

*These notes refer to the Local Government and Public Involvement in Health Act 2007 (c.28) which received Royal Assent on 30 October 2007*

# LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 17: Final Provisions**

570. [Part 17](#) of the Act makes general provision for orders, regulations and guidance under the Act. It provides for regulations and orders to be made by statutory instrument and for the Parliamentary or Assembly procedure which is to apply in respect of these instruments. The Secretary of State is given power by order to amend, repeal or revoke enactments for the purposes of making supplementary or consequential provisions. This Part also provides for extent, commencement and the short title of the Act.

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

571. [Schedule 1](#) makes amendments consequential upon Part 1 of the Act.

#### ***Schedule 2: Electoral arrangements: consequential amendments***

572. [Schedule 2](#) makes consequential amendments to the Local Government and Housing Act 1989.

#### ***Schedule 3: Executives: further amendments***

573. [Schedule 3](#) makes consequential amendments to the Local Government Act 2000.

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

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

#### ***Schedule 5: Parishes: further amendments***

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

#### ***Schedule 6: Byelaws: further amendments***

576. [Schedule 6](#) repeals a number of outmoded or unnecessary provisions relating to certain matters which byelaws can address. Section 82(4) of the Public Health Acts Amendment Act 1907 provides that byelaws affecting the foreshore below high water require the consent of "the Board of Trade", (which is now exercisable given by the Secretary of State for Transport,) before they can be confirmed. This requirement will

be lifted as this consent is considered to be no longer necessary. Guidance issued by the Department for Communities and Local Government for local authorities includes general advice on consultation with relevant bodies as part of the byelaw-making process. Section 231(1) of the Public Health Act 1936 will be amended to repeal the provisions which relate to byelaws regulating the location of bathing-machines and the costumes to be worn by bathers. These provisions are considered outmoded and unnecessary. It also provides for the repeal of section 56(2) and (3) of the Public Health (Control of Disease) Act 1984 which provide for byelaws to prevent the spread of infectious disease by the occupants or users of tents, vans, sheds and similar structures used for human habitation. This provision has never been used.

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

577. **Schedule 7** provides for consequential amendments to enactments where parish and community councils were included by virtue of the fact they were best value authorities. These amendments ensure that parish and community councils are not removed from these provisions simply because they are no longer best value authorities.
578. This Schedule repeals sections 34 and 35 of the Local Government Act 2003 (power to make grants to parishes and to communities in Wales towards expenditure incurred in complying with best value duties).

***Schedule 8: Best value: minor and consequential amendments***

579. **Schedule 8** provides for minor and consequential amendments to Part 1 of the Local Government Act 1999 and to other enactments arising from Part 7 of the Act (best value).
580. In particular, sections 4 to 9 of the Local Government Act 1999 are amended to reflect the fact that they will only apply to Welsh best value authorities (see section 139).

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

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

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

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

***Schedule 11: Schedule to be inserted in Audit Commission Act 1998***

583. The new Schedule 2A to the Audit Commission Act 1998 inserted by this Schedule makes provision about the interaction of the Audit Commission with various persons and bodies, in particular "inspection authorities" and "public authorities".
584. "Inspection authorities" are the criminal justice inspectorates, the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection (see paragraph 1 of Schedule 2A).
585. "Public authorities" are persons or bodies whose functions are of a public nature (excluding the Houses of Parliament) (see paragraph 2 of Schedule 2A). References to public authorities in Schedule 2A do not include public authorities outside the UK, except in paragraph 9 (power to provide advice or assistance).

## **Inspection programmes and inspection frameworks**

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

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

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

## **Co-operation**

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

## **Joint working**

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

## **Delegation**

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

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

591. [Paragraph 9](#) confers a power on the Audit Commission to provide advice and assistance to other public authorities whether within or outside the UK. The Audit Commission will also be able to charge the authority to which it provides assistance a fee for carrying out such work.

## **Inspections carried out under arrangements**

592. [Paragraph 10](#) enables the Audit Commission to exercise functions, which it does not ordinarily have, where another inspection authority has sought to delegate those functions to the Audit Commission.

## ***Schedule 12: The Commission for Local Administration in England: minor and consequential amendments***

593. This Schedule covers the minor and consequential amendments arising from the provisions in Part 9 regarding the Commission for Local Administration.

