

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Structural and Boundary Change in England

Supplementary

Section 20: Correction of orders

88. This section allows the Secretary of State to rectify a mistake in an order under Chapter 1, e.g. a restructuring or boundary change order or an order containing incidental or consequential provision, where he is satisfied that there is a mistake in the order which can not be rectified by a subsequent order by virtue of section 14 of the Interpretation Act 1978. This relates to orders which may not otherwise be capable of amendment as their provisions may be spent soon after commencement.
89. *Subsection (2)* sets out that a “mistake” includes a provision contained in or omitted from the order in reliance on inaccurate or incomplete information supplied by any public body.
90. *Subsection (3)* provides that a public body as referred to in subsection (2) includes a parish council.

Section 21: Pre-commencement invitations etc

91. This section introduces the concept of a “pre-commencement invitation” and provides that it is immaterial if the Secretary of State issues such an invitation or guidance prior to commencement of this Chapter. Further, that it is immaterial if he consults, prior to commencement, on any proposal received in response to a pre-commencement invitation. This means that any invitations and proposals that have been made and any consultation that has been carried out, at any time before commencement of Chapter 1, (whether before or after Royal Assent), are effective for the purposes of the Chapter. In particular, this means that the Secretary of State will be able to implement, after commencement, proposals received at any time before commencement.

Section 22: Consequential Amendments

92. This section provides that Schedule 1 has effect.

Section 23: Definitions for the purposes of Chapter 1

93. This section defines various terms for the purposes of Chapter 1. In particular:
- a “single tier” area is firstly where there is a single tier of local government for an area, i.e. where there is a county council and no district councils for that area or

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where there is a district council and no county council for that area. Secondly, an area is “single tier” if it is a London borough;

- a “two-tier” area is either a district area where there is a district council and a county council undertaking functions which apply to the area or it is a county area where there is a county council and district areas all of which have district councils;
- a proposal is only made “in response to” an invitation or direction if it is a type of proposal which is permitted, is in response to an invitation or direction, is in accordance with that invitation or direction and includes a local government area of which at least part is currently two-tier;
- a “body affected by an order” includes a body whose area or functions are affected by an order; which will cease to exist following an order; or which is established pursuant by or in consequence of an order.

Chapter 2: Control of Disposals Etc

Section 24: Authorities dissolved by orders: control of disposals, contracts and reserves

94. This section provides that the Secretary of State may make a direction requiring relevant authorities to obtain consent, with effect from a date specified by the Secretary of State, from the person(s) specified in the direction before they can:
- dispose of land if the consideration for it exceeds £100,000;
 - enter into a capital contract where the authority concerned would be required to pay consideration of more than £1,000,000 or where the contract includes a term allowing the consideration to be varied;
 - enter into any non-capital contract where the consideration exceeds £100,000 and the contract extends beyond a date specified in the direction, or under the terms of the contract, the period of the contract may be extended beyond that date;
 - include an amount of reserves in the calculation of its budget requirement for council tax purposes.
95. *Subsection (2)* defines a “relevant authority” as one which is to be dissolved by order made under section 7 or 10 and which is specified or falls within a description of authority specified in the direction.
96. *Subsection (3)* defines “capital contract” and “non-capital contract”. A capital contract means a contract in relation to which the consideration payable by the authority would be capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003.
97. *Subsection (4)* provides that the person(s) whose consent is required as specified in the direction, may be the Secretary of State or such authority or other person as he thinks appropriate. He may identify a different person for different matters that require consent or in relation to different authorities or types of authorities.

Section 25: Directions: further provision about reserves

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

Section 26: Directions: supplementary

99. *Subsection (2)* of section 26 enables consent to be given for a particular disposal or contract, or for disposals or contracts of any description. Consent may be given either unconditionally or subject to conditions.
100. *Subsection (3)* provides that certain enactments will have effect subject to a direction, that is, that the direction will take precedence. The enactments are: (a) section 123(1) of the Local Government Act 1972 which confers power on local authorities to dispose of land and (b) any other enactment relating to the disposal of land by a local authority.
101. *Subsection (4)* provides that any consent required by a direction is additional to any consent required by other legislation in relation to the disposal of land by local authorities.
102. *Subsections (5) and (6)* set out that where the consideration under the contract is not in money, the value of the consideration shall apply for the purposes of the financial limits in section 24. Where there is a question over the value of such consideration and the relevant authority and the person who is required to give consent can not reach agreement as to the value, it will be determined by the Secretary of State.
103. *Subsection (7)* provides that a direction may be varied or revoked by a subsequent direction.

Section 27: Consideration to be taken into account for the purposes of direction

104. This section provides that for the purpose of deciding whether the financial limits in section 24 have been exceeded, the consideration with respect to certain disposals and contracts shall be taken into account.
105. The consideration in relation to other disposals of land made after 31 December 2006 shall be taken into account.
106. The consideration is that in respect of contracts entered into by the authority after 31 December 2006 which are either with the same contractor as the contract in question, or which relate to the same or a similar description of subject matter as the contract in question shall also be taken into account.

Section 28: Contraventions of direction

107. *Subsections (1) and (2)* provide that any disposal made in the absence of consent in contravention of section 24 will be void. Any contract similarly entered into without consent will not be enforceable against the successor authority.
108. *Subsection (3)* defines a “successor” authority as an authority which is established by order under section 7 or 10 and whose area covers whole or part of the area of an old authority.
109. *Subsection (4)* provides that a contract entered into in contravention of a direction under section 24 will not be a certified contract for the purpose of the Local Government (Contracts) Act 1997. This means that the contractor will not be afforded the protection provided by that Act, that is, the contract will be open to a challenge in private law and there will not be terms which survive any setting aside of the main contract.
110. *Subsections (5) and (6)* provide that if an authority applies reserves to reduce its budget requirement for council tax purposes without consent, the authority will be treated as though it has not made its council tax calculations as required by the Local Government Finance Act 1992 and accordingly will not be able to collect council tax.

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Section 29: Power to amend

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