

# **LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Local Government and Public Involvement in Health Act 2007. They have been prepared by the Department for Communities and Local Government, together with the Wales Office, in order to help the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. Therefore, where a section or a part of a section does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

3. The Local Government and Public Involvement in Health Act gives effect to the Government's proposals for reform of the local government system in England and for reform of the current arrangements for patient and public involvement in the provision of health and social care services. It also gives effect to a commitment to expand the legislative competence of the National Assembly for Wales ("the Assembly") in the field of local government.
4. In July 2004 an initial discussion document *'The future of local government – developing a 10 year vision'* was published by the Office of the Deputy Prime Minister (now known as the Department for Communities and Local Government) to launch the debate on the future of local government between central government, local government and other stakeholders under the heading *local:vision*. Between July 2004 and February 2006 numerous documents under the *local:vision* heading were published setting out ideas for discussion and consultation.
5. The Local Government White Paper *'Strong and Prosperous Communities'*, published on 26th October 2006, was a response to the *local:vision* consultation. This Act follows from that White Paper.
6. The Department of Health instigated a review of patient and public involvement in the provision of health services in August 2005. In January 2006 the Department published the White Paper *'Our health, our say, our care: a new direction for community services'*. Following publication of the White Paper, an Expert Panel was established in February 2006 in order to consider the evidence that had been gathered. The Expert Panel published its findings in July 2006.
7. On 13<sup>th</sup> July 2006 the Department of Health published the consultation document *'A Stronger Local Voice'* setting out the proposed changes. Since then there have been extensive discussions with stakeholders.

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## **STRUCTURE OF THE ACT**

8. The Act is set out as follows:
- **Part 1: Structural and Boundary Change in England**  
**Chapter 1: Structural and Boundary Change**  
**Chapter 2: Control of Disposals etc**
  - **Part 2: Electoral Arrangements**  
**Chapter 1: Power of District Councils in England to Change Electoral Scheme**  
**Chapter 2: Miscellaneous**  
**Chapter 3: Consequential Amendments**
  - **Part 3: Executive Arrangements for England**
  - **Part 4: Parishes**  
**Chapter 1: Parishes**  
**Chapter 2: Power to Promote Well-Being**  
**Chapter 3: Reorganisation**
  - **Part 5: Co-operation of English Authorities with Local Partners etc**  
**Chapter 1: Local Area Agreements and Community Strategies**  
**Chapter 2: Overview and Scrutiny Committees**
  - **Part 6: Byelaws**
  - **Part 7: Best Value**
  - **Part 8: Local Services: Inspection and Audit**  
**Chapter 1: Constitution of the Audit Commission**  
**Chapter 2: Audit Commission and Auditors: Functions and Procedure**  
**Chapter 3: Auditor General for Wales and Auditors**
  - **Part 9: The Commission for Local Administration in England**
  - **Part 10: Ethical Standards**  
**Chapter 1: Conduct of Local Authority Members**  
**Chapter 2: Employees**
  - **Part 11: Joint Waste Authorities**
  - **Part 12: Entities Controlled etc by Local Authorities**
  - **Part 13: The Valuation Tribunal for England**
  - **Part 14: Patient and Public Involvement in Health and Social Care**
  - **Part 15: Powers of National Assembly for Wales**
  - **Part 16: Miscellaneous**

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- **Part 17: Final provisions**

## **TERRITORIAL EXTENT**

9. The Act in general extends to England and Wales only. Certain provisions of the Act make amendments to other legislation and where appropriate these amendments have the same extent as the legislation amended; if this is the case provision is made by section 244(3) (Extent). In addition, the power of the Secretary of State under section 243 to make an order containing amendments, repeals or revocations for purposes connected with the Act extends also to Scotland and Northern Ireland. The extent section itself, and sections 245 (Commencement) and 246 (Short Title) extend also to Scotland and Northern Ireland.

10. As regards matters extending to Scotland, it was not necessary to invoke the Sewel Convention.

## **TERRITORIAL APPLICATION: WALES**

11. Some provisions of the Act apply in relation to England and Wales, but much of it applies in relation to England only. The Act does however give the Assembly “framework powers” to make provision in relation to Wales on a range of local government matters. These powers are conferred by amendments to Schedule 5 to the Government of Wales Act 2006 (see further the Commentary on Part 15 of the Act).

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

## **COMMENTARY ON SECTIONS**

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

#### **Introduction**

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

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

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

##### **Section 1: “principal authority” and “single tier of local government”**

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

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

## **Section 2: Invitations and directions for proposals for single tier of local government.**

16. Section 2 allows the Secretary of State to invite or direct a principal authority to make a proposal for a single tier of local government which includes all, or in the case of county councils, part of the area covered by that authority. Proposals must be based on whole local authority areas. A proposal can either be a Type A, B or C proposal or a combined proposal.

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

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

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

19. *Subsection (9)* provides that a direction issued under *subsection (1)* is subject to section 3(1).

## **Section 3: Invitations, directions and proposals: supplementary**

20. *Subsection (1)* of section 3 provides that the Secretary of State may only direct an authority to make a proposal for a single tier of local government where he believes that it would be in the interests of effective and convenient local government. However, the Secretary of State may not give a direction after 25 January 2008.

21. This subsection has the effect of limiting the Secretary of State’s power of direction to one year from the 25 January 2007 – the date by which proposals in response to the invitation issued in October 2006 had to be received. This will allow only a short window of opportunity in which the Secretary of State may issue a direction.

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

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

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

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

26. *Subsection (8)* provides that a direction given under section 2, i.e. before the 25 January 2008 deadline may not later be varied if the original direction required a Type A proposal (whole county proposal based on existing county boundaries) or Type B proposal (one or more districts in a county area based on existing district boundaries); and, the variation would require or permit a Type C proposal (combination of whole county or one or more districts in that county with an adjoining county or counties, or district(s)) or a combined proposal.

27. This is to ensure that a variation does not “affect” more or different authorities which were not “affected” by the original direction, so that for example, the Secretary of State should not be able to vary a direction from being one to an authority to produce a Type B proposal to one to the same authority to produce a Type C proposal as that would inevitably affect at least one different and new authority which would not have been affected by the terms of the original direction.

#### **Section 4: Request for Boundary Committee for England’s advice**

28. This section provides that the Secretary of State upon receipt of a proposal received in response to an invitation or direction may request the Boundary Committee’s advice on any matter relating to the proposal no later than the date specified.

29. *Subsection (3)* enables the Secretary of State to substitute a later date for the receipt of such advice.

#### **Section 5: Boundary Committee’s powers**

30. This section allows the Boundary Committee to provide the advice requested under section 4(2) and also allows the Committee, where such advice is provided, to do one of the following:

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

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

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

#### **Section 6: Boundary Committee’s procedure**

33. *Subsection (1)* provides that when the Boundary Committee is asked for advice by the Secretary of State in relation to a proposal, it may request any additional information from a local authority that it may require in relation to any of its functions under section 5. The

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authority must provide the information if requested to do so by such date as the Boundary Committee may specify.

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

35. *Subsection (3)* provides that a recommendation or alternative proposal must be made on or before the relevant date. This is the date set by the Secretary of State for the receipt of advice under section 4(2) or, if the date is later revised, that later date under section 4(3).

36. *Subsection (4)* establishes that before making an alternative proposal the Boundary Committee must publish a draft of the proposal and take steps they consider sufficient to inform persons that may have an interest in the draft proposal of it and of the length of time that they have to make representations on the draft proposal to the Committee.

37. *Subsection (5)* requires the Boundary Committee to take into account any representations that it receives within the specified period and provides that where the Committee makes any proposal to the Secretary of State it must inform all persons who made representations in relation to the draft proposal of the proposal and of the length of time that they have to make representations on the proposal to the Secretary of State. This will be four weeks beginning with the date set by the Secretary of State for the receipt of advice under section 4(2) or, if the date is later revised, that later date under section 4(3).

#### **Section 7: Implementation of proposals by order.**

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

39. *Subsection (2)* provides that where the Secretary of State has requested advice on a proposal from the Boundary Committee he must wait six weeks from the date specified in the request for advice (or a later date if this date is then substituted) before making a decision or an order.

40. *Subsection (3)* provides that the Secretary of State may not make an order to implement a proposal received in response to an invitation or direction unless he has previously consulted every authority affected by the proposal (except the authority or authorities which made it) and such other persons as he considers appropriate. This provision does not apply to the implementation (with or without modification) of alternative proposals made by the Boundary Committee.

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

42. *Subsection (5)* provides that where a proposal is submitted jointly by every authority affected by it the Secretary of State may consult, before making an order, such other persons as he considers appropriate and that subsection (3) in these circumstances (obligation on the Secretary of State to consult before implementing a proposal) does not apply.

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43. *Subsection (6)* provides that the Secretary of State may request information or advice from the Boundary Committee on any matter relating to the proposal. *Subsection (7)* provides a power for the Boundary Committee to respond to such a request.

## **Boundary change**

### **Section 8: Review by Boundary Committee of local government areas**

44. Section 8 allows the Boundary Committee to conduct a review of one or more local government areas and as a result recommend a boundary change to the Secretary of State. The Boundary Committee may conduct this review either on its own initiative or at the request of the Secretary of State or a local authority.

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

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

- alteration of a boundary of a single tier area or London borough which will result in the abolition of a two-tier area;
- alteration of a two-tier area which will result in the abolition of a single tier area or London borough;
- the constitution of a new local government area and resultant abolition of an existing local government area where the new area includes a combination of the whole or part of a single tier area, or London borough, and the whole or part of a two-tier area;
- the alteration of a local government area or creation of a new local government area that would extend into an area that is currently outside all local government areas. This means that the recommendation for boundary change may not extend an area into Wales, the City of London or the Temples.
- the alteration of any local government area that results in a change to the overall pattern of local government in England. Proposals must ensure the existing pattern, comprising wholly of counties divided into districts, counties comprising one district or London boroughs, is retained (with the exception of the Isles of Scilly, the City of London, the Inner Temple and the Middle Temple which do not reflect this pattern).

47. *Subsection (5)* allows the Boundary Committee to recommend to the Secretary of State that no change should be made where they consider this to be desirable.

48. *Subsection (6)* ensures that when the Boundary Committee are considering whether (or if so what) boundary change is necessary they must have regard to:

- (a) the need to secure effective and convenient local government; and
- (b) the need to reflect the identities and interests of local communities.

49. *Subsection (7)* requires the Boundary Committee to have regard to any guidance issued by the Secretary of State in exercising its functions of conducting a boundary review, in having regard to the matters at subsection (6) when considering whether boundary change is desirable and in recommending boundary change, or no change. Similarly, a local authority

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must have regard to any guidance issued by the Secretary of State when requesting the Boundary Committee to conduct a boundary review.

50. *Subsection (8)* requires a local authority, where requested to do so, to provide any information that the Boundary Committee may reasonably require in undertaking a review. The information must be provided by such date as the Boundary Committee may specify.

### **Section 9: Boundary Committee's review: consultation etc**

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

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

53. *Subsection (3)* provides that before the Boundary Committee makes a recommendation, it must publish a draft of the recommendation and take steps they consider sufficient to inform those persons that may have an interest of the recommendation of it, and of the length of time that they have to make representations on the recommendation to the Committee.

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

### **Section 10: Implementation of recommendations by order**

55. Section 10 provides that, following a recommendation by the Boundary Committee to the Secretary of State for boundary change, the Secretary of State may implement the recommendation with or without modification by order. The Secretary of State may also decide to take no action or request a further review.

56. *Subsection (2)* provides that, where the Boundary Committee makes a recommendation for no boundary change, the Secretary of State may if he so chooses make a request for a further review under section 8.

57. The Secretary of State must allow 6 weeks from the date that the recommendation was sent to him before making an order, a decision to take no action or a decision to request a further review. This is to allow time for representations to be made directly to the Secretary of State and for him to consider them.

58. *Subsection (4)* allows the Secretary of State, when he receives a recommendation from the Boundary Committee, to make a request to the Boundary Committee to supply him with information or advice on any matter relating to the recommendation.

## **Implementation of changes**

### **Section 11: Implementation orders: provision that may be included**

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

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

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

62. *Subsections (6) and (7)* enable the Secretary of State to implement a proposal with such modifications as to provide a single tier of local government for an area which includes all or part of an area in the proposal but which is not an area which itself could have been specified. This gives the Secretary of State for example the ability to modify a proposal for a single tier of local government by changing the area so as to take account of recommendations which might be made for boundary change by the Boundary Committee for the same area.

### **Section 12: Provision relating to membership etc of authorities**

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

64. *Subsection (2)* defines “a new local authority” as referred to under section 12 (1)(i) to (k) as one established by order under section 7 or 10. This includes an existing county council becoming a district council and vice versa. It also defines “a transitional period” as the time before members elected at the first election of the new authority come into office.

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

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

67. *Subsection (6)* allows an order made by the Electoral Commission under section 17 of the Local Government Act 1992 to revoke provisions as to electoral arrangements made in an order made under section 7 or 10 of this Act. The Electoral Commission may make an order

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under section 17 of the Local Government Act 1992 to provide for the electoral arrangements in that area. This part of section 17 of the Local Government Act 1992 will not be repealed.

### **Section 13: Implementation orders: further provision**

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

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

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

### **Section 14: Regulations for supplementing orders**

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

### **Section 15: Incidental etc provision in orders or regulations**

72. This section specifies particular incidental, consequential, transitional or supplementary provision which may be made including provision for the transfer of staff and with respect to charter trustees.

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

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

### **Section 16: Agreements about incidental matters**

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

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

77. *Subsection (6)* provides that the definition of a public body in this section also includes a parish council.

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### **Section 17: Residuary bodies**

78. This section enables the Secretary of State by order to establish one or more bodies corporate (“residuary bodies”) to take over any property, rights, liabilities or related functions of local authorities which cease to exist as a result of section 7 or 10.

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

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

81. *Subsection (4)* establishes that any order under section 17 may include incidental, consequential, transitional or supplementary provision and *subsection (5)* allows such an order dealing with residuary bodies to contain provision which applies, modifies or amends enactments.

### **Section 18: Staff Commissions**

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

83. *Subsection (3)* allows the Secretary of State to direct the staff commissions with respect to their procedure.

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

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

86. *Subsection (8)* defines “relevant authority” as a local authority or a residuary body established under section 17.

### **Section 19: Certain county councils to be billing authorities**

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

### **Supplementary**

#### **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.

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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 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:

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- 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.

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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.

#### **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.

## **PART 2: ELECTORAL ARRANGEMENTS**

### **Introduction**

112. Part 2 of the Act enables district councils in England in some circumstances to change their scheme for elections where they wish to do so.

113. It requires the Electoral Commission and Boundary Committee in exercising their functions under section 13 of the Local Government Act 1992 to consider whether the number of councillors in a ward of a council which is subject to a scheme for partial-council

elections is appropriate. It allows the Boundary Committee to obtain information from local authorities in connection with the discharge of its functions.

114. It also allows a principal council operating whole council elections to make a request to the Electoral Commission in connection with the provision of single-member electoral areas. It allows local authorities to change the names of their electoral areas. It removes the requirement for the number of councillors in a metropolitan district ward to be divisible by 3. Finally, the Secretary of State is given power to make an order that ensures local government elections take place on the same day as European parliamentary general elections in those years where the two elections are scheduled to take place.

