: Concluding the PPI review" http://www.gnn.gov.uk/environment/fullDetail.asp?ReleaseID=187509&NewsAreaID=2&NavigatedFromDepartment=False
218 *Concluding the review of patient and public involvement Recommendations to ministers from Expert Panel*, Department of Health, 12 May 2006: http://www.dh.gov.uk/assetRoot/04/13/70/42/04137042.pdf
219 The document is available on the Department's website:

Government's conclusions were published in December 2006 at the time the current Bill was published.[220]

4. The Commission for Patient and Public Involvement

The Commission for Patient and Public Involvement in Health was established as a non-departmental public body in January 2003 to oversee the new system of patient and public involvement. One of its main functions is to advise the Secretary of State on arrangements for public involvement in, and consultation on, matters relating to the health service. A summary list of its functions is provided on the Department of Health website.[221] The Commission:

- sets up, funds, staffs and performance manages all PPI Forums
- appoints all members to PPI Forums
- sets quality standards for, and issues guidance to PPI Forums
- submits reports to the Secretary of State for Health on how the whole system of patient and public involvement is working and advises him about it
- makes reports as it sees fit to other national bodies such as the Healthcare Commission, the NPSA and any other body (including the media) on patient and public involvement issues and issues that in its opinion give rise to concern about the safety or welfare of patients
- carries out national reviews of services from the patient's perspective – collating data from PPI Forums and making recommendations to the Secretary of State and to other bodies and persons it considers appropriate[222]

The Commission receives a total budget of around £28 million a year, around one third of which is spent directly on supporting and running the Commission. The rest is spent on contracts with organisations to provide support to Patient Forums.[223] The report and accounts of the Commission for 2005/6 are available on its website.[224]

On 22 July 2004 the Government published the report of a review into NHS "arm's length" bodies. John Reid, then Secretary of State for Health, announced that the number of such bodies would be reduced, saving at least £500 million and increasing resources that could be channelled directly to frontline NHS patient care. One of the

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http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4137040&chk=U6PSmq;
See also statement on 14 July 2006:
http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060714/wmstext/60714m0146.htm

220 This is available on the Department of Health's website:
http://195.33.102.76/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4141027&chk=YeQaB1

221 Its statutory functions are set out in section 20 of the *National Health Service Reform and Health Care Professions Act 2002* (section 243 of the *NHS Act 2006*). Schedule 6 of the 2002 Act (schedule 16 in the NHS Act 2006). The *Commission for Patient and Public Involvement in Health (Membership and Procedure) Regulations 2002* (SI 2002/3038) as amended make further provision relating to the Commission.

222 The web link is:
http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/PatientAndPublicInvolvement/InvolvingPatientsPublicHealthcare/InvolvingPatientsPublicHealthcareArticle/fs/en?CONTENT_ID=4031635&chk=TLxjKG

223 Source: Regulatory Impact Assessment: http://www.communities.gov.uk/index.asp?id=1505155

224 http://www.cppih.org/documents/AnnualReport2006_001.pdf

"arm's length" bodies affects was the Commission for Patient and Public Involvement in Health, which would be abolished.[225] The review document said:

> The Commission for Patient and Public Involvement in Health will be abolished. Patients' Forums will remain the cornerstone of the arrangements we have put in place to create opportunities for patients and the public to influence health services.
>
> Stronger, more efficient arrangements to provide administrative support and advice to Forums will be put in place. These will enable Forums to concentrate on their core functions, maximising the resources available for spending on real involvement rather than administration. The NHS Appointments Commission will appoint Forum members in the future.
>
> A clear quality framework for Forum activities in monitoring and reviewing health services will be established and communicated to Forums. The best body to do this will be identified in discussion with others including the Healthcare Commission, which itself has a duty to improve services in the interests of patients and public. It will be important that the details are discussed fully with stakeholders before the necessary primary legislation is taken forward.[226]

The Commission took part in the review of patient and public involvement that followed. Extracts from the overview paper that it submitted to the expert panel set up by the Government early in 2006 are reproduced below. The Commission argued that it was not feasible to continue with the current system and instead recommended a system of local networks. Its description of the failings of the current system is set out below:

- There are high levels of frustration within the system caused by discordance between vision in legislation and implementation;
- With the Department of Health emphasising only the service improvement function, monitoring and review of services is too often the sole pre-occupations of Forums;
- Too much has been expected of too few people. It is unrealistic to expect volunteers, however committed, to do all the things that are expected of Forums to improve all of the NHS services in their area, as well as to engage the wider community in holding the NHS to account;
- Governance arrangements and bureaucracy, which of necessity accompany the monitoring function, have stifled enthusiasm and are expensive and time consuming. Regulations place constraints on a volunteer's freedom of action and an extensive amount of Commission staff time is taken up with governance and disciplinary matters;
- It has proved difficult to widen the pool of participants to reflect diversity in local populations. Current arrangements tend to exclude people who are employed or who have limited time to offer for instance because of caring responsibilities. Most Forum members are not economically active

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[225] See, Department of Health Press Notice 22 July 2004, "Reid – Reducing NHS bureaucracy to release resources to the front line", which also quotes the Written Commons Statement that he made that day.

[226] Department of Health, *Reconfiguring the Department of Health's Arm's Length Bodies*, 22 July 2004: http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4086081&chk=y4UlfP

or are past working age. The role requires a time commitment that others are unable to make;

- The quasi-statutory role of Forum members dampens people's early enthusiasm on initial involvement; and forms a barrier to first time volunteers and to people wanting to become involved on an episodic or thematic basis;
- The system is too orientated towards particular NHS institutions rather than encompassing the patient's journey through a variety of health and social care services and, despite some good work, does not easily facilitate networking;
- Current arrangements do not enable the development of wider PPI activity at the local level including the voluntary and community sector.
- There is confusion between the "internal" PPI activity of Trusts and the role of the PPI Forums, the role of Overview and Scrutiny Committees in PPI, and also between PPI in service improvement on the one hand and in long term service planning on the other;
- There is a lack of clarity about where responsibility lies to develop and support the systems and processes for dialogue and engagement on particular issues – it is unclear what is the role of Trusts, PPI Forums, and Overview and Scrutiny Committees;
- The social care remit is a secondary focus at most;
- The accountability role of Forums has been undermined: their smaller than expected size has made it hard to make them authoritative and representative in any real sense. The circumscribing of their powers through the regulations, combined with their poor resource base for administrative support, has meant limited local networking. The short and unstable life of Forums has dented public confidence in their ability to engender improvements in services. [227]

5. "Section 11" duty of NHS bodies to consult users

Section 11 of the *Health and Social Care Act 2001* (section 242 of the *NHS Act 2006*) places a duty on Strategic Health Authorities, Primary Care Trusts and NHS Trusts to involve and consult patients and the public in planning the services that they are responsible for; developing and considering proposals for changes in the way those services are provided; and making decisions that affect how those services operate.

This duty came to the attention of the press during 2006 when a Derbyshire woman tried to block a Primary Care Trust from awarding a GP contract to a US firm. Overturning an earlier decision of the High Court, the Appeal Court ruled that NHS patients had not been properly consulted over the plan to allow the firm to run local GP services, thus requiring the Primary Care Trust to conduct an investigation under section 11.[228]

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[227] CPPIH Overview Paper: Input to PPI Review Panel, *Keeping Accountability Alive – CPPIH 2003-2006*, paragraph 50: http://147.29.80.160/portal/csc/genericContentGear/download/CPPIH+Overview+Paper+10.3.063.pdf?document_id=103700090

[228] "Private GP care consultation win" BBC News Online 23 August 2006: http://news.bbc.co.uk/go/pr/fr/-/hi/health/5279022.stm

Guidance on the duty[229] points out that although the form of this particular duty was new, consultation on changes to health services was not; Community Health Council Regulations 1996 had required Strategic Health Authorities (and previously Health Authorities) to consult on proposals for any substantial development or variation to health services. The guidance also mentions other duties to consult within the NHS, including the requirements to consult on varying the area of, abolishing, or changing the name of NHS bodies such as Primary Care Trusts, NHS Trusts and Strategic Health Authorities.