594. Paragraphs 4(4)(b) and 5(2) of Schedule 12 repeal the requirements in sections 28(3) and 29(6) of the Local Government Act 1974 that the Minister of the Civil Service is required to consent to the scales on which Local Commissioners pay fees, expenses and allowances. Paragraph 11(2) repeals the requirement in paragraph 3 of Schedule 4 to the Local Government Act 1974 that the Minister of the Civil Service's consent is required to the amount of payments of remuneration, pensions etc to the Local Commissioners and the Commission's staff.
595. Paragraph 7 makes a number of amendments to section 32 of the Local Government Act 1974. Section 32 provides for absolute privilege in defamation proceedings for certain communications relating to the work of the Local Commissioners and for exemption from disclosure for information obtained by Local Commissioners in the course of their investigations, subject to limited exceptions. Paragraph 7(6) extends the defence of absolute privilege in defamation proceedings to the publication of reports, statements or summaries of reports or statements by a Local Commissioner. Paragraph 7(9) clarifies which authorities can give a written notice to prevent the disclosure of information which a Local Commissioner might otherwise be authorised or required to disclose, where the authority considers disclosure would not be in the public interest. The amendments made by paragraph 7 also ensure that the defence of absolute privilege in defamation proceedings and the exemption from disclosure of information obtained during an investigation apply where any person discharges or assists in the discharge of a function of a Local Commissioner.
596. Paragraph 10 replaces the definition of 'person aggrieved' in section 34(1) of the Local Government Act 1974 with a definition of the 'person affected'. A "person aggrieved" is defined as a person who is the subject of a complaint to a Local Commissioner that he or she has suffered injustice. A "person affected" includes such persons but also includes a person who it appears has, or may have, suffered injustice in consequence of a matter which has come to the attention of a Local Commissioner during the course of an investigation. This reflects the Local Commissioners' new powers (in new section 26D inserted by section 174) to investigate such matters.
597. Paragraphs 13 and 15 amend provisions inserted by the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 which facilitates joint working arrangements between the Parliamentary, Health and Local Commissioners.

### ***Schedule 13: Consequential amendments relating to joint waste authorities***

598. Part 1 sets out the consequential amendments to the Local Government Act 1972 while Part 2 sets out other consequential amendments. All the amendments in the Schedule bring joint waste authorities in line with other similar bodies such as, joint authorities, local authorities and joint waste disposal authorities.

### ***Schedule 14: Consequential amendments relating to entities controlled etc by local authorities***

599. Schedule 14 amends references to Part V of the Local Government and Housing Act 1989 in other enactments and provides that the amended descriptions shall have the meaning given by an Order under Sections 217 and 218.

### ***Schedule 15: The Valuation Tribunal for England***

600. Paragraphs 1 and 3 of Schedule 15 to this Act amend Schedule 11 to the 1988 Act by dividing that Schedule into four Parts as follows. Part 1 (paragraphs A1 to A20) establishes the VTE and makes provision in relation to that Tribunal. Part 2 (paragraphs 1 to 7A) concern VTs in Wales only. Parts 3 and 4 (paragraphs 8 to 12A and 13 to 18 respectively) apply in relation to both England and Wales.

## **Establishment of the Tribunal**

601. Paragraph 2 of Schedule 15 establishes the VTE and makes further provision in relation to the Tribunal through new paragraphs A1-A20 of Schedule 11 to the 1988 Act.

## **Establishment and Jurisdiction**

602. Paragraph A1 states that there shall be a VTE and paragraph A2 transfers the jurisdiction of the VTs in England to the VTE. This jurisdiction includes the current jurisdiction of the VTs as well as their historic jurisdiction (for example in relation to the community charge).
603. Paragraph A3 enables the Secretary of State to make provision (by way of regulations) for matters to be referred to arbitration where all of the parties to the appeal agree in writing.

## **Membership**

604. Paragraph A4 specifies four types of members of the VTE. These are the VTE President, one or more Vice-Presidents, a panel of chairmen and other members.
605. Vice-Presidents have the functions assigned to them by the VTE President (paragraph A5) and may exercise the VTE President's functions in certain specified circumstances (paragraph A6).
606. The Lord Chancellor makes appointments to the VTE and the Secretary of State determines the terms and conditions of their appointment (paragraph A7).
607. The Secretary of State also determines (after consultation with the VTE President and the VTS) how many Vice-Presidents, chairmen and other members the VTE is to have. The determination may be a specific number, a minimum, a maximum, or a minimum and a maximum (paragraph A8).

## **Tenure of Office**

608. VTE members hold office in accordance with their terms and conditions (paragraph A9).
609. The Lord Chancellor is able to remove a VTE member from post if satisfied the member is unable, unwilling, or unfit to perform their functions as a member (paragraph A10). Any removal must comply with the procedural requirements in the Constitutional Reform Act 2005 (see, in particular, section 108(1) of that Act).

## **Remuneration, allowances and pension**

610. Paragraphs A11, A12 and A13 enable the Secretary of State to determine any remuneration and pension payable to the VTE President or Vice-Presidents, and to determine what allowances (including travel and subsistence) are payable to VTE members.
611. The VTS must pay these sums (paragraph A14). The Secretary of State has power to pay grant to the VTS under paragraph 18(1) of Schedule 4 to the 2003 Act.