## **CHAPTER 1: POWER OF DISTRICT COUNCILS IN ENGLAND TO CHANGE ELECTORAL SCHEME**

### **Introductory**

#### **Section 31: Schemes for elections**

115. Section 31 sets out the schemes for elections that a district council may resolve to be subject to.

#### **Power of district councils to change to whole-council elections**

#### **Section 32: Resolution for whole-council elections**

116. This section enables a district council that is subject to a scheme for elections by halves or elections by thirds to resolve to be subject instead to a scheme for whole-council elections.

#### **Section 33: Resolution for whole-council elections: requirements**

117. Section 33 sets out the requirements for passing a resolution for whole-council elections. The resolution can only be passed during a specified period. This period differs according to whether the council is a metropolitan district council or a non-metropolitan one. The resolution must be passed by a majority of at least two-thirds of members voting at a specially convened meeting of which notice of the object has been given. Section 33(7) enables the Secretary of State to extend the period during which the decision must be taken.

#### **Section 34: Scheme for whole-council elections**

118. This section is concerned with how a scheme for whole-council elections will operate. It requires ordinary elections to be held in particular years. For metropolitan district councils, these are 2010 and every four years after. For non-metropolitan district councils, the years are 2011 and every four years after. This follows the pattern that has been established for non-metropolitan district councils that are already subject to a scheme for whole-council elections. No metropolitan district councils are currently subject to whole council elections.

#### **Sections 35 and 36: Publicity and Notice to the Electoral Commission**

119. As soon as possible after the resolution to move to a scheme for whole-council elections has been passed, the council must publicise the fact that it has become subject to the new scheme and produce an explanatory document. It must also notify the Electoral Commission of the resolution.

## **Power of district councils to revert to partial-council elections**

### **Section 37: Resolution for elections by halves**

120. This section enables a non-metropolitan district council that is operating whole-council elections but has, at some point since 1 April 1974, previously operated elections by halves to resolve to return to elections by halves.

### **Section 38: Resolution for elections by halves: requirements**

121. Section 38 requires a resolution for elections by halves to be passed during a specified period. The resolution must be passed by a majority of at least two-thirds of members voting at a specially convened meeting of which notice of the object has been given. Section 38(7) enables the Secretary of State to extend the period during which the decision must be taken.

### **Section 39: Resolution for elections by thirds**

122. This section enables a council that is operating whole-council elections but has, at some point since 1 April 1974, previously operated elections by thirds to resolve to return to elections by thirds.

### **Section 40: Resolutions for elections by thirds: requirements**

123. Section 40 requires a resolution for elections by thirds to be passed during a specified period. This period differs according to whether the council is a metropolitan district council or a non-metropolitan one. The resolution must be passed by a majority of at least two-thirds of members voting at a specially convened meeting of which notice of the object has been given. Section 40(7) enables the Secretary of State to extend the period during which the decision must be taken.

### **Sections 41 and 42: Publicity for resolution and Notice to Electoral Commission**

124. These sections are similar to the provisions made as to publicity for a resolution and notice to the Electoral Commission in sections 35 and 36 but are concerned with cases in which a council has resolved to become subject to a scheme for partial-council elections.

### **Section 43: Electoral Commission to consider whether electoral review is necessary**

125. Section 43 places a duty on the Electoral Commission to consider whether or not an electoral review is necessary where a council has resolved to become subject to a scheme for partial-council elections. The Electoral Commission may decide a review is necessary where the number of councillors per ward is not the appropriate number of councillors as set out in section 13(5) of the Local Government Act 1992, which is amended by section 56 of this Act. If they decide that a review is necessary they can direct the Boundary Committee to conduct a review using their existing powers under section 13(3) of the Local Government Act 1992.

### **Section 44: Electoral Commission to make order for new electoral scheme**

126. This section requires the Electoral Commission to make an order setting out details of what a council's resolution to move to elections by halves or by thirds will mean in practice. Where the council is moving to elections by halves the order is called an "order for elections by halves". Where the council is moving to elections by thirds the order is called an "order for elections by thirds". *Subsection (2)* ensures that, if the council's resolution has triggered an electoral review by the Boundary Committee, the Electoral Commission's order does not pre-empt the Committee's recommendations.

**Section 45: Order for elections by halves: years in which elections are to be held**

127. Section 45 requires an order for elections by halves to secure that elections are held in the years determined in accordance with the section. The first ordinary elections under the new scheme will be whole-council elections (see section 46(2)) which must be held in a relevant year; that year being 2011 and every fourth year afterwards. Subsequent ordinary elections must be held in a year for elections by halves, that year being 2012 and every second year afterwards. This follows the pattern that has been established for non-metropolitan district councils that are already subject to a scheme for elections by halves.

**Section 46: Order for elections by halves: councillors to be elected at ordinary elections**

128. This section makes further provision about the detail that must be included in an order for elections by halves. In particular, it sets out what the order must say about when each of the councillors is to be elected, and when he or she is to retire. It provides (in *subsection (2)*) that the first ordinary elections under the new regime must be whole-council elections.

**Section 47: Order for elections by thirds: years in which elections are to be held**

129. Section 47 requires an order for elections by thirds to secure that elections are held in the years specified in that section. The first ordinary elections under the new scheme will be whole-council elections which must be held in a relevant year; that year being, in relation to a metropolitan district council, 2014 and every fourth year afterwards and, in relation to a non-metropolitan district council, 2011 and every fourth year afterwards. Subsequent ordinary elections will be held in each subsequent year, unless it is a fallow year; a fallow year being 2013 and every fourth year afterwards. This follows the pattern that has been established for metropolitan district councils and non-metropolitan district councils respectively that are already subject to a scheme for elections by thirds.

**Section 48: Order for elections by thirds: councillors to be elected at ordinary elections**

130. This section makes further provision about the detail that must be included in an order for elections by thirds. In particular, it sets out what the order must say about when each of the councillors is to be elected, and when he or she is to retire. It provides (in *subsection (2)*) that the first ordinary elections under the new regime must be whole-council elections.

**Section 49: Order for elections by halves or elections by thirds: transitional provision**

131. Section 49 allows the Electoral Commission to include in an order for partial-council elections provision about the transition to the council's new scheme, including provision for some councillors to retire at times different from those otherwise applying and for identifying which of them are so to retire.

**Section 50: Powers of Electoral Commission to make incidental etc provision**

132. This section allows the Electoral Commission to make incidental, consequential, transitional or supplemental provision in connection with any order for partial-council elections.

**Section 51: Position if Electoral Commission act under existing powers**

133. This section is concerned with a case in which the Electoral Commission has directed the Boundary Committee to conduct a review (see section 43(2)) and in response to that request the Boundary Committee make recommendations for electoral changes. It ensures

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that the Electoral Commission is not required by the Act to include anything in the order for elections by halves or for elections by thirds that they deal with in an order made under existing powers in section 17 of the Local Government Act 1992.

### **Section 52: Publicity for order by Electoral Commission**

134. As soon as possible after the Electoral Commission has made an partial-council elections order, the council must, in a manner it sees fit, publicise the fact that it is now subject to a new electoral scheme and produce an explanatory document.

### **Power of district councils to alter years of ordinary elections of parish councillors**

#### **Section 53: Power of council to alter years of ordinary elections of parish councillors**

135. Section 53 gives a council which has passed a resolution to change its scheme for elections, a power to make provision by order to change the ordinary year of elections of parish councillors. The power is given to enable a council to ensure that a person voting for a parish councillor will be able to vote, at the same time, for a district councillor.

### **Amendment of existing provisions about schemes for ordinary elections**

#### **Section 54: Amendment of existing provisions about schemes for ordinary elections**

136. This section repeals sections 7(4) to (6) of the Local Government Act 1972. Those provisions allow a non-metropolitan district council to request that the Secretary of State change its scheme for elections by order.

137. As a consequence of the repeal, section 54 contains saving provision. This is to ensure that the repeal does not apply to any request made under section 7(4) until the Secretary of State has either decided not to make an order giving effect to that request or has made such an order.

138. Section 54 also repeals the powers of the Secretary of State to provide by order a scheme for partial-council elections for a principal council in England under section 86 of the Local Government Act 2000 and, in relation to London borough councils only, under section 8(2) of the 1972 Act.

139. *Subsection (6)* preserves any orders made under the repealed provisions and they are therefore unaffected by the repeal.

## **CHAPTER 2: MISCELLANEOUS**

### **Requests for single-member electoral areas in England**

#### **Section 55: Requests for single-member electoral areas**

140. This section provides for principal councils that hold whole-council elections, to request that the Electoral Commission directs the Boundary Committee for England to conduct an electoral review of their area with the aim of introducing single-member electoral areas. If the Electoral Commission decides not to direct a review the section requires the Electoral Commission to provide local authorities with reasons for this decision. *Subsection (6)* ensures that the Boundary Committee are not obliged to respond to a request by recommending that all wards become single-member wards if, having regard to the factors listed in section 13(5)(a) to (c) of the 1992 Act, they consider it would be inappropriate to do so.

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## **Electoral Commission and Boundary Committee: reviews and recommendations**

### **Section 56: Electoral Commission and Boundary Committee: reviews and recommendations**

141. This section amends section 13 of the Local Government Act 1992. It changes the matters which the Electoral Commission or the Boundary Committee will have regard to when conducting electoral reviews. The amendment will apply, not only to a case in which a council moves back to partial-council elections following a resolution passed by the council under this Chapter, but also to any case in which a council is operating partial-council elections.

142. Where the Boundary Committee conducts a review of such an authority it will need to balance the desirability of recommending an 'appropriate' number of councillors against those other matters within section 13(5) of the 1992 Act. The appropriate number of councillors will be a number of members divisible by two where there are elections by halves; and a number of members divisible by three where there are elections by thirds. However, the Boundary Committee will continue to have the flexibility to recommend a different number of councillors per ward if it considers this best reflects those other matters within section 13(5).

### **Section 57: Procedure in connection with reviews**

143. Section 57 amends section 13 of the Local Government Act 1992. It inserts a new subsection into section 13 which allows the Boundary Committee to request any additional information from an authority that it may require in relation to a review of electoral arrangements. The authority must provide the information if requested to do so by such date as the Boundary Committee may specify.

144. Section 57 also amends section 15 of the Local Government Act 1992. It modernises the procedure which the Boundary Committee follows when conducting electoral reviews. Section 15A of the 1992 Act is also repealed.

## **Electoral areas in England**

### **Section 58: Metropolitan districts: councillors per ward**

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

### **Section 59: Change of name of electoral area**

146. This section enables a county council, a district council or a London borough council to change the name of an electoral division or district/London borough ward, as the case may be, in its area by passing a resolution at a special meeting held for the purpose. The resolution must be passed by a majority of at least two-thirds of members voting at a specially convened meeting, where notice of the object of the meeting has been given.

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147. Prior to passing the resolution the council must take such steps as it considers appropriate to consult with persons who might be interested. Following a resolution being passed the council must then inform certain bodies, including the Electoral Commission, of the change. The Electoral Commission's power to amend the names of local authority electoral areas remains unaffected. It should be noted that if a change in the name of an electoral area is proposed within 5 years of a change made by the Electoral Commission, the local authority must first seek the approval of the Electoral Commission.

### **Election dates**

#### **Section 60: Power to change date of local elections to date of European Parliamentary general election**

148. This section inserts new sections into the Representation of the People Act 1983 to enable the Secretary of State in England, and the Welsh Ministers in Wales, to combine local elections with European Parliamentary general elections in future years, when those elections fall in the same year.

149. New section 37A gives the Secretary of State the power to change local government and Greater London Authority election dates so that they are the same as the European Parliamentary general election date in a particular year. The power may be exercised in relation to one or more of the following types of election: (a) elections for county, district and London borough councils; (b) elections for parish councils; (c) Greater London Authority elections.

150. Before making an order using this power the Secretary of State must consult with the Electoral Commission, and any other persons or bodies he considers it appropriate to consult. An order cannot be made until a draft of the order has been approved by both Houses of Parliament. The order must be made six months in advance of the date of the local government or European parliamentary elections, whichever is the earliest.

151. New section 37B gives Welsh Ministers the same power to change local government election dates so that they are the same as the European Parliamentary general election date. The power may be exercised in relation to either or both of the following types of election: (a) elections for county and county borough councils; (b) elections for community councils.

152. Welsh Ministers must also consult with the Electoral Commission, and any other persons or bodies they consider it appropriate to consult. An order cannot be made until a draft of the order has been approved by the National Assembly for Wales. The order must also be made six months in advance of the date of the local government or European parliamentary elections, whichever is the earliest.

### **CHAPTER 3: CONSEQUENTIAL AMENDMENTS**

#### **Section 61: Consequential amendments**

153. This section gives effect to Schedule 2, which contains amendments consequential on provision made in Part 2.

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

### **Introduction**

154. Part 2 of the Local Government Act 2000 put in place a new decision-making framework in which there is a separation of the decision-making and scrutiny roles of local authorities. It required the majority of local authorities to put in place executive arrangements involving the creation and operation of one of three different forms of executive. For certain small district councils, the option of alternative arrangements, not involving a separate executive, was made available.

155. Part 3 of, and schedule 4 to, this Act provide for the discontinuance of two of the forms of executive, the leader and cabinet executive and the mayor and council manager executive, provided for under the 2000 Act. It introduces a new-style leader and cabinet executive. It also provides the means for an authority to adopt governance arrangements which differ from its existing arrangements.

### **Executive Arrangements for England**

#### **Section 62: Executive arrangements for England**

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

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

- Leader and cabinet executive (England);
- Mayor and cabinet executive;

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

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

159. The maximum number of members that an executive may have remains 10.

#### **Section 63: Discharge of functions**

160. This section amends the provisions of the Local Government Act 2000 to provide for the leader in a leader and cabinet executive (England) to make arrangements for the discharge of functions in the same way as a mayor in a mayor and cabinet executive.

#### **Section 64: Changing governance arrangements**

161. This section inserts new sections 33A to 33O into the Local Government Act 2000. The new provisions allow a local authority to change their executive arrangements, including the replacement of their existing form of executive with a different form of executive as permitted under section 11 of the Local Government Act 2000; or where they are operating

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alternative arrangements, to change their alternative arrangements, including the replacement of those arrangements with executive arrangements.

162. Sections 33A to 33I set out the general procedure to be followed by local authorities. These provisions require a local authority to draw up proposals for a change in governance arrangements and allow them to provide for the change to be subject to approval in a referendum where the proposed change is for the operation of a different form of executive or a move to executive arrangements. They require an authority to take reasonable steps to consult local government electors and other interested persons on the proposals and to pass a resolution to make the proposed change. They also make provision about the implementation of the change.

163. Sections 33J to 33N impose certain additional requirements in relation to proposals for a change to a new form of executive or to executive arrangements and proposals which are to be subject to a referendum.

164. Section 33O is an interpretation provision.

#### **Section 65: Referendum following petition**

165. This section amends the provisions in section 34 of the Local Government Act 2000 to ensure the provisions in that Act, which provide the ability of local people to petition their local authority to hold referendum on a relevant form of executive, are updated to reflect the insertion into the 2000 Act of new sections 33A to 33O by section 64 of this Act.

#### **Section 66: Elected mayors**

166. This section amends section 39 of the Local Government Act 2000 as it applies to local authorities in England. It replaces subsection (5) with new subsections (5A), (5B) and (5C) which provide that reference in any enactment to a member or councillor of a local authority does not include the elected mayor of an authority that is operating executive arrangements involving a mayor and cabinet executive. This is unless:

- the Secretary of State has provided in regulations that a mayor is to be treated as a member or councillor for the purposes of an enactment; or
- provision to the contrary has been made in an enactment.