The guidance highlights the difference between the section 11 duty and the duty created by Regulations under section 7 of the *Health and Social Care Act 2001* for NHS organisations to consult local authority Overview and Scrutiny Committees. The latter relates to any proposal for a 'substantial development or variation' of the health service whereas the section 11 duty, "still applies whether or not a proposal constitutes a substantial variation or development". The word 'substantial' is not defined in the legislation on the section 7 duty but there is guidance on the duty from the Department of Health, which describes factors that might be taken into account when deciding whether a change is 'substantial'.[230]

B. The Bill

A detailed account of the clauses in Part 11 of the Bill, its rationale, responses that the Government has received on its proposals and further details about the way that they might work are available from the following documents published in December 2006:

- The Explanatory Notes provide a description of the clauses[231]
- The Regulatory Impact Assessment provides information about the rationale, costs and potential impact [232]
- *Government Response to A Stronger Local Voice* provides details of the rationale for the proposals, reactions to them and how they are intended to work in practice[233]

Below is a summary of the Bill together with extracts from the documents listed above. A good deal more detail is in the documents, including, in the last one, the concerns of Patient Forums, which are also available on the website of the Commission for Patient and Public Involvement.[234]

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229 Department of Health, *Strengthening Accountability: Involving Patients and the Public, Policy guidance*, Section 11 of the Health and Social Care Act 2001: http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4008005&chk=rVmyFE

230 Department of Health, *Overview and Scrutiny of Health: Guidance*, 2003, paragraph 10.6.3.: http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsLegislation/PublicationsLegislationArticle/fs/en?CONTENT_ID=4009607&chk=eSdfrn

231 Local Government and Public Involvement in Health Bill Explanatory Notes: Bill 16- EN

232 http://www.communities.gov.uk/index.asp?id=1505155

233 available at: http://195.33.102.76/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4141027&chk=YeQaB1

234 http://www.cppih.org/about_what.html

The Health Select Committee announced on 23 November 2006 that it would be conducting an inquiry into patient and public involvement in the NHS. It called for evidence to be submitted by 10 January 2007.[235] Further issues relating to the new arrangements may therefore emerge from the Committee.

Clauses 153-159 provide for the new patient and public involvement arrangements, which will include local involvement networks. They provide that:

- Each local authority must make contractual arrangements with someone other than a local authority to ensure that local involvement networks can exist and function. The activities of local networks would include promoting and supporting the involvement of people in the commissioning, provision and scrutiny of local health and social services; obtaining the views of local people, making those views known to the relevant bodies, and suggesting improvements to local health and social services. Local authorities would be able to make payments.

- Regulations may require service providers to respond to local improvement networks.

- Regulations may require service providers to allow authorized representatives of local improvement networks to enter and observe activities in premises owned or controlled by the service-provider.

- Overview and Scrutiny Committees must acknowledge receipt of a referral about a social services matter from a local involvement network and inform the referrer about the Committee's actions.

- Local authorities' contractual arrangements must include provision requiring annual reports from each local involvement network.

The Regulatory Impact Assessment details the rationale for the change:

> The changing structure of the NHS, with an increasing plurality of providers and more focus on commissioning means that it is no longer appropriate to have a PPI system which is based around individual providers. In the current system, each Patient's Forum scrutinises the services of its individual body (Hospital Trust, Specialist Trust, PCT etc).
>
> We wish to create a system of PPI which is capable of following the whole user experience, rather than looking at services in isolation. For this reason we wish to create a system which can apply equally to health and social care, which can encourage involvement and input from people who use, or might use, any health or social care services in the area. [paragraphs 7 and 8 on pages 49 and 50]

The Government Response document explains that the local authority's role would be to tender a contract for a host organization to support the local involvement network

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[235] House of Commons Health Select Committee Press Notice, 23 November 2006: http://mirror.parliament.uk/parliamentary_committees/health_committee/hcpn061123.cfm

[paragraph 1.26] and sets out the difference between the proposed local involvement networks and the existing Patient Forums:

> …there are several fundamental differences between PPI forums and LINks, for example LINks will cover social care services as well as health, they will be established for a geographical area rather than a specific organization, and the will also decide locally how members will be appointed and how others will be able to contribute to their work priorities.
>
> An important difference is that LINks are specifically designed to reach out to and include, a wide range of existing local groups representing patients and the public and to provide a channel for local health and social care organizations to engage with those groups. LINks should not be based on methods of involvement that exclude groups of people because of the time commitment involved or unfamiliar ways of working. We are therefore keen for other voluntary and community groups and individuals with experience of different methods of engagement to participate in LINks, bringing expertise from other areas… [paragraphs 1.5 and 1.6]

On funding, the Regulatory Impact Assessment says:

> Currently approximately £9m is spent annually on supporting CPPIH, which represents 32% of the total PPI budget. The costs of Local Authorities administering and monitoring contracts with host organisations will vary according to the nature of their area and each Local Authority's infrastructure. However, it is estimated that Local Authorities will need between £5,000 and £15,000 for this work. It is our expectation that the same amount of funding will go to the new system as is currently spent on PPI, therefore, even if each Local Authority is at the higher end of the scale, their expenditure represents roughly 8% of the total budget. This demonstrates that the new system will allow a significantly larger proportion of PPI funds to be spent directly on the front line, on engaging local people.[page 49]