## **Organisation and delegation**

612. The VTE President may make arrangements about the organisation of the VTE (paragraph A15).
613. Paragraph A16 enables the VTE President and Vice-Presidents to delegate functions, in writing, to other VTE members, but not any function of deciding an appeal.

## **Dealing with appeals**

614. The VTE President must make arrangements (tribunal business arrangements) providing for the selection of VTE members to deal with appeals (paragraph A17). These arrangements must provide for at least one senior member of the VTE (that is, the VTE President, a VTE Vice-President or a chairman) to deal with an appeal.
615. Appeals may continue if a member becomes unable to act, but not if that member is the only member dealing with the appeal (paragraph A18).

## **Regulations**

616. The Secretary of State may make regulations in relation to the procedure or any other matter relating to the VTE (paragraph A19). In particular, these regulations may include provision about disqualification, or they may provide for functions to be discharged on the VTE's behalf by VTS staff.
617. Paragraph A19(3) provides that regulations may not be made in relation to staff, accommodation and equipment. This is because these matters are functions of the VTS and are addressed by the 2003 Act.
618. [Paragraphs 4-9](#) of Schedule 15 to this Act make various amendments to the new Part 2 of Schedule 11 to the 1988 Act (Valuation Tribunals: Wales). In particular, provision is made to enable the creation of one or more VTs in Wales and to allow members, in Wales, to be entitled to such remuneration as the Secretary of State may determine.
619. [Paragraphs 10-18](#) of Schedule 15 to this Act make various amendments to the new Part 3 of Schedule 11 to the 1988 Act (Procedure, Orders, etc).

## ***Schedule 16: Consequential amendments relating to the creation of the Valuation Tribunal for England***

620. [Schedule 16](#) to the Act sets out consequential amendments of other legislation relating to the establishments of the VTE:
621. In particular, amendments to the 2003 Act:
- a) make it a function of the VTS to make the payments necessary for the matters set out in paragraphs A11 to A13 (see paragraph 11(2)(e) of Schedule 16 to the Act); and
  - b) make provision for the VTE President to be a member of the VTS as long as he remains President (see paragraph 13 of Schedule 16 to the Act).
622. Amendments to the Constitutional Reform Act 2005 include amendments to Schedule 14 of that Act. These make provision for appointments to the VTE to be made by the Lord Chancellor.

## ***Schedule 17: Powers of National Assembly for Wales***

623. [Paragraph 1](#) provides for amendments to Schedule 5 to the [Government of Wales Act 2006 \(c.32\)](#) (Assembly Measures) that will introduce a number of matters into "*Field 12: local government*".
624. [Paragraph 2](#) provides that an Assembly Measure may make provision for and in connection with the following matters:
625. Matter 12.1: The constitution of a new county borough or county in Wales; the abolition or alteration of an existing county borough or county in Wales; the establishment of a council for a new county borough or county in Wales and the abolition of existing county and county borough councils in Wales; and, the alteration of a police boundary



in Wales, as a consequence of an alteration to a local government boundary in Wales but in the latter case only with the consent of the Secretary of State.

- 626. Matter 12.2: The making, coming into force and confirming of a byelaw.
- 627. Matter 12.3: The conduct of elected members, co-opted members and employees of the following authorities in Wales: county, county boroughs, community councils, fire and rescue authorities, and National Park authorities. The amendment includes provision giving the Assembly certain legislative competence concerning the making and handling of allegations that a member or co-opted member of a police authority in Wales has breached their authority's code of conduct, although an Assembly Measure containing such provision may require Secretary of State consent under Part 3 of Schedule 5 to the 2006 Act.
- 628. Matter 12.4: County council and county borough council strategies for promoting or improving the economic, social and environmental well-being of local authority areas in Wales or contributing to sustainable development in the United Kingdom.
- 629. Matter 12.5: The making of arrangements by specified authorities in Wales to secure improvement in the exercise of their functions, i.e. provisions equivalent to the best value duties in Part 1 of the Local Government Act 1999; the making of arrangements by such authorities for the involvement in the exercise of their functions of people who are likely to be affected by or interested in the exercise of those functions; the assessment and inspection of the performance of such authorities. The specified authorities include a county council or county borough council in Wales, a fire and rescue authority in Wales and a National Park authority for a National Park in Wales.
- 630. [Paragraphs 3 and 4](#) provide that an Assembly Measure can only alter the boundary of a police area in Wales with the consent of the Secretary of State.

### ***Schedule 18: Repeals***

- 631. This Schedule will be supplemented by orders made under the power of the Secretary of State under section 243 (power to make further amendments and repeals).