167. Section 66 also amends section 39 of the Local Government Act 2000 by inserting a new subsection (6), which provides for the elections of mayors in England to take place on the same day as council elections. The new subsections (7) and (8) re-enact the current subsection (6), so that the term of office of mayors in England and Wales remains four years.

#### **Section 67: Leader and cabinet executives (England)**

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

169. The provision made for the election of the leader in a leader and cabinet executive (England) varies depending on whether the local authority holds whole-council elections or elections by halves or by thirds. In the case of the former, the leader is elected at the annual meeting following a whole-council election or at a subsequent meeting. In the case of the latter, the leader is elected at the relevant annual meeting. Thereafter, the leader is elected at

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the annual meeting held shortly after the day on which the previous leader would normally be required to retire as councillor.

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

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

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

#### **Section 68: Power to make incidental, consequential provision etc**

173. Section 68 allows the Secretary of State to make incidental or consequential provision for the purpose of changing election years and the terms of office of executive members.

#### **Section 69: Time limit for holding further referendum**

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

#### **Section 70: Interpretation**

175. This section amends the definition of the "executive leader" in section 48 of the Local Government Act 2000. It also inserts a definition of the "ordinary day of election".

#### **Section 71: Larger authorities to cease operating alternative arrangements**

176. Section 71 requires that local authorities operating alternative arrangements with a population of greater than 85,000 on 30 June 1999 to cease operating alternative arrangements and to start operating the leader and cabinet executive (England). It sets out the procedure that is to be followed by these authorities to make the required change. The councils concerned must operate the new leader and cabinet model no later than the day of their annual meeting in 2009.

#### **Section 72: Failure to cease operating alternative arrangements**

177. Section 72 gives the Secretary of State a default power which allows her to specify by order executive arrangements providing for a leader and cabinet executive (England) where a council which is required to cease operating executive arrangements fails to resolve to move to the new leader and cabinet model. The new model must be operated no later than the day of the council's annual meeting in 2009.

#### **Section 73: Sections 71 and 72: supplementary**

178. Section 73 makes clear that sections 33C, 33I(1) and 33P(5) either do not apply to councils which must cease to operate alternative arrangements or apply with modifications.

## **Section 74: Further amendments & transitional provision**

179. This section provides that Schedules 4 and 5 have effect.

## **PART 4: PARISHES**

### **Introduction**

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

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

## **CHAPTER 1: PARISHES**

### **Section 75: Parishes: alternative styles**

182. This section amends the Local Government Act 1972 by inserting new provisions and making other amendments to existing sections.

183. Section 11A provides that new groups of parishes which are created by order under section 11(1) of the Local Government Act 1972 must use the same alternative style. A grouping containing a mixture of styles will not be permitted. The new style will be reflected in the name of the council and its meetings and also in the titles of trustees, chairman, vice-chairman and councillors.

184. Section 11B requires a de-grouping order to provide for the style of a parish to be preserved when it is de-grouped.

185. Section 12A allows a parish council or a parish meeting to resolve have a style.

186. Section 12B allows a common parish council of an existing group of parishes to change the style of the group.

187. Section 17A sets out the alternative styles. A parish will continue to be able to have the status of a town although it may not also have an alternative style.

### **Section 76: Appointed councillors**

188. This section amends sections 15 and 16 of the Local Government Act 1972 to ensure chairman and vice-chairman of parish councils are chosen from among the elected councillors rather than those who have been appointed. The section also inserts a new section 16A into that Act.

189. Section 16A allows a parish council to appoint individuals to be councillors. The new section allows the Secretary of State to make provision in regulations about appointed councillors. It is expected that this power will be used to specify the kinds of individual who may be appointed as councillors - for example representatives of key community groups or young people. In exercising a function under or by virtue of this section, parish councils must

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have regard to any guidance issued by the Secretary of State about the exercise of that function.

## **CHAPTER 2: POWER TO PROMOTE WELL-BEING**

### **Section 77: Extension of power to certain parish councils**

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

### **Section 78: Community strategies**

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

## **CHAPTER 3: REORGANISATION**

### **Key terms used**

### **Section 79: Community governance reviews**

192. This section defines a community governance review as a review of the whole or part of the area of a principal council for the purpose of making recommendations of the kind set out in sections 93 to 98. It requires the council to comply with the provisions in the Act relating to community governance reviews and with the terms of reference of the review.

193. In a two-tier area, a principal council must notify the county council that a community governance review is being conducted and of the terms of reference of the review including any modification of those terms.

### **Section 80: Community governance petitions**

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

195. To be valid, a community governance petition must meet the conditions in section 82 (3) to (6) as far as they are applicable. These include conditions about the number of local government electors who must sign the petition, the area that petitioners wish to see considered as part of a review and the specifying of recommendations which the petitioners wish a community governance review to consider making.

### **Section 81: Terms of reference of review**

196. This section allows for a principal council to determine the terms of reference under which a community governance review must be undertaken and requires the terms of reference to specify the area under review. A principal council must publicise the terms of reference.

## **Undertaking community governance reviews**

### **Section 82: Council's power to undertake review**

197. This section gives a principal council the power to undertake a community governance review.

### **Section 83: No review being undertaken: duty to respond to petition**

198. Section 83 is concerned with a case in which a principal council receives a valid community governance petition which relates to the whole or part of its area and, at the time the petition is received, the council is not carrying out a community governance review. In such a case, the council must undertake a review that has terms of reference that allow for the petition to be considered. However, this duty does not apply if the council has in the previous two years concluded a community governance review and in the council's opinion the area to which the petition relates covers the whole or a significant part of the area to which the review related.

### **Section 84: Review being undertaken: duty to respond to petition**

199. This section is concerned with a case in which a principal council receives a community governance petition which relates to any part of its area and, at the time the petition is received, the council is in the course of undertaking a community governance review, the area to which the petition relates being wholly outside the area currently under review.

200. It sets out the following options from which the council can choose when deciding how to deal with the petition:

- The first option is for the council to modify the terms of reference of the current review to allow the recommendations made in the petition to be considered;
- The second option is for the principal council to undertake a separate review which has terms of reference that allow for the petition recommendations to be considered; and
- The third option is to modify the terms of reference of the current review, to undertake a separate review and ensure that, when taken together the terms of reference of the current review (as modified) and the terms of reference of the new review, allow for the petition to be considered.

201. However, the council does not have to choose from any of these options if it has in the previous two years concluded a community governance review and, in the council's opinion, the area to which the petition relates covers the whole or a significant part of the area to which the review related.

### **Section 85: Power to respond to petition**

202. This section specifies the cases in which a principal council receives a valid petition relating to the whole or part of its area but is not required to conduct a community governance review. The cases are where on the date that the petition is received:

- The council is not undertaking a review, but, has in the previous two years concluded a review and in the council's opinion the area to which the petition relates covers the whole or a significant part of the area to which the completed review related

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- The council is undertaking a community governance review and the petition area is wholly outside the area under review and the council has concluded a previous community governance review in the previous two years that in the council's opinion the area to which the petition relates covers the whole or a significant part of the area to which the previous review related
- The council is undertaking a community governance review of part of its area, and the area to which the petition relates is not wholly outside the area under review.
- The council is undertaking a community governance review of part of its area, and the area to which the petition relates to the whole of the council's area.
- The council is undertaking a community governance review of the whole of its area, and the area to which the petition relates to the whole or part of the council's area.

203. In each of these cases, the principal council can decide to undertake a review or modify the terms of reference of an existing review or take no action.

### **Reorganisation of community governance**

#### **Section 86: Reorganisation of community governance**

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

205. Electoral arrangements are considered "protected" where:

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

### **Recommendations of review**

#### **Section 87: Constitution of new parish**

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

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

#### **Section 88: Existing parishes under review**

208. This section provides for a community governance review to recommend the abolition or alteration of an existing parish as a result of a community governance review. The council could also recommend that no change be made to the existing parish. The area of abolished parishes does not have to be redistributed to other parishes.

209. *Subsections (3) and (4)* specify that a principal council conducting a community governance review must include a recommendation as to whether or not the geographical

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name of the existing parish should be changed and whether or not parishes should have a parish council.

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

#### **Sections 89 and 90: New or retained councils: consequential recommendations**

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

#### **Section 91: Grouping or de-grouping parishes**

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

#### **Section 92: County, district or London borough: consequential recommendations**

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

214. Section 92 also gives the Electoral Commission the power to make an order giving effect to any recommendations it receives under *subsection (2)*. The Electoral Commission must notify the council that made the recommendations and, in any two-tier area, the county council of whether or not it has given effect to the recommendations made. If it makes an order, the Electoral Commission must provide both the principal council and county council (if any) with two copies of the order.

#### **Duties of council undertaking review**

#### **Section 93: Duties when undertaking a review**

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

216. *Subsection (8)* requires principal councils to complete the review within 12 months.

#### **Section 94: Recommendations to create parish councils**

217. This section directs principal councils to create parish councils in parishes which have 1000 electors or more. In parishes with 151 to 999 electors the principal council may recommend the creation of either a parish council or a parish meeting. In new parishes, or existing parishes without a parish council, that have 150 or fewer electors principal councils are unable to create a parish council and therefore parish meetings must be created. This does not apply to existing parishes which have a parish council. The aim of this section is to extend the more direct participatory form of governance provided by parish meetings to a larger number of electors.

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### **Section 95: Electoral recommendations: general considerations**

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

### **Publicising outcome of review**

### **Section 96: Publicising outcome**

219. This section details the steps that a principal council is required to take to secure that persons who may be interested are informed of the decision of the council as to whether or not to give effect to the recommendations of a community governance review, and the reasons for that decision. These steps include the publication of the decision and reasons. It also lists the bodies a principal council must notify following any reorganisation order it makes.

### **Miscellaneous**

### **Section 97: Supplementary regulations**

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

### **Section 98: Orders and regulations under this Chapter**

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

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

223. *Subsection (7)* allows the Electoral Commission to make such incidental, consequential, transitional or supplementary provisions it believes are necessary when making an order under section 98.

### **Section 99: Agreements about incidental matters**

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

225. *Subsection (5)* provides definitions of terms used within this section. This includes the definition of “public body” which has the same meaning as in section 16.

### **Section 100: Guidance**

226. This section provides for the Secretary of State and the Electoral Commission to issue guidance relating to the conduct of community governance reviews, the making of recommendations about electoral arrangements and about changes to electoral areas of principal councils affected by recommendations made as part of a review and the

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implementation of recommendations made as part of the reviews. It requires principal councils to have regard to this guidance.

### **Section 102: Interpretation**

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

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

### **Introduction**

228. This Part provides for a local area agreement (“LAA”), which will be an agreement between a local authority and certain partner authorities, approved by the Secretary of State. It will be prepared by the local authority which will consult partner authorities and others (this will include persons from the voluntary and community sector and local businesses). The local authority and partner authorities will co-operate with each other in determining local improvement targets for the area to be included in the LAA. It also amends section 4 of the Local Government Act 2000 to provide that the local authorities which prepare LAAs must consult partner authorities when preparing their community strategy. Section 116 introduces a requirement on local authorities and Primary Care Trusts to undertake a joint strategic needs assessment of the health and social care needs of its local populations.

229. This Part also amends the provisions of the Local Government Act 2000 in respect of local authority overview and scrutiny committees. It seeks to strengthen the role of the overview and scrutiny committees to improve accountability. It enables committees to review specific actions of those public bodies specified in section 104 operating in their area and to require them to provide information or appear before them. It also requires the local authority or the authority's executive to respond to its reports or recommendations.

## **CHAPTER 1: LOCAL AREA AGREEMENTS AND COMMUNITY STRATEGIES**

### **Section 103: Application of Chapter: responsible local authorities**

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

### **Section 104: Application of Chapter: partner authorities**

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

232. *Subsection (4)(b)* refers to the English Sports Council which is known as Sports England. *Subsection (4)(e)* refers to the Historic Buildings and Monuments Commission which is known as English Heritage. *Subsection (4)(i)(i)* refers to the Secretary of State in relation to his functions under section 2 of the Employment and Training Act 1973. These functions are exercised by Jobcentre Plus. Similarly the functions described in *subsection 4(i)(ii)* and *(iii)* are exercised by the Highways Agency.

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233. *Subsection (7)* provides that the Secretary of State may amend the list of bodies and persons, by order, from time to time by adding any person with functions of a public nature, deleting any person, or by adding or deleting references to the Secretary of State's functions. Before making such an order, the Secretary of State must consult such representatives of local government as he considers appropriate.

#### **Section 105: "Local improvement targets": interpretation**

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

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

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

#### **Section 106: Duty to prepare and submit draft of a local area agreement**

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

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

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

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

#### **Section 107: Approval of draft local area agreement by Secretary of State**

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

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

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

#### **Section 108: Duty to have regard to local improvement targets**

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

#### **Section 109: Designated targets**

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

246. *Subsection (2)* provides that where the Secretary of State has approved a revision proposal to the LAA he may designate any local improvement target that has been added by the revision proposal. This must be done within one month of the date the revision proposal was approved. (Targets may also be added to LAAs by agreement between the responsible authority and each person to whom the target in question is to relate, under section 110(6). But such targets, once added, may not be designated.)

#### **Section 110: Revision and addition of targets**

247. *Subsection (1)* provides that a designated target can only be amended or removed through a revision proposal which is then sent to the Secretary of State for his approval in accordance with sections 111 and 112.

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

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

250. *Subsection (5)* makes it clear that local improvement targets can only be added to a LAA either by agreement between the persons to whom the target is to relate, in accordance with *subsection (6)*, or in accordance with a revision proposal under sections 111 and 112.

### **Section 111: Designated targets: revision proposals**

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

252. *Subsection (1)* provides that a responsible authority may, whilst the LAA has effect, prepare and submit to the Secretary of State a “revision proposal”. The Secretary of State may also direct a local authority to prepare a “revision proposal”. Where such a direction has been made, the responsible authority must prepare a revision proposal.

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

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

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

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

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

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

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

### **Section 112: Approval of revision proposal**

259. *Subsection (1)* sets out the options for the Secretary of State in considering a revision proposal that has been submitted. If the revision proposal was prepared in response to a direction by the Secretary of State (under section 111(1)(b)), he may approve the revision proposal or require the responsible authority to modify it or reject it. Alternatively, if the responsible local authority has chosen to prepare and submit a revision proposal, the Secretary of State may either approve or reject the proposal. In this case he may not require the revision proposal to be modified.

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

261. *Subsection (4)* provides that where the Secretary of State has required a responsible local authority to modify a revision proposal, that it shall be treated as a direction to that local authority to prepare another revision proposal. This means that the authority will be under the same duties again to consult and co-operate and to have regard to the community strategy and to guidance, and that partner authorities will be under the duty to co-operate and to also have regard to guidance, when modifying the revision proposal.

### **Section 113: Duty to publish information about local area agreement**

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

- the Secretary of State has designated a local improvement target or has revoked a designation (under section 109);
- the approved LAA has been amended by a revision proposal, that has been approved by the Secretary of State (under section 112(2));
- the approved LAA has been amended by locally agreed alterations or additions or deletions of local priority targets (under section 110(2) and (6)).

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

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

**Section 114: Preparation of community strategy**

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

**Section 115: Orders under Part 1 of Local Government Act 2000: Wales**

265. This section amends sections 3, 5 to 7 and 9 of, and inserts a new section 9A into Part 1 of the Local Government Act 2000 which concern the promotion of economic, social or environmental well-being etc.