The earlier documents on the Government's proposals had suggested that, unlike Patient Forums, local involvements networks might not have powers of inspection. The Response document explains that the Government has decided that such powers would be a good idea after all:

> To enable LINks to gather information from all types of patients and users of services, there will be times when it is right to collect peoples' experiences whilst they are currently using services. We therefore plan to provide LINks with the power to enter health and social care premises (with some exceptions) and to observe and assess the nature and quality of services. A LINk will form a view of services by talking to people using them and by speaking to staff….[Paragraph 1.41]
>
> PPI Forums currently have the right to inspect NHS premises, and many forum members felt that rights of access would be essential to ensure that LINks are as effective as possible. In particular, the survey conducted by Health Link, in which many forum members participated, was extremely compelling….[Paragraph 2.13]

The Regulatory Impact Assessment says:

> …A limited amount of data is collected about the number of inspections currently conducted by Patients' Forums – CPPIH collects this data, but only on a voluntary reporting basis, and therefore our figures may not show the whole picture. However, they show that on average, 300 inspections are conducted every month, making a total of 3,600 Forum inspections every year. The move from having 570 Forums to only 152 LINks should reduce the number of visits as fewer bodies will be conducting them and LINks will target their inspections, and they will be strategically planned and based on the evidence the LINks gather. Extending these rights to some social care premises may however mean that there are some additional visits to these services. There will however be limits on which social care institutions LINks will have the power to enter, for example, they will not be able to enter facilities providing services to children. [page 54]

The requirement for Overview and Scrutiny Committee to respond to referrals relates only to social services but as Section 7(3) of the *Health and Social Care Act 2001* already provides for various Regulation-making powers in relation to Overview and Scrutiny Committees and health matters, it might be possible to achieve the same result for health services by means of Regulations.

Clauses 160-162 abolish Patient and Public Involvement Forums.

Clause 163 amends the existing "section 11" duty (section 242 of the NHS Act 2006) of NHS bodies by inserting that changes and decisions on which consultation is required must be "significant". It defines "significant" as those that have a "substantial" impact on

- the manner in which services are delivered to users of those services at the point when they are received by users, or
- the range of health services available to those users

The clause also provides that the relevant bodies must have regard to any guidance on this duty issued by the Secretary of State.

Clause 164 requires that Primary Care Trusts must, subject to Directions by the Secretary of State, make reports on the consultations that they have carried out and on the influence that the results of the consultation has had on its commissioning decisions.

XIII Wales

Under the *Government of Wales Act 2006*, the National Assembly for Wales may pass laws, known as "Assembly Measures" in certain fields (i.e. devolved subjects). The fields are listed in part 1 of schedule 5 of the 2006 Act, field 12 being local government. Within the fields, certain 'matters' may be specified and the present Bill specifies a number of local government matters where the Assembly is to be able to pass laws. **Clause 165**, which forms part 12 of the Bill, gives effect to **schedule 14** which amends schedule 5 of the 2006 Act by introducing a number of matters into the local government field. These are:

- Structure and boundaries
- Community strategies and well-being
- Byelaws
- Best value

- Standards of conduct

Sue Essex, the Welsh Assembly Government's Local Government and Public Services Minister, has welcomed the Bill, saying that the powers it provides will help the Assembly Government, working with local government, to reform public service delivery in Wales on the lines recommended by Sir Jeremy Beecham. The response continues:

> The Bill will enable the Assembly Government to bring forward proposals that will help local authorities to improve their performance and strengthen local strategic planning. It will also enable us to encourage more collaborative working, and in the light of this experience, to consider proposals for voluntary or directed mergers of local authorities.
>
> The Bill will also allow us to simplify procedures for making and confirming local authority bye-laws in Wales and to consider a more local approach to dealing with instances of misconduct by local authority members.
>
> The Minister added:
> There is scope in this Bill to give yet further powers to the National Assembly. I will be discussing with the Secretary of State amendments to the Bill that would give Wales further powers but, as I have made clear, The Assembly Government has no intention of seeking amendments relating to local government electoral arrangements.[236]

[236] Welsh Assembly Government, "Local Government Minister welcomes new Bill", *Press release*, 13 December 2006