266. Section 5 of the Local Government Act 2000 enables the Secretary of State to, by order, amend, repeal, revoke or disapply an enactment which prevents or obstructs local authorities from exercising their powers to promote well-being. *Subsection (3)* of this section amends section 5 of the Local Government Act 2000 so that the Secretary of State cannot make any provision under that section that affects Wales without consulting the Welsh Ministers. It also provides that the Secretary of State cannot make an order under that section to amend, repeal, revoke or disapply subordinate legislation made by Welsh Ministers or the National Assembly for Wales without the consent of the Welsh Ministers; or a Measure or Act of the National Assembly for Wales without the consent of the National Assembly (except when making incidental or consequential provision).

267. Section 6 of the Local Government Act 2000 enables the Secretary of State to, by order, amend repeal, revoke or disapply any enactment which requires a local authority to prepare, produce or publish any plan or strategy. *Subsection (5)* of this section amends section 6 of the Local Government Act 2000 so that the Secretary of State's power to modify enactments concerning plans etc is confined to local authorities in England.

268. *Subsection (6)* amends section 7 of the Local Government Act 2000 to confer a power on the Welsh Ministers to, by order, amend, repeal, revoke or disapply any enactment that requires a local authority to prepare, produce or publish any plan or strategy relating to any particular matter in relation to a local authority in Wales. By way of these amendments, the Welsh Ministers are given an equivalent power to that of the Secretary of State under section 6 of the Local Government Act 2000.

269. *Subsection (7)* provides that an order made under section 7 of the Local Government Act 2000 cannot make a provision that would, if it were an Assembly Measure, be outside of the National Assembly for Wales' legislative competence. An order made under this section must be approved by resolution of the National Assembly except where the order is made only for the purpose of amending an earlier order under that section such that the earlier order extends to a particular authority or authorities or ceases to apply to a particular authority or authorities.

270. *Subsection (9)* of this section inserts a new section 9A into the Local Government Act 2000 which sets out the procedure that must be followed before making an order under section 7. Welsh Ministers must first consult such local authorities in Wales, representatives of local government in Wales and other persons that are likely to be affected by the order

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before laying a document before the National Assembly for Wales that explains the proposals, form of the draft order and details of the consultation undertaken. Subsequently, no draft of an order under section 7 which gives effect to the proposals is to be laid before the National Assembly within 60 days of the above document being laid (excluding periods when the Assembly is dissolved or in recess for more than 4 days). A draft order under section 7 which is laid must be accompanied by a statement of the Welsh Ministers detailing representations considered and any changes to the proposals in the above document. Excepted from the above procedure is an order made solely for the purposes of amending an earlier order made under this procedure to either extend or cease to apply that earlier order to a particular authority or authorities of a particular description.

### **Section 116: Health and social care: joint strategic needs assessments**

271. Section 116 introduces a requirement on responsible local authorities and Primary Care Trusts (PCTs) to undertake a joint strategic needs assessment of the health and social care needs for the area of the responsible local authority. This will determine what will be needed in terms of the discharge of health and social care functions in relation to the area of the local authority.

272. Statutory guidance will be issued under section 4 of the Local Government Act 2000 and section 106(2)(c)(ii) and (3)(b) to make it clear that the Sustainable Community Strategy and subsequent targets in the LAA should take account of the findings of the joint strategic needs assessment.

273. *Subsection (5)* provides that the responsible local authority must publish each assessment of relevant needs prepared under this section in relation to its area.

### **Section 117: Interpretation of Chapter**

274. This section provides a glossary to the terms used in Chapter 1 of Part 5.

### **Section 118: Transitional provision**

275. This section sets out the arrangements for change from voluntary LAAs to those required by these sections.

276. *Subsections (1) and (2)* sets out that the first direction of the Secretary of State to an authority to prepare a LAA may provide that the LAA submitted may have been prepared *before* the direction to do so was given. That is, that where such a direction applies, an authority may submit a LAA which was in existence previously as a voluntary LAA. Such a direction will also provide that the LAA submitted need not have been prepared following consultation with partner authorities, and with co-operation between the responsible local authority and partner authorities nor with regard to guidance issued by the Secretary of State and in the case of the authority, without having regard to the community strategy. This means that the Secretary of State will have the flexibility to allow certain local authorities to submit voluntary LAAs for approval, which were in existence before the provisions came into force.

277. He can also direct that other local authorities prepare a fresh LAA in accordance with all the statutory provisions under section 106. This may be necessary in cases in which local authorities are at the point of negotiating their next LAA, i.e. where their present voluntary LAA is about to expire.

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278. Subsections (3) to (5) amend the Offender Management Act so that cross-references to the Local Government and Public Involvement in Health Act which appear in the Offender Management Act 2007 match the section numbers in this Act, in particular in paragraph 5 of Schedule 3 to that Act which adds functions of the Secretary of State in relation to probation services to the functions in relation to which the Secretary of State is a partner authority for the purposes of LAAs.

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

### **Section 119: Reference of matter by councillor to overview and scrutiny committee**

279. Several pieces of legislation introduced in this Act together provide for the process called a “Community Call for Action” in the Local Government White Paper. These are section 119, accompanied by sections 236 and 237. Section 119 inserts section 21A into the Local Government Act 2000. It requires each local authority operating executive arrangements to ensure its overview and scrutiny arrangements enable any member of the authority to refer a local government matter to the relevant overview and scrutiny committee. (Section 21 of the Local Government Act 2000 empowers overview and scrutiny committees to review or scrutinise decisions made, and to make reports and recommendations about matters whether or not they are the responsibility of the executive; and to make reports or recommendations on matters which affect the authority’s area.) Corresponding provision can be made for authorities operating alternative arrangements under secondary legislation made under section 32(3) of the 2000 Act as expanded and replaced by section 127(2).

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

281. Subsections (5) to (8) of inserted section 21A apply to references by councillors who are not members of the committee. Section 21A(6) entitles a committee, when deciding how to proceed, to consider representations from the member who referred the matter, and to take into account the extent to which he has exercised the powers given to him under section 236 of the Act to resolve it. Section 21A(7) makes clear that, although it is open to a committee not to pursue a matter, it must let the member know the reason for the decision. Section 21A(8) requires the committee to copy its report or recommendations on the matter to the member who referred the matter. Section 21A(10) defines the matters which can be referred to overview and scrutiny committees in this way. Those matters are intended to be any matter that relates to the work of the local authority other than a local crime and disorder matter (such matters being dealt with by the Police and Justice Act 2006, which is amended by section 126 of this Act), or a matter in a category which the Secretary of State has excluded by order.

### **Section 120: Power of overview and scrutiny committee to question members of authority**

282. By virtue of section 236 of the Act, an authority can make arrangements for individual members to exercise functions of the authority in relation to the electoral division or ward for which the member is elected. Section 120, inserts a provision into section 21 of the Local Government Act 2000 allowing overview and scrutiny committees to require such members to appear before the committee to answer questions in relation to any functions that they exercise.

**Section 121: Powers to require information from partner authorities**

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

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

285. “Relevant partner authority” is defined in new section 21C(8), which is inserted by section 122, and means a person who is a partner authority in relation to a local authority for the purposes of Chapter 1 of Part 5 (local area agreements), except for a police authority or a chief officer of police.

286. “Relevant committee” is defined in section 21C(8) of the Local Government Act 2000, which is inserted by section 122, and means any overview and scrutiny committee of an authority which is required to prepare LAAs under Chapter 1 of Part 5 of the Act.

287. The type of information about which regulations may be made under *subsection (1)* of section 22A does not include information that can be the subject of regulations made under section 20(5)(c) or (d) of the Police and Justice Act 2006 or section 244(2)(d) or (e) of the National Health Service Act 2006.

288. Section 22A(4) will enable regulations to be made about the information which “associated authorities” may or may not provide to a “relevant district council committee”. A relevant district council committee is defined by section 22A(6) as the overview and scrutiny committee of a district council which is not a responsible local authority – that is, the committee of a district council in a two-tier area, or a sub-committee of such a committee. An associated authority is defined in section 22A(6) as either a partner authority (except a police authority or the chief officer of police) or the county council in that two-tier area.

289. Section 22A(5) sets out that information about which the Secretary of State can make provision, under new section 22A(4), does not include information for which provision can be made under either section 20(5)(c) or (d) of the Police and Justice Act 2006. As section 244 of the National Health Service Act 2006 does not apply to district authorities in two tier areas, the Secretary of State may make provision about health related information in the regulations that can be made under new section 22A(4).

290. Section 22A(7) allows for regulations made under this section to make different provision in relation to different persons – that is, partner authorities or associated authorities – and committees and in relation to different descriptions of such persons or committees. Section 22A(8) makes clear that the power in section 22A(7) does not affect the power in section 105(2)(b) of the Local Government Act 2000 that orders and regulations may make different provisions for different cases, authorities or descriptions of authority.

291. Subsection (6A) of section 20 of the Police and Justice Act 2006, which is inserted by *subsection (2)* of section 121, makes it clear that information about which provision can be made in regulations made under that section can only relate to the discharge of crime and disorder functions and local crime and disorder matters.

292. Subsection (2A) of section 244 of the National Health Service Act 2006, which is inserted by *subsection (4)* of section 121, makes it clear that information about which provision can be made in regulations made under that section can only relate to the health service in the local authority’s area.

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

## **Section 122: Overview and scrutiny committees: reports and recommendations**

293. *Subsection (1)* inserts new sections 21B, 21C and 21D of the Local Government Act 2000 after section 21A of that Act, which is inserted by section 122 of this Act.

294. Section 21B applies where an overview and scrutiny committee of an authority in England makes a report or recommendations to the authority or the executive. It does not apply where the report or recommendation is made to the authority or the executive by a crime and disorder committee by virtue of subsection (1)(b) or (3)(a) of section 19 of the Police and Justice Act 2006.

295. Subsection (2) of inserted section 21B empowers the overview and scrutiny committee to publish its report or recommendations.

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

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

298. The provisions about confidential and exempt information in section 21D (which is also inserted by section 122) apply in relation to the publishing of a report or recommendations or a response to any of these documents.

299. Section 21C applies where a relevant committee make a report or recommendations to an authority or an executive and the report or recommendations relate to a local improvement target which relates to a relevant partner authority and is specified in a LAA of the authority. It does not apply where the report or recommendations are made by a crime and disorder committee by virtue of subsections (1)(b) or (3)(a) of section 19 of the Police and Justice Act 2006.

300. “Local improvement target” and “local area agreement” are defined in subsection (8) of section 21C and have the same meanings as in Chapter 1 of Part 5 of the Act.

301. The overview and scrutiny committee may give the relevant partner authority notice in writing requiring them to have regard to the report or recommendations in exercising their functions. A relevant partner authority which is a health service body i.e. a National Health Service Trust, an NHS Foundation Trust or a Primary Care Trust cannot be required to have regard to a report or recommendations made to that body under regulations made under section 244 of the National Health Service Act 2006.

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

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

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

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

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

306. It should be noted that section 21D does not apply to the executive of an authority. This is because the meaning of “relevant exempt information” has been imported from Part 5A of the Local Government Act 1972 which applies to an authority but not to an executive of that authority.

307. Subsection (3) of inserted section 21D enables the overview and scrutiny committee or an authority to exclude if they wish any confidential information or relevant exempt information from a copy of a document provided to a member of the local authority.

308. When information is excluded from any document, subsection (4) of inserted section 21D enables the overview and scrutiny committee or the authority, in publishing, or providing a copy of it, to replace any part of the document which discloses confidential information or exempt information with a summary that does not disclose that information. Where in consequence of the exclusion of confidential information or exempt information, the document would be misleading or not reasonably comprehensible, subsection (4) requires the authority to provide a summary of the part concerned.

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

310. *Subsection (2)* of section 122 amends section 22 of the Local Government Act 2000 by inserting new *subsection (12A)* to give the Secretary of State a power to make regulations in relation to local authority executives in England which replicate the provision contained in section 21D.

### **Section 123: Joint overview and scrutiny committees: local improvement targets**

311. *Subsection (2)* of section 123 allows the Secretary of State to make regulations enabling a county council in a two tier area to establish a joint overview and scrutiny committee with one or more district councils in its area.

*These notes refer to the Local Government and Public Involvement in Health Act 2007 (c.28)  
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312. By virtue of *subsections (2)(b), (3) and (4)*, regulations under this section may confer on such joint overview and scrutiny committees the functions of making reports and recommendations to the county council or to the county council and one or more of the district councils which established that committee on matters (except excluded matters) relating to the attainment of a local improvement target in the relevant LAA (ie in the LAA of the county council in the group of authorities which established the joint committee). Subsection (4) sets out that crime and disorder matters, on which a crime and disorder committee may make reports and recommendations by virtue of section 19 of the Police and Justice Act 2006, are excluded. This is because under section 21 of the Police and Justice Act 2006 provision may be made in respect of the functions of a joint crime and disorder committee in relation to crime and disorder scrutiny functions.

313. *Subsection (5)* allows these regulations to make provision as to the relevant information which an “associated authority” must or must not disclose to a joint committee. *Subsection (6)* sets out that an associated authority means the county council which is the responsible local authority in relation to the district council and partner authorities to the responsible authority, other than a police authority or chief of police. *Subsections (6) and (8)* set out that relevant information means information which is relevant to a local improvement target in the relevant LAA which relates to the associated authority. However, *subsection (7)* makes clear that regulations may not make provision in relation to crime and disorder related information, as the joint overview and scrutiny committee may not report on crime and disorder matters.

314. Subsection (5) also provides that regulations may make provision generally as to the discharge of functions, appointment of sub-committees, and co-opting of persons who are not members of the authority by applying the provisions of, or making corresponding provision to, section 21(4) and (6) to (12) of the Local Government Act 2000. Regulations may also apply or make equivalent provision to new sections 21A to 21D of the Local Government Act 2000 as to the reference of matters to overview and scrutiny by councillors, the duty of an authority or executive to respond to an overview and scrutiny committee, the duties on associated authorities to have regard to reports and recommendations and as to confidential and exempt information in relation to the publication of reports. There is no power to apply subsections (13) to (15) of section 21 of the Local Government Act 2000, so joint overview and scrutiny committees will not have power to require members or officers of local authorities to appear and answer questions. Provision equivalent to or applying section 246 of, and Schedule 17 to, the National Health Service Act 2006 (exempt health related information) may also be made under this last head. Section 246 of, and Schedule 17 to, the National Health Service Act 2006 apply to an item of business of an overview and scrutiny committee considering matters relating to the health service in the authority’s area and provide that certain information will be exempt from disclosure in accordance with the provisions of section 100A(4) of the Local Government Act 1972 which means that the public may be excluded from the meeting during that item of business, if an appropriate resolution of the council is in place.

315. *Subsection (9)* requires joint overview and scrutiny committees to have regard to any guidance issued by the Secretary of State.

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

### **Section 124: Overview and scrutiny committees of district councils: local improvement targets**

316. Section 124 inserts a new section 21E into the Local Government Act 2000.

317. Section 21E(1) and (2) allow the Secretary of State to make regulations enabling a district council in a two tier area to make reports and recommendations to its county council or to that county council's executive, on matters relating to a local improvement target in the area's LAA, where that local improvement target relates to a partner authority. Section 21E(4) sets out that a partner authority for these purposes means the county council and any authority which is a partner authority of the county council other than a police authority or the chief of police.

318. Section 21E(3) provides that regulations may also apply or make provision corresponding to the duty of an authority or executive to respond to an overview and scrutiny committee, the duties of associated authorities to have regard to reports and recommendations and the treatment of reports and recommendations, and responses to them, which contain confidential and exempt information, i.e. the regulations may make provision applying the provisions of new sections 21B to 21D of the Local Government Act 2000.

### **Section 125: Guidance**

319. Section 125 amends section 21 of the Local Government Act 2000 to provide for new *subsections (16) and (17)*. These will enable the Secretary of State to require overview and scrutiny committees to have regard to any guidance issued by the Secretary of State. It is intended that guidance issued under these powers and under section 123(9) will clarify how overview and scrutiny committees and joint overview and scrutiny committees should avoid duplication of each other's work.

### **Section 126: Reference of local crime and disorder matters to crime and disorder committees etc**

320. Section 126 amends sections 19 and 20 of the Police and Justice Act 2006. It brings the provision for references of local crime and disorder matters by local councillors to crime and disorder committees into line with the treatment of local government matters in the new section 21A of the Local Government Act 2000 inserted by section 119. New section 19(3) provides that every local authority must ensure that its crime and disorder committee has power to make a report or recommendations to the local authority with respect to any local crime and disorder matter referred to it, and that it must make arrangements which enable any member of the authority to refer any local crime and disorder matter to the local authority.

321. New section 19(4) provides that arrangements enable a person to refer a matter to a committee if they enable him to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee.

322. Section 19(5) applies subsections (6) and (7) where a local crime and disorder matter is referred to a crime and disorder committee by a member of a local authority in accordance with arrangements made under subsection (3)(b). Subsection (6) provides that, when considering whether or not to make a report or recommendations to the local authority in relation to the matter, the committee may have regard to any powers which the member may exercise in relation to the matter by virtue of section 236 of this Act, and to any

representations made by the member as to why it would be appropriate for the committee to exercise any of its relevant powers in relation to the matter.

323. Section 19(7) provides that the committee must notify the member of its decision, and the reasons for it, if it decides not to make a report or recommendations to the local authority in relation to the matter.

324. Section 19(8) requires that the crime and disorder committee copy reports or recommendations to the authority in relation to a crime and disorder matter to any member of the authority who referred the matter to the committee in accordance with arrangements made under subsection (3)(b), and to such of the responsible authorities and co-operating persons and bodies as it thinks appropriate.

325. Section 19(8A) provides that section 19(8B) applies where the crime and disorder committee of a local authority makes a report or recommendations to the authority by virtue of subsection (3)(a), or where it provides a copy of a report or recommendations under subsection (2) or (8)(b). Section 19(8B) provides that in such circumstances, the crime and disorder committee must notify the authority, body or person to whom it makes the report or recommendations, or provides the copy, that it must consider the report or recommendations; respond to the committee indicating what (if any) action it proposes to take; and have regard to the report or recommendations in exercising its functions.

326. *Subsection (4)* of section 126 inserts in section 19(11) of the Police and Justice Act 2006 an amended definition of “local crime and disorder matter”. The new definition includes crime and disorder and substance misuse that affects all or part of the electoral area for which the member is elected or any person who lives or works in that area.

327. Sections 126(6), (7) and (8) make consequential amendments to Section 20 of the Police and Justice Act 2006.

### **Section 127: Overview and scrutiny committees: consequential amendments**

328. Section 21 of the Local Government Act 2000 requires local authorities operating executive arrangements to ensure that their overview and scrutiny committee has certain powers. Where a local authority has more than one overview and scrutiny committee, that obligation can be satisfied by ensuring that those committees have those powers between them. *Subsection (1)* amends section 21 of the Local Government Act 2000 so that the reference to overview and scrutiny committees also includes any joint overview and scrutiny committees. Subsection (1) provides that a joint overview and scrutiny committee means:

- a) a joint overview and scrutiny committee within the meaning given in subsection (2)(a) and (b) of section 245 of the National Health Service Act 2006.
- b) a joint overview and scrutiny committee within the meaning given in subsection (2)(a) and (b) of section 185 of the National Health Service (Wales) Act 2006; or
- c) a joint overview and scrutiny committee within the meaning of section 123 of the Local Government and Public Involvement in Health Act 2007.

329. Section 21(4) of the Local Government Act 2000 provides that, subject to 21(5), an overview and scrutiny committee of a local authority may not discharge any functions other than its functions under that section.

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330. Subsection (1) of section 127 also amends section 21(4) of the Local Government Act 2000 to add into the list of functions which an overview and scrutiny committee may exercise, functions under section 21A to 21C or any functions conferred on it through regulations under 21E.

331. Section 32 of the Local Government Act 2000 enables the Secretary of State to establish arrangements for local authorities to discharge their functions without having a separate executive (i.e. for those local authorities operating alternative arrangements). *Subsection (2)* replaces section 32(3) of the Local Government Act 2000 with a new subsection (3) which amplifies the current provision under that section, so that the Secretary of State may make regulations for councils operating alternative arrangements, which may include similar provision to that provided for in this Act for overview and scrutiny committees. It also splits the powers of the Secretary of State into powers which he may exercise in relation to England and powers which the Welsh Ministers may exercise in relation to Wales.

332. *Subsection (3)* also makes consequential amendments to section 245(3)(b) of the National Health Service Act 2006 so that the Secretary of State may, by regulations, apply the revised overview and scrutiny provisions to joint health overview and scrutiny committees established under regulations under that section. *Subsection (4)* makes equivalent provision for Wales.

### **Section 128: Transitional provision**

333. The new procedure for altering governance arrangements set out in new section 33E of the Local Government Act 2000 (inserted by section 64 of the Act) also applies to changes to executive arrangements and alternative arrangements which are required to be made by virtue of any of the provisions of Chapter 2 of Part 5 of the Act.

## **PART 6: BYELAWS**

### **Introduction**

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

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

336. The Government initially intends to use the powers in these sections 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.

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

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

### **Section 129: Alternative procedure for byelaws**

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

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

### **Section 130: Fixed penalties for breach of byelaws**

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

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

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out the function. This may be a direct employee of the authority, or a person, or an employee of a person, with whom the local authority has a contract for the enforcement of byelaws.

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

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

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

#### **Section 131: Use of fixed penalty receipts**

346. This section requires local authorities, when considering how to use their fixed penalty receipts, to have regard to the desirability of using the money in combating nuisances governed by byelaws for which fixed penalty notices may be issued. This means that local authorities would be required to consider whether fixed penalty receipts should be used generally in combating such nuisances. It would not be necessary for receipts to be used only towards combating the nuisance the relevant byelaw is concerned with.

#### **Section 132: Guidance**

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

#### **Section 133: Community support officers etc**

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

#### **Section 134: Revocation of byelaws**

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

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

### **Section 135: Further amendments relating to byelaws**

351. This section gives effect to Schedule 6.

## **PART 7: BEST VALUE**

### **Introduction**

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

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

354. The Act confers a Measure-making power on the National Assembly for Wales in relation to best value (see section 238 and Schedule 18).

### **Best value authorities**

#### **Section 136: Parish councils and community councils etc not to be best value authorities**

355. Section 136 amends the definition of local authorities in England and Wales that are best value authorities for the purposes of Part 1 of the Local Government Act 1999.

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

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

358. *Subsections (1)(b)* and *(c)* make equivalent provision for Wales, where the equivalent of a parish council is a community council. They provide that a community council is not a best value authority. An Order<sup>2</sup> made by the National Assembly for Wales under section 2(5)

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

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

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of the Local Government Act 1999 exempted all community councils with an income of under £1,000,000 in 1998 and 1999 from any of the duties in sections 3 to 6 of the Act. In practice, this exempted all community councils from the best value regime, as none had an income in excess of that sum.

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

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

#### **Section 137: Guidance about general best value duty**

360. Section 137 extends the existing power of the Secretary of State and the Welsh Ministers to give guidance to best value authorities. At present, guidance can be given about the consultation of local people by best value authorities about how the authorities fulfil the general best value duty set out in section 3 of the Local Government Act 1999. The Act confers a more general power to issue statutory guidance to best value authorities about how to fulfil that duty.

#### **Section 138: Involvement of local representatives**

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

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

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

364. *Subsection (6)* clarifies what is meant by certain terms, including “local person” and “representative”.

- The term *local person* refers to any person likely to be affected by or interested in the exercise of the relevant function of a best value authority. This could include a group or organisation. Under new section 3A, a best value authority might decide to involve representatives of individual citizens, local residents or service users, community

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

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groups, voluntary sector organisations or businesses (amongst others) in the exercise of its functions.

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

### **Section 139: Abolition of performance indicators etc except for Welsh authorities**

365. Section 139 provides that sections 4 and 6 of the Local Government Act 1999 no longer apply to best value authorities in England (including police authorities) or to police authorities in Wales. In so doing, it removes (a) the power of the Secretary of State to specify performance indicators and standards for best value authorities; (b) the duty of such authorities under section 4(5) to meet applicable performance standards; (c) the duty of such authorities under section 6 to prepare and publish best value performance plans ("BVPPs"); and (d) the power of the Secretary of State to issue statutory guidance in respect of BVPPs.

366. Sections 4 and 6 will continue apply to Welsh best value authorities (ie. all best value authorities in Wales other than police authorities). The power in section 4(1) to specify performance indicators and standards, and the powers as regards BVPPs in section 6, will continue to be available to the Welsh Ministers as regards such authorities. The Assembly will be able to amend or replace these provisions, or to confer power on Welsh Ministers to do so, using the framework power conferred by Schedule 18 to the Act.

367. When this section is commenced, it is intended that provision will be made so that best value performance indicators can continue to be set in respect of police authorities, and so that police authorities will continue to be under an obligation to prepare BVPPs, for a limited period of time. It is intended that any indicators set, and BVPPs prepared, under such provision will relate purely to policing matters and will not have any impact on local authorities. It is expected that such provision will cease to have effect in 2009 or 2010. By that time, the Home Office expects to have in place such provision replicating the relevant provisions of Part 1 of the Local Government Act 1999 for police authorities as they consider necessary.

### **Section 140: Abolition of best value performance reviews**

368. Section 140 removes the statutory requirement in section 5 of the Local Government Act 1999 for best value authorities to undertake best value performance reviews and the power of the Secretary of State and the Assembly to issue guidance on how best value authorities conduct such a review.

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

#### **Section 141: Consultation with and consent of Welsh Ministers**

369. Section 141 makes certain changes to the Secretary of State's powers under section 16 of the Local Government Act 1999 to modify enactments obstructing compliance with best value and under section 97 of the Local Government Act 2003 to modify enactments in connection with charging or trading. In particular, it precludes the Secretary of State amending, modifying or removing the application of any Assembly Measures, Assembly Acts or subordinate legislation made by Welsh Ministers or the Assembly without the consent of the Welsh Ministers or the Assembly (as appropriate), except where the provision is consequential on or incidental to other provisions.

**Section 142: Power of Welsh Ministers to modify enactments obstructing best value etc**

370. Section 142 confers on the Welsh Ministers a power similar to that in section 16 of the Local Government Act 1999 to modify enactments obstructing compliance with best value, and removes from the Secretary of State the power to do so in relation to Welsh best value authorities.

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

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

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

374. Section 142 will come into force two months after Royal Assent. *Subsection (3)* makes transitional provisions to cover the period before section 144, which adds a definition of the term 'Welsh best value authority' to the Local Government Act 1999, comes into force.

**Other**

**Section 143: Grants to promote or facilitate exercise of functions by best value authorities**

375. Section 143 inserts new sections 36A and 36B into the Local Government Act 2003 ("the 2003 Act"). Those sections enable grants to be paid to a person for the purpose of improving the performance of best value authorities. Any grant can be paid subject to conditions (sections 36A(5) and (6) and 36B(4) and (5)).

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

377. Section 143 will come into force two months after Royal Assent. If section 144 (which introduces the term "Welsh best value authority" into Part 1 of the Local Government

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Act 1999) has not been commenced at that time, section 143(2) ensures that new sections 36A and 36B will have effect by reference to the existing provisions in the Local Government Act 1999 until such time as section 144 is commenced.

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

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

#### **Section 144: Best value: minor and consequential amendments**

380. Section 144 defines the term “Welsh best value authorities” for the purposes of the Local Government Act 1999 and introduces Schedule 8, which makes further minor and consequential amendments.

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

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

#### **Introduction**

382. Part 8 of the Act makes provision about the inspection and audit of local services. In particular, sections 147 and 148 of and Schedule 10 to the Act provide for the merger of the inspection functions of the Benefit Fraud Inspectorate (in relation to English local authorities) with the Audit Commission. The intention is that this will avoid duplication of effort and reduce inspection burdens on local authorities.

383. Sections 149 and 150 and Schedule 11 make provision about the interaction between the Audit Commission and other authorities. Sections 153 to 158 and 165 amend the Commission’s powers to produce and publish studies and reports. Sections 159 to 163 update and amend several of the Commission’s powers relating to audit. Section 164 relaxes the restrictions on disclosure of information obtained by the auditor or the Audit Commission.

384. Sections 166 and 167 make provision about the Auditor General for Wales and auditors.

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

#### **Section 145: Membership**

385. This section reduces the number of members of the Audit Commission. At present the Commission must comprise 15 to 20 members. The Act reduces this requirement to 10 to 15 members.

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

### **Section 146: Change of name**

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

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

### **Benefits inspections**

#### **Section 147: Powers of the Audit Commission relating to benefits**

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

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

#### **Section 148: Benefits Fraud Inspectorate: transfers to Audit Commission**

389. This section enables the Secretary of State to make transfer schemes transferring to the Audit Commission property, rights and liabilities relating to the inspection of the administration of housing benefit and council tax benefit by the Benefits Fraud Inspectorate.

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

### **Interaction with other authorities**

#### **Section 149: Interaction of the Audit Commission with other authorities**

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

392. The new Schedule 2A includes provision enabling the Audit Commission to provide advice and assistance to public authorities whether within or outside the UK (see paragraph 9 of the new Schedule). It replaces the existing provision in section 37 of the Audit Commission Act 1998 (power to provide advice and assistance to certain inspection authorities).

#### **Section 150: Interaction of benefits inspectors with the Audit Commission**

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

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394. This section requires such persons to produce documents setting out what inspections they expect to carry out and how they expect to carry them out, after consultation with the Audit Commission. It requires them to send copies of the final documents to the Audit Commission and the Secretary of State. It requires such persons to co-operate with the Audit Commission. It also enables them to act jointly with the Audit Commission. These new powers and duties reflect the new powers and duties of the Audit Commission in new Schedule 2A to the Audit Commission Act 1998 inserted by Schedule 11 to the Act.

### **Inspections and audit**

#### **Section 151: Powers of auditors and inspectors to obtain information**

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

#### **Section 152: Inspections of best value authorities**

396. This section clarifies the Audit Commission's existing power to inspect best value authorities' compliance with their duties under Part 1 of the Local Government Act 1999 (best value). It enables the Audit Commission to carry out general inspections of the performance of best value authorities.

### **Studies and reports etc**

#### **Section 153: National studies**

397. Section 153 adds to the list of bodies that the Audit Commission must consult on its proposals for national studies under sections 33 and 34 of the Audit Commission Act 1998. The amendment requires the Audit Commission to consult the Secretary of State to ensure relevant Government Departments are consulted on proposed national studies. The Audit Commission retains a limited residual power in Wales in relation to national studies. The amendments also provides that where a proposed study relates to a body in respect of which the Welsh Ministers may exercise functions, the Audit Commission must also consult Welsh Ministers

#### **Section 154: Studies at request of particular bodies**

398. Sections 35 and 35A of the Audit Commission Act 1998, which allowed the Audit Commission to carry out and charge for consultancy studies at the request of audited bodies, are repealed by this section. Those powers are replaced by the Audit Commission's new power to provide advice and assistance to public authorities (see paragraph 9 of new Schedule 2A to the Audit Commission Act 1998 inserted by Schedule 11 to the Act).

#### **Section 155: Registered Social Landlords**

399. Section 155 confers on the Audit Commission power to provide advice and assistance to all registered social landlords in England, without needing to consider whether they are public authorities.

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### **Section 156: Information about performance standards of local authorities etc**

400. Section 156 of this Act repeals sections 44 to 47 of the Audit Commission Act 1998. Those sections gave the Audit Commission power to require local authorities to publish information about their performance.

### **Section 157: Reports on English local authorities**

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

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

403. The Secretary of State may by order amend the list of bodies which are subject to the reporting power in this section by removing a body from the list or by adding a body which is a best value authority. The Secretary of State may not add to the list a body which is a Welsh best value authority or a police authority for a police area in Wales.

### **Section 158: Reports categorising English local authorities**

404. Section 158 amends the requirement in section 99 of the Local Government Act 2003 for the Audit Commission to produce reports on its findings on local authorities' performance in exercising their functions which categorise the authorities. This section provides that the Audit Commission will only need to produce a report if directed by the Secretary of State.

### **Miscellaneous**

#### **Section 159: Appointment of auditors**

405. This section amends section 3(6) of the Audit Commission Act 1998 which disbars a firm from being appointed as an auditor by the Audit Commission unless each of its members is a member of one or more of the qualifying professional accountancy bodies. The provision is amended so that the Audit Commission may appoint a firm provided that those persons carrying out or supervising the audit belongs to one of the qualifying bodies.

#### **Section 160: Inspection and disclosure of personal information**

406. Under section 15 of the Audit Commission Act 1998 an interested person can inspect the accounts to be audited and all books, deeds, contracts, Acts, vouchers and receipts relating to them. These rights are wide enough to allow access to the personal information of service users which would otherwise be covered by data protection legislation. This section amends section 15 to provide that personal information is not disclosed if the auditor considers appropriate.

#### **Section 161: Right to make objections at audit**

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

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### **Section 162: Appointment of auditor to carry out agreed audits**

408. This section amends section 29 of the Audit Commission Act 1998 (which provides that the Audit Commission can undertake the audit of any body connected with local government or the National Health Service, subject to the consent of the Secretary of State and the agreement of the body concerned) to clarify the fact that the Audit Commission is entitled to appoint auditors to undertake audits under section 29, as well as doing so itself.

### **Section 163: Consent for the purposes of agreed audit**

409. The aforementioned section 29 of the Audit Commission Act 1998 is further amended to allow the Secretary of State to give consent to a class of body to be audited e.g. where there are a large number of bodies of the same type.

### **Section 164: Disclosure of information obtained by the Audit Commission or an auditor**

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

411. The amended provision enables-

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

### **Section 165: Publication of information by the Audit Commission**

412. This section allows the Audit Commission to publish any information provided the publication will not prejudice the effective performance of its functions or those of an auditor.

## **CHAPTER 3: AUDITOR GENERAL FOR WALES AND AUDITORS**

### **Section 166: Registered social landlords in Wales**

413. Section 166 confers on the Auditor General for Wales power to provide advice and assistance to all registered social landlords in Wales, without needing to consider whether they are public authorities.

### **Section 167: Disclosure of information obtained by the Auditor General for Wales or an auditor**

414. This section makes provision for the Auditor General for Wales and an auditor under the Public Audit (Wales) Act 2004 equivalent to provision made by section 164 for the Audit Commission and an auditor under the Audit Commission Act 1998.

## **PART 9: THE COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND**

### **Introduction**

415. The Commission for Local Administration, more commonly known as the Local Government Ombudsmen, is an independent body established under Part 3 of the Local Government Act 1974. The Commission comprises a body of Commissioners, consisting of the Local Commissioners themselves, any advisory Commissioners who have been appointed, and the Parliamentary Commissioner for Administration.

416. The Local Commissioners may conduct investigations into complaints from members of the public that they have sustained injustice in consequence of maladministration by certain authorities. The Local Commissioners may also give advice and guidance to authorities on good administrative practice. The Local Commissioners' jurisdiction covers all local authorities (excluding town and parish councils); police authorities; education appeal panels; and a range of other bodies providing local public services.

417. Part 9 of this Act clarifies and updates the Local Commissioners' jurisdiction to reflect modern means of local service delivery. It also clarifies and modifies their powers of investigation. It provides for changes to the appointment and removal of the Commissioners, greater flexibility in how complainants access the Commissioners' service, and wider powers for the Commissioners to delegate their functions. It also amends the funding and reporting requirements on the Commission, and clarifies the Commissioners' power to issue and publish reports and statements.

### **Section 168: Appointment and removal of Commissioners**

418. This section amends section 23(4) of the Local Government Act 1974 to remove the requirement for the Secretary of State to consult with representatives of authorities in England in advance of making recommendations to the Crown for the appointment of new Commissioners (including advisory Commissioners).

419. New provisions are substituted for section 23(5) of the Local Government Act 1974, which provided for appointments as Commissioners to be full-time or part-time. The new *subsection (5)* makes it clear that a Commissioner's terms of appointment can be changed with his or her consent from full-time to part-time, or vice versa. New *subsections (5A), (5B)* and *(6A)* provide for Commissioners to be appointed for a non-renewable fixed term of not more than seven years.

420. Section 23(6) is amended to remove the requirement for the Commissioner to vacate office at the age of 65. This brings the position of the Commissioners into line with the position of other similar office-holders.

### **Section 169: Responsibilities of Commissioners**

421. Section 23 of the Local Government Act 1974 provides that each Local Commissioner must be given responsibility for cases relating to a particular geographic area or areas. Section 169 amends section 23 to give the Commission greater flexibility to allocate matters between the Local Commissioners.

### **Section 170: Annual reports**

422. The requirement for the Commission to prepare an annual report is amended so that, in future, the Commission will be required to lay a copy of the report before Parliament. This

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section also repeals the requirement for the Commission to give authorities and bodies representing authorities the opportunity to comment on the report and on the reports of individual Commissioners.

#### **Section 171: Power to investigate**

423. This section inserts a new section 24A into the Local Government Act 1974, which sets out the circumstances in which a Local Commissioner may investigate a matter. The Local Commissioners will continue to have a wide discretion to decide whether to initiate, continue or discontinue an investigation. In particular, section 24A(7) makes it clear that a Local Commissioner may decide not to investigate, or to discontinue an investigation, where he is satisfied with the action that the authority concerned has taken or proposes to take.

#### **Section 172: Authorities subject to investigation**

424. This section amends section 25 of the Local Government Act 1974. The amendments clarify which bodies are to be treated as an ‘authority’ to which Part 3 of the Local Government Act 1974 applies, i.e. an authority whose actions may be investigated by the Commissioners. In particular, the amendments make clear that services delivered under partnership arrangements with such authorities fall within the Commissioners’ jurisdiction.

#### **Section 173: Matters subject to investigation**

425. This section amends section 26 of and Schedule 5 to the Local Government Act 1974 to provide that a Local Commissioner can investigate an alleged or apparent failure in a service which it is an authority’s function to provide, and an authority’s alleged or apparent failure to provide such a service, in addition to his existing powers to investigate maladministration. It also removes the general restriction on a Local Commissioner’s power to investigate contractual and commercial transactions, replacing it with a number of narrower restrictions.

#### **Section 174: Complaints and matters coming to Commissioners’ attention**

426. This section inserts new sections 26A to 26D into the Local Government Act 1974. Sections 26A to 26C clarify the process for making or referring a complaint to the Local Commissioners, with some amendments. In particular, although a complaint must usually be made in writing, sections 26B(3) and 26C(4) amend the 1974 Act to allow a Local Commissioner to disapply this requirement at his discretion.

427. Section 26D provides a Local Commissioner with a new discretionary power to initiate an investigation into possible maladministration or service failure affecting persons other than the original complainant (if any) where this has emerged in the course of an investigation.

#### **Section 175: Reports and statements of reasons**

428. This section amends section 30 of the Local Government Act 1974, which deals with the requirements for a Local Commissioner to prepare and send a report or statement of reasons in relation to a matter. In particular, it clarifies and amends what a Local Commissioner can include in a report made under section 30(1). It provides that a Local Commissioner may include recommendations in the report. Where the report relates to maladministration, those recommendations are recommendations with respect to what actions a local authority should take to remedy or prevent injustice.

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429. It also clarifies and amends the circumstances in which a Local Commissioner can issue a statement of reasons rather than a full report. It provides that a Local Commissioner must issue a statement of reasons where he has decided not to investigate a matter or to discontinue an investigation of a matter; and may issue a statement of reasons where he has completed an investigation but the local authority takes or proposes to take satisfactory action to resolve it, and it would not be appropriate to prepare and send a full report.

**Section 176: Power of Commissioners to make recommendations etc**

430. Where a Local Commissioner produces a report, section 31 of the Local Government Act 1974 requires the authority concerned to consider the report and, within 3 months, to notify the Local Commissioner of the action which it proposes to take. If the Local Commissioner is not satisfied with the authority's response, he is required to make a further report recommending action to be taken.

431. At present, section 31 only applies where a Local Commissioner reports that injustice has been caused to a person. *Subsection (2)* of section 176 extends section 31 so that it applies where a Local Commissioner reports that there has been maladministration, or a failure in, or to provide, a service, even if no injustice has resulted.

432. *Subsection (3)* of this section extends a Local Commissioner's existing powers to make recommendations for action which an authority should take to remedy a matter and prevent its recurrence to cover recommendations about a failure in a service or a failure to provide a service, in line with the changes to the Commissioners' jurisdiction made in section 173.

**Section 177: Publication of reports etc by Commissioners**

433. This section inserts a new section 31B into the Local Government Act 1974 to provide an express power to publish reports, statements and summaries of reports and statements, or part of a report or statement, and to supply a copy of all or part of a report, statement or summary, at a reasonable charge, to anyone who requests this. It also provides that a summary supplied in accordance with section 31B should not identify any person apart from the authority or authorities concerned, unless it is in the public interest for it to do so (except if the person identified is the Mayor of London or a member of the London Assembly).

**Section 178: Making complaints etc electronically**

434. This section clarifies that complaints to the Commissioners may be made in ways other than on paper, by providing that references in the legislation to doing something in writing include it being done in writing electronically, for example by e-mail or text message.

435. The new section makes one exception to the ability to communicate electronically. A Minister of the Crown or an authority subject to investigation by the Commissioners may give notice to the Commissioners to prevent them from disclosing information where they consider that it is in the public interest to do so. Any such notice must be given in traditional hard copy form.

**Section 179: Disqualifications**

436. This section clarifies and updates the restrictions in Schedule 4 of the Local Government Act 1974, which disqualify a person in some circumstances from:

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- becoming or being a Local Commissioner;
- once appointed as a Local Commissioner, from investigating certain matters;
- from taking up certain posts at the end of their term of office as a Local Commissioner.

437. The restrictions apply, for example, where there would be a risk of a conflict of interest. The amendments take account of the reorganisation of the Commission's work under new section 23(8A) of the 1974 Act, and reflect the fact that a person may have taken action on behalf of an authority without having been a member of that authority.

#### **Section 180: Expenses of the Commission**

438. This section changes the mechanism for funding the Commission. Instead of being funded through the local government funding mechanism, the revenue support grant, this section provides for the Commission to be paid each year such amount as the Secretary of State determines is required for the discharge during that year of the Commission's functions, subject to the approval of the Treasury.

#### **Section 181: Delegation**

439. The existing power for the Local Commissioners to delegate to an officer of the Commission is replaced with a wider power for any Commissioner (including an advisory Commissioner) to delegate their functions.

#### **Section 182: Minor and consequential amendments**

440. This section inserts Schedule 12 to the Act which contains minor amendments to Part 3 of the Local Government Act 1974 and consequential amendments arising from Part 9 of the Act.

### **PART 10: ETHICAL STANDARDS**

#### **Introduction**

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

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

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

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

### **Codes of conduct**

#### **Section 183: Conduct that may be covered by code**

444. This section amends sections 49, 50, 51 and 52 of the Local Government Act 2000 in relation to the principles that govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, the provisions of the code of conduct they are required to follow and the provisions which such authorities may add to the code of conduct they adopt. The effect is that such principles and provisions may apply to a member when he or she is acting in an official capacity, but the only principles and provisions which may apply to members outside their official capacity are those which prohibit conduct that would (if engaged in) constitute a criminal offence.

#### **Section 184: Certain references to code of conduct to include default code**

445. This section makes amendments to sections 37, 52 and 54 of the Local Government Act 2000. The effect of the amendment to section 37 is that authorities which have not adopted a code of conduct will be under a duty to include a copy of the mandatory provisions of the model code in their constitutions. The effect of the amendment to section 52 is that a person who becomes a member of an authority which has not adopted a code of conduct will be required to undertake that he will observe the mandatory provisions of the model code. The amendment to section 54 will provide for standards committees to assist members and give advice and training to them on following the mandatory provisions of the model code. The amendment to section 54 will also provide for standards committees to monitor the operation of the mandatory provisions of the model code.

### **Conduct of members of authorities in England: assessment of allegations**

#### **Section 185: Assessment of allegations**

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

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

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

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

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

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

452. The section also inserts section 57C into the Local Government Act 2000 which provides that where a person makes an allegation of misconduct to a standards committee it must take reasonable steps to give a written summary of the allegation to the person who is the subject of the allegation. Where the standards committee makes a decision that no action should be taken, it must also take reasonable steps to give notice of this and the reasons for the decision to the subject of the allegation. In addition, where the standards committee receives a request to review a decision to take no action, it must take reasonable steps to give notice of this to the subject of the allegation. A power is also included for the Secretary of State to make regulations which may prescribe circumstances in which the duty to give a summary of the allegation to the subject of it should not arise at the time the standard committee receives the allegation but at another time.

453. The section also inserts section 57D of the Local Government Act 2000, to enable the Standards Board to direct that a standards committee's power to undertake initial assessments of misconduct allegations should be suspended, and to direct that any allegations the standards committee receives must be referred either to the Standards Board or to a specified standards committee of another authority. The section provides a power for the Secretary of State to make regulations concerning the circumstances in which the Standards Board can exercise this power. *Subsection (7)* of new section 57D provides the Standards Board with a power to issue guidance in connection with section 57D or in connection with any direction under that section.

454. The section also inserts a new section 58 of the Local Government Act 2000 setting out the courses of action open to the Standards Board when an allegation is referred to it for consideration. The Standards Board must either refer the allegation for investigation to one of the Board's ethical standards officers, or decide that no action should be taken, or refer the matter back to the relevant local standards committee. Where it decides to take no action, it should give notice of the decision and the reasons for it to the person who made the allegation and to a person who was the subject of the allegation.

#### **Section 186: Information to be provided to Standards Board by relevant authority**

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

## **Conduct of local authority members: miscellaneous amendments**

### **Section 187: Chairmen of standards committees**

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

### **Section 188: Sub-committees of standards committees**

457. This section has the effect that a standards committee of a relevant authority in England may appoint a sub-committee to undertake any of its functions, including any functions concerning parishes.

### **Section 189: Joint committees of relevant authorities in England**

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

### **Section 190: Standards Board for England: functions**

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

### **Section 191: Ethical standards officers: investigations and findings**

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

### **Section 192: Ethical standards officers: reports etc**

461. This section amends sections 64 and 65 of the Local Government Act 2000 to provide that an ethical standards officer's report on the outcome of his investigation or an interim report on his investigation can be passed to the relevant standards committee in order to assist it in carrying out its functions.

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

### **Section 193: Disclosure by monitoring officers of ethical standards officers' reports**

463. This section inserts section 65A into the Local Government Act 2000 to allow a monitoring officer to inform any member or officer of an authority of the outcome of an ethical standards officer's investigation into an allegation, and also to furnish them with a

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copy of the report or any part of it where this will help to promote high standards of conduct by members and co-opted members of the authority.

#### **Section 194: Matters referred to monitoring officers**

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

#### **Section 195: References to Adjudication Panel for action in respect of misconduct**

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

#### **Section 196: Consultation with ombudsmen**

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

#### **Section 197: Interim case tribunals**

467. This section amends section 78 of the Local Government Act 2000 to provide that, where an interim case tribunal decides that a member should be suspended, the effect of the tribunal's notice is to suspend or partially suspend the member, rather than, as currently, requiring that the authority should take action to put the notice into effect. In addition, new provision is made for an appeal to the High Court against a decision by an interim case tribunal only to be possible where the permission of the High Court has been given.

#### **Section 198: Case tribunals: England**

468. This section inserts sections 78A and 78B into the Local Government Act 2000 in respect of case tribunals in England. Section 78A provides a new power for the Secretary of State to make regulations concerning the sanctions which a case tribunal can impose. Section 78B provides that a case tribunal must give notice of its decision on a case to the Standards Board, the member who is the subject of the allegation, and the person who made the allegation. The case tribunal must also publish its decision in one or more local newspapers. New provision is also made for an appeal to the High Court against a decision by a case tribunal only to be possible where the permission of the High Court has been given.

#### **Section 199: Case tribunals: Wales**

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

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### **Section 200: Exemption from Data Protection Act 1998**

470. This section inserts new sub-sections 31(7) and (8) of the Data Protection Act 1998 to provide that personal data processed by a monitoring officer, an ethical standards officer or the Public Services Ombudsman for Wales for the purpose of discharging any function under Part 3 of the Local Government Act 2000 are exempt from the subject information provisions of the Act to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

### **Section 201: Supplementary and consequential provision**

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

## **CHAPTER 2: EMPLOYEES**

### **Section 202: Politically restricted posts: grant and supervision of exemptions**

472. The Local Government and Housing Act 1989 provides that a person is disqualified from becoming a member of a local authority if he or she holds a politically restricted post. This section amends the 1989 Act so that the granting and supervision of exemptions from the political restriction will be the responsibility of the standards committee of each local authority in England, rather than that of the Independent Adjudicator. The section also provides that the Secretary of State may issue general advice with regard to the making of decisions on political restrictions. Before giving such general advice, the Secretary of State must consult those representatives of local government he considers appropriate.

### **Section 203: Politically restricted posts: consequential amendments**

473. This section makes consequential amendments to the Local Government and Housing Act 1989, the Environment Act 1995 and the Greater London Authority Act 1999 to ensure that the new arrangements are compatible with existing legislation.

### **Section 204: Political assistants' pay**

474. This section provides for the Secretary of State to make an order in relation to England which will specify the maximum pay of political assistants by reference to a point on a relevant pay scale. Welsh Ministers may make such an order in relation to Wales.

## **PART 11: JOINT WASTE AUTHORITIES**

### **Introduction**

475. Sections 205 to 211 concern the establishment of joint waste authorities. The provisions allow two or more local authorities to submit a proposal to the Secretary of State for the creation of a joint waste authority to discharge some, or all, of their waste functions (collection, disposal and/or street cleansing) through that authority. The decision to make a proposal to form a joint waste authority is a voluntary one. The Secretary of State may then implement the proposal, with or without limited modifications, by order.

476. The Secretary of State may issue guidance to advise authorities on what proposals for joint waste authorities should seek to achieve and the issues that authorities should consider

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when preparing proposals. The Secretary of State may also make regulations that set out what matters the proposals must cover and what information must accompany them.

477. The provisions give the Secretary of State the power to implement proposals by order, with or without modifications. However, the Secretary of State may not establish a joint waste authority for an area other than that specified in the proposal or to discharge functions other than those specified in the proposal.

478. The Secretary of State has the power to dissolve a joint waste authority in two circumstances: where all the member authorities have requested him to do so; or where he considers it necessary to do so.

### **Section 205: Proposals for joint waste authorities in England**

479. This section provides for local authorities to make proposals to create joint waste authorities in England and sets out the requirements for those proposals. *Subsection (2)* provides that a proposal may be made only by all the local authorities that are local waste authorities for the area specified in the proposal. *Subsection (3)* defines local waste authority for the purpose of subsection (2). *Subsection (4)* provides that a proposal may not be made if there is a local authority for the whole of the specified area which has all of the specified functions.

480. *Subsection (5)* provides that the Secretary of State may make regulations on the matters to be included in a proposal and information that is required to accompany a proposal. *Subsection (6)* provides further detail on the scope of the regulations made by the Secretary of State, such that they could require proposals to provide detail on the membership of joint waste authorities; procedures for appointing chairman and vice-chairman; and how costs of the proposed authority will be met by each of the local authorities.

481. *Subsection (7)* requires local authorities to have regard to any guidance issued by the Secretary of State as to what a proposal should seek to achieve and matters that should be considered when making a proposal. *Subsection (8)* sets out definitions for the section. *Subsection (9)* defines local authority for the purposes of this Part.

### **Section 206: Consultation**

482. *Subsection (1)* requires local authorities to consult relevant electors and any interested person in their area on a draft of the proposal. *Subsection (2)* defines ‘relevant electors’ for the purpose of subsection (1). *Subsection (3)* defines ‘local government electors’ for the purpose of subsection (2).

### **Section 207: Implementation of proposals by order**

483. *Subsection (1)* provides that the Secretary of State may implement a proposal for a joint waste authority in England by order with or without modification. *Subsection (2)* provides that any authority established under subsection (1) shall be referred to in this Part as a ‘joint waste authority’.

484. *Subsection (3)* allows the Secretary of State, in the order establishing the joint waste authority, to make provision enabling him to require that authority to submit a scheme for winding-up that authority, and for the transfer of its functions, property and staff, rights and liabilities, to appropriate local authorities. *Subsection (4)* allows the Secretary of State to implement any scheme submitted under subsection (3) by order to dissolve an authority.

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*Subsection (5)* sets out the limitations to the Secretary of State's powers under subsection (4) such that the Secretary of State can only dissolve an authority where a request is received from all the constituent local authorities or he considers it necessary to do so.

485. *Subsection (6)* provides that once an authority has been established the Secretary of State can by order exclude functions for which it has been established.

486. *Subsection (7)* allows incidental, consequential, transitional or supplementary provisions to be included in orders made under this section. *Subsection (8)* expands on the type of provisions that might be made under subsection (7), this would allow for provisions to address the details of the transfer of property, rights, liabilities, staff, other staffing matters, such as pensions, from constituent authorities to a joint waste authority, and ensure that any outstanding legal action regarding these matters is also transferred.

487. *Subsection (10)* sets out the limitations to the Secretary of State's powers under subsection (1). The Secretary of State cannot establish a joint waste authority for an area that is different from the area specified in the proposal, or establish a joint waste authority to discharge functions that are not specified in the proposal.

488. *Subsection (11)* sets out definitions of 'appropriate local authority' and 'waste functions' for the section.

#### **Section 208: Membership of joint waste authorities**

489. This section sets out the requirements for membership of joint waste authorities.

#### **Section 209: Consequential amendments**

490. This section sets out the necessary consequential amendments. *Subsection (1)* amends section 24 of the Waste and Emissions Trading Act 2003 to make joint waste authorities in England that have the disposal function waste disposal authorities for the purposes of the 2003 Act. *Subsection (2)* provides that other consequential amendments relating to joint waste authorities are provided in Schedule 13.

#### **Section 210: Joint waste authorities in Wales**

491. *Subsection (1)* provides that the Welsh Ministers may by order make provision which apply sections 205 to 208 in relation to Wales. Such an order may also apply any provisions of Part 17 (final provisions), in so far as those provisions relate to sections 205 to 208. An order under section 210 may apply the provisions of sections 205 to 208 with such modifications as the Welsh Ministers consider appropriate.

492. *Subsection (2)* allows incidental, consequential or supplementary provisions to be included in orders made under this section. These provisions may amend or modify any enactment or any instrument made under any enactment.

#### **Section 211: Interpretation**

493. This section sets out definitions for this Part of the Act for 'joint waste authority' and 'local authority'.

## **PART 12: ENTITIES CONTROLLED ETC BY LOCAL AUTHORITIES**

### **Introduction**

494. This Part replaces Part V of the Local Government and Housing Act 1989, which places propriety controls in relation to certain categories of local authority companies. Part 12 ensures that propriety controls may now be applied in relation to the wider range of entities through which local authorities in England and Wales now operate, rather than just to local authority companies. This Part allows for propriety controls to be applied to those entities in respect of which financial information must be included in the local authority's statement of accounts. Provision is also made to define terms in other enactments that currently rely on definitions in Part V of the 1989 Act.

### **Sections 212 and 213: Entities controlled etc by local authorities; Trusts**

495. Section 212 provides power for the Secretary of State, or Welsh Ministers (in relation to Welsh local authorities), to make an order requiring, prohibiting or regulating the taking of specified actions by entities connected with an English local authority. An Order may also require, prohibit or regulate the taking of specified actions by a local authority or certain members or officers of a local authority.

496. Orders made under the power may relate to all English (or Welsh) local authorities, authorities of particular descriptions or particular authorities. Orders may make provision in relation to all entities connected with a local authority or entities of a particular description.

497. Local authorities are defined as those bodies which are required to prepare a statement of accounts by regulations made under section 27 of the Audit Commission Act 1998 or section 39 of the Public Audit (Wales) Act 2004 in accordance with proper practices and are local authorities for the purposes of section 21 of the Local Government Act 2003 (accounting practices). Proper practices under section 21 of the Local Government Act 2003 are defined, by virtue of secondary legislation, as including the Code of Practice on Local Authority Accounting in the United Kingdom – A Statement of Recommended Practice (“SORP”) as published by the Chartered Institute of Public Finance and Accounting (CIPFA).

498. An entity is stated to be “connected with” a local authority if financial information about that entity must be included in the local authority's statement of accounts. For the purposes of this Part, a local authority itself does not qualify as such an entity.

499. It is intended to use the Order making powers to enable propriety controls to apply to the wider range of entities through which local authorities in England and Wales now operate rather than just to local authority companies as currently defined in Part V of the Local Government and Housing Act 1989 (and the Local Authorities (Companies) Order 1995 made under this part).

500. Section 213 brings trusts and trustees within the provisions that can be made under Section 212.

### **Section 214: Further provision about orders**

501. Section 214 makes further provision as to what an Order made under Section 212 may include. An Order may require an entity, a local authority or trustees to obtain the consent of

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the Audit Commission (in England), or the Auditor General for Wales (in Wales), before taking a particular action.

502. Under Section 214(3) an Order may also require a local authority to make arrangements for enabling questions to be put to certain members or officers of the authority including those who are members, directors or holders of specified positions with the entity concerned. An Order under this power may prescribe circumstances in which a local authority would be prohibited from taking action which would permit a person becoming a member, director, or holder of a specified position in relation to an entity. An Order may also require an authority to ensure that, as far as practicable, entities connected with that authority comply with the provisions of any Order applicable to them. Section 214(4) makes provisions in relation to trusts and trustees which corresponds to the provisions in Section 214(3).

503. Where an Order makes provision in relation to entities, trusts, or trustees, of a particular description it may provide for any expression used in identifying the description of the entity to have the meaning given, for the time being, by a “relevant document” identified by the Order. Section 214(7) defines a relevant document as a document which has been identified as proper practices for the purposes of section 21(2)(b) of the Local Government Act 2003 by regulations made under section 21 of that Act. The intention is that descriptions are able to be based on documents such as those setting out standard local authority accounting practices, for example SORP, without needing to amend the Order where changes are made to such documents.

#### **Section 215: Exemptions from orders**

504. Section 215 provides the Secretary of State (in England), and Welsh Ministers (in Wales), with a power to give a Direction exempting an entity or a particular description of entities from any Order made under Section 212. A Direction may be time limited, may contain conditions and is capable of being varied or revoked by a subsequent Direction. A Direction may also be made in relation to trusts or trustees.

#### **Section 216: Consequential amendments**

505. Section 216 repeals Part V of the Local Government and Housing Act 1989 and brings into effect Schedule 14 (other consequential amendments). Section 216(3) – 216(5) provide that amendments made in statutory instruments as a result of the repeal of Part V of the 1989 Act may provide for an expression used to have the meaning given, for the time being, by a document which has been identified as proper practices for the purposes of section 21(2)(b) of the Local Government Act 2003 by regulations made under section 21 of that Act. The intention, as with Orders made under section 212, is that descriptions are able to be based on documents such as those setting out standard local authority accounting practices, for example SORP, without needing to amend the Order where changes are made to such documents.

#### **Sections 217 and 218: Definition of certain terms in amended enactments: England and Wales**

506. Schedule 14 to the Act makes a number of consequential amendments to replace references in other legislation to Part V of the Local Government and Housing Act 1989. Section 217 provides a power for the Secretary of State by Order to define the terms included, by Schedule 14, in those other enactments. The Order may provide for the definitions inserted by Schedule 14 to have the meaning given, for the time being, by a

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document which has been identified as proper practices for the purposes of section 21(2)(b) of the Local Government Act 2003 by regulations made under section 21 of that Act. The intention, as with Orders made under section 212, is that descriptions are able to be based on documents such as those setting out standard local authority accounting practices, for example SORP, without needing to amend the Order where changes are made to such documents. Section 218 makes similar provision for Welsh Ministers to define expressions for the purposes of other enactments.

## **PART 13: THE VALUATION TRIBUNAL FOR ENGLAND**

### **Introduction**

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

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

509. Part 13 of this Act makes provision to replace the 56 VTs in England with a single Valuation Tribunal for England (VTE). It creates the new positions of VTE President and Vice-Presidents, which may be remunerated, and provides that appointments to the VTE be made by the Lord Chancellor on the advice of the Judicial Appointments Commission.

### **Section 219: Establishment of the Tribunal**

510. Section 219 establishes the VTE (by giving effect to Schedule 15 to the Act), abolishes the 56 VTs created under the 1988 Act and provides for the transfer of jurisdiction.

### **Section 220: Consequential and transitional provision etc**

511. Section 220 makes consequential amendments relating to the establishment of the VTE (by means of Schedule 16 to the Act). It also enables the Secretary of State to make regulations which supplement or give full effect to the establishment of the VTE, including (in particular) the power to make arrangements for appointing VTE members until the Lord Chancellor, on advice from the Judicial Appointments Commission, takes over the role of making those appointments.

## **PART 14: PATIENT AND PUBLIC INVOLVEMENT IN HEALTH AND SOCIAL CARE**

### **Introduction**

512. Section 237 of the National Health Service Act 2006 (“the 2006 Act”) requires the Secretary of State to continue the establishment of Patients' Forums for NHS trusts, Primary Care Trusts and NHS foundation trusts. The principal role of Patients' Forums is to monitor and review the provision of health services on behalf of patients.

513. Section 243 of the 2006 Act provides for the Commission for Patient and Public Involvement in Health ("CPPIH"). The CPPIH represents, supports, and manages the

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performance of, Patients' Forums. It also has a role in advising the Secretary of State on arrangements for public involvement in, and consultation on, matters relating to the health service.

514. Part 14 of the Act makes provision for the abolition of Patients' Forums and the CPPIH. In their place, it imposes a duty on local authorities to make contractual arrangements for the involvement of people in the commissioning, provision and scrutiny of health services and social services. It is expected that, under the arrangements, particular bodies (whether existing or newly-created) will be given the task of being the means through which such involvement is achieved. Such a body is referred to as a "local involvement network" (although the Act does not require use of that title).

515. Section 242 of the 2006 Act provides for public involvement and consultation on the planning of the provision of health services, proposals for change in the way that those services are provided and decisions to be made affecting the operation of those services. Section 242 applies to health service bodies in England and Wales. Part 14 of the Act amends section 242 as it applies to certain English health-service bodies. Section 242 also applies to NHS trusts all or most of whose hospitals, establishments and facilities are in Wales: the Act does not alter the way in which section 242 applies to those trusts.

516. Part 14 amends the 2006 Act so as to impose a duty on Strategic Health Authorities to make arrangements to secure that health service users are involved in matters to be set out in regulations.

517. Part 14 amends the 2006 Act to impose a new duty on each Primary Care Trust and Strategic Health Authority to report on consultation arrangements and the influence that the results of consultation have on commissioning decisions.

### **Local involvement networks**

#### **Section 221: Health services and social services: local involvement networks**

518. This section imposes a duty on local authorities to make contractual arrangements for the involvement of people in the commissioning, provision and scrutiny of health and social services.

519. *Subsection (1)* requires each local authority (as defined in section 229) to ensure there are means in place to facilitate the carrying out of the specified activities (listed under *subsection (2)*). The specified activities are to promote involvement and provide support for the involvement of people in the commissioning, provision and scrutiny of local care services (as defined in *subsection (6)*). In addition the specified activities will include enabling people to monitor, and review, the commissioning and provision of local care services for the purpose of considering standards of local care and whether and how they could or ought to be improved. The activities also include obtaining the views of people about their needs for, and experiences of, those services and may involve making reports and recommendations to people responsible for commissioning, providing, managing or scrutinising those services about how local care services could be improved.

520. *Subsections (4) and (5)* provide that the Secretary of State may, by regulations, add to the activities specified in subsection (2) after consulting with such persons as he considers appropriate.

### **Section 222: Arrangements under section 221(1)**

521. This section contains rules about the arrangements that will be made by the local authority for the purposes of ensuring that there is a means to carry out the activities specified in section 221(2).

522. *Subsections (2) to (4)* have the effect that the local authority will have to enter into contractual arrangements with another person. That person (referred to as the “host”, although not called that in the Act) must not be a local authority, a National Health Service trust, an NHS foundation trust, a Primary Care Trust or a Strategic Health Authority. In addition, the arrangements must ensure that the host cannot also be a local involvement network (as defined in subsection (2)). In other words, these subsections envisage a chain of three different people: local authority – host – local involvement network.

523. Subsection (4), as well as ensuring that a local involvement network is a person distinct from the host, also specifies – with a view to securing the independence of local involvement networks – that a network must not be any of the following:

- a local authority
- a National Health Service trust
- an NHS foundation trust
- a Primary Care Trust or
- a Strategic Health Authority

524. *Subsection (5)* ensures that the arrangements can allow for local involvement networks to work together on a regional or national basis in relation to activities specified in section 221(2).

525. *Subsection (6)* enables arrangements to include the making of payments by the local authority and *subsection (7)* provides that arrangements must include the required provision about annual reports (see section 227).

### **Section 223: Arrangements: power to make further provision**

526. This section places a duty on the Secretary of State to make regulations providing that the arrangements made by a local authority must require the host to include prescribed provision in the arrangements that the host makes when setting up a local involvement network. In particular, the regulations may require the local authority to require the host to include provisions relating to the ways certain decisions are to be taken by the local involvement network, the authorisation of individuals able to enter the premises of health and social care providers, the use of money by the local involvement network and the consequences if the local involvement network contravenes any provision of its arrangements with the host.

### **Section 224: Duties of services-providers to respond to local involvement networks**

527. This section allows the Secretary of State to make regulations which will impose a duty on services-providers to respond to requests for information made by local involvement networks and deal with reports or recommendations made by local involvement networks. Before making any regulations, the Secretary of State must consult with such persons as he considers appropriate.

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528. The meaning of “services-provider” given in sections 224 and 225 includes certain NHS bodies, local authorities (as defined in section 229) and any other person prescribed in regulations made by the Secretary of State.

#### **Section 225: Duties of services-providers to allow entry by local involvement networks**

529. This section places a duty on the Secretary of State to make regulations imposing a duty on services-providers to allow authorised representatives of local involvement networks to enter and view, and observe the carrying on of activities on, premises owned or controlled by services-providers. Such visits will enable local involvement networks to carry on, in particular, their activities in connection with the scrutiny and monitoring of local care services. Before making these regulations the Secretary of State must consult with appropriate persons.

530. *Subsections (2) and (3)* provide that the regulations may include provisions which place conditions, restrictions and limitations on the duty to allow entry by local involvement networks. This will allow the regulations to limit local involvement networks’ access to certain premises or in relation to certain activities to ensure patient safety and dignity or to ensure that their viewing of a facility is appropriate to the carrying on of local involvement networks’ activities. Regulations could, for example, limit access to an operating theatre when an operation is taking place. These provisions may require certain conditions to be satisfied before any duty arises, may describe those authorised representatives to whom the duty may or may not apply, may limit the numbers to whom the duty applies or may limit hours during which the duty applies.

531. *Subsection (4)* provides that any authorised representative entering premises as a result of these regulations must comply with all applicable conditions and restrictions imposed by the regulations.

#### **Section 226: Local involvement networks: referrals of social care matters**

532. This section provides that where a local involvement network refers a matter relating to social care services to an overview and scrutiny committee, that committee must acknowledge receipt of the referral and keep the referrer informed of the committee’s actions in relation to the matter. This section allows the Secretary of State to make regulations providing for the time in which the committee must acknowledge receipt of such a referral.

533. This section relates only to referrals of social care matters because there are existing regulation-making powers in section 244(2) of the 2006 Act which relate to scrutiny of health services. Together, the existing regulation-making powers, and the provisions of this section, will ensure that overview and scrutiny committees are required to respond to local involvement networks on the health and social care matters that they refer.

534. *Subsections (3) to (5)* require the committee to decide whether its powers are exercisable in relation to the matter and, if they are, whether or not they are to be exercised. In exercising those powers, the committee must take into account relevant information provided by a local involvement network.

#### **Section 227: Local involvement networks: annual reports**

535. This section sets out the required provision about annual reports referred to in section 222(7).

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536. Section 222(7) requires that arrangements under section 221(1) entered into by a local authority with a host must include the required provision about annual reports. The arrangements will require that an annual report must be prepared, by each local involvement network put in place by the host, on the activities of the local involvement network in each financial year. Where a local involvement network does not produce an annual report, the arrangements must provide for the host to produce it. The arrangements must also require that the report complies with certain requirements set out in *subsection (3)*, that the report must be prepared by 30 June following the end of each financial year and that copies of it should be made publicly available (having had regard to guidance issued by the Secretary of State that may be in force at the time) and sent to the bodies specified in *subsection (4)*.

537. The requirements set out under *subsection (3)* are that the report must address such matters as the Secretary of State may direct and must include details of amounts spent in relation to the local involvement network's activities. Where in any financial year there are activities for which a host is required to, but has not, put in place a local involvement network, the host will be required to prepare a report in relation to those activities, including details of amounts spent on those activities (which are likely to include amounts spent in attempting to put in place a local involvement network to carry on those activities).

#### **Section 228: Transitional arrangements**

538. This section provides for transitional arrangements between the end of Patients' Forums and the start of local involvement networks. It places a temporary duty on local authorities to ensure that there are means by which the activities specified in section 221(2) can be carried on in their area in the event that contractual arrangements are not yet in place. Regulations will set the period that the temporary duty will last and may set out the ways in which the temporary duty may or may not be complied with (for example, making it clear that local authorities may not perform the activities themselves) and the reporting requirements that are to be imposed on the local authority and any person undertaking the activities under arrangements made by the local authority.

#### **Section 229: Sections 221 to 228: interpretation and supplementary**

539. *Subsection (1)* defines "local authority" for the purposes of sections 221 to 228.

540. *Subsection (2)* gives the Secretary of State power to make incidental, supplementary, consequential, transitory or transitional provision or savings when making regulations under sections 221 to 228.

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

##### **Section 230: Abolition of functions of Patients' Forums**

541. This section abolishes specified functions of Patients' Forums, the Secretary of State's regulation-making power to confer rights of entry on members of Patients' Forums and regulation-making power to make provision about the membership of Patients' Forums.

542. *Subsection (2)* makes provision for preparation of final reports and accounts, when the functions of the Patients' Forums are abolished. Should this happen on a date other than at the end of the financial year, a Patients' Forum must prepare annual accounts for the final reporting period as if that date were the end of the financial year. The report must be sent to the Commission for Patient and Public Involvement in Health within 2 months of that date.

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543. *Subsection (3)* requires that the final report includes details of anything being done by a Patients' Forum which is outstanding when these Patients' Forum functions are abolished.

544. The final reporting period will end when this section comes into force, and runs from the preceding 1 April.

545. A Patients' Forum is not required to prepare a report or annual accounts in relation to any period after the end of the final reporting period.

### **Section 231: Abolition of Patients' Forums**

546. This section abolishes Patients' Forums by omitting the provisions of the 2006 Act which establish Patients' Forums, provide for the appointment of their members and make provisions about Patients' Forums' annual reports.

547. *Subsection (2)* makes provision for the transfer of property, rights and liabilities of each forum to the Secretary of State for Health. Under *subsection (3)*, any legal proceedings relating to anything transferred may be continued by or in relation to the Secretary of State for Health.

### **Section 232: Abolition of Commission for Patient and Public Involvement in Health**

548. This section abolishes the Commission for Patient and Public Involvement in Health by omitting the provisions in the 2006 Act which establish the Commission and its functions.

549. *Subsection (2)* makes provision for the transfer of property, rights and liabilities of the Commission to the Secretary of State for Health. Under *subsection (3)*, any legal proceedings relating to anything transferred may be continued by or in relation to the Secretary of State for Health.

550. *Subsections (4) and (5)* state that the Secretary of State may fix the Commission's final reporting period once he is satisfied that the Commission has substantially carried out its function of reviewing Patients' Forums' final annual reports.

551. The final reporting period must begin on a 1st April, but can be longer or shorter than a year, as the Secretary of State fixes it.

552. The Commission is not required to prepare a report or annual accounts in relation to any period after the end of the final reporting period.

### **Consultation about health services**

#### **Section 233: Duty to involve users of health services**

553. This section amends section 242 of the National Health Service Act 2006 ("the 2006 Act") which sets out the current duty to involve and consult users of health services. This section also inserts new sections 242A and 242B into the 2006 Act.

554. Section 242 applies to Strategic Health Authorities, Primary Care Trusts, NHS trusts and NHS foundation trusts. However, the amendments do not change how section 242 applies to NHS trusts all or most of whose hospitals, establishments and facilities are located in Wales. The amendments do alter how section 242 applies to the rest of the bodies to which the section applies, and the bodies to which the amendments do apply are referred to as "relevant English bodies". The amendments replace the existing duty imposed by section 242 on relevant English bodies with a new duty to make arrangements to involve the users of health services.

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555. The new section 242(1B) provides that relevant English bodies must involve (whether by consultation or provision of information, or in other ways) users of health services in the planning of the provision of services, the development and consideration of proposals for change in the way services are provided and decisions affecting the operation of services. In relation to the development and consideration of proposals for changes to services, or decisions affecting the operation of those services, the duty to involve will arise only where the proposal for change to, or decision affecting the operation of, services would have an impact on the range, or manner of delivery, of services received by the user.

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

557. New section 242A confers a duty on the Secretary of State to make regulations requiring a Strategic Health Authority to make arrangements to ensure that users of health services are involved in matters specified in regulations. In complying with this duty a Strategic Health Authority must have regard to any guidance issued by the Secretary of State, about how the duty to involve should be carried out and when and how often that involvement should occur.

558. New section 242B gives the Secretary of State the power to make regulations enabling Strategic Health Authorities to give directions, in certain circumstances, to Primary Care Trusts in relation to arrangements that the Primary Care Trust might make for the involvement of patients and the public in accordance with section 242. Those circumstances are where the Strategic Health Authority will be making arrangements for involvement.

### **Section 234: Reports on consultation**

559. This section amends the 2006 Act to impose a duty on Strategic Health Authorities and Primary Care Trusts to report, at times directed by the Secretary of State on consultations they have conducted, or intend to conduct, in relation to commissioning decisions for which they are responsible.

560. The reporting duty in respect of Primary Care Trusts will also apply to consultations not undertaken by a Primary Care Trust itself but which have an impact on commissioning decisions.

561. This section also places a duty on Strategic Health Authorities to prepare a report, at times directed by the Secretary of State, on certain other consultations it has carried out and what influence the views gathered have had on matters specified in that direction.

562. The Secretary of State has a power to give directions in relation to reports on consultation.

## **PART 15: POWERS OF NATIONAL ASSEMBLY FOR WALES**

### **Introduction**

563. Part 15, together with Schedule 17, of the Act makes amendments to Part 1 of Schedule 5 to the Government of Wales Act 2006 (the 2006 Act) so as to confer enhanced legislative competence on the Assembly in specific fields. Section 93 of the 2006 Act enables the Assembly to make laws known as Assembly Measures. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is within the Assembly's competence if it

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relates to (or is incidental to or consequential on provision that relates to) one or more of the matters specified in the fields listed in Part 1 of Schedule 5 to the 2006 Act. Sections 93 and 94 of the 2006 Act came into force immediately after the National Assembly election on 3 May 2007. Part 1 of Schedule 5 to the 2006 Act lists twenty fields in which the Assembly currently exercises functions and each field will be divided into matters. Field 12 provides for matters in the field of local government. An Assembly Measure may include any provision that could be made by Act of Parliament, subject to specific restrictions set out in Part 2 of Schedule 5 to the 2006 Act.

### **Section 235: Powers of National Assembly for Wales**

564. Section 235 gives effect to Schedule 17 to the Act.

## **PART 16: MISCELLANEOUS**

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

#### **Section 236: Exercise of functions by local councillors in England**

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

#### **Section 237: Exercise of functions under section 236: records**

566. The purpose of this section is to ensure transparency and accountability. It empowers the Secretary of State to make regulations to ensure that records are kept of decisions or actions taken by councillors under section 236, and that such records are deposited with the local authority. The local authority must make the records available for inspection by members of public. If certified in accordance with section 41(2C) of the Local Government (Miscellaneous Provisions) Act 1976 (inserted by *subsection (3)*), copies of such records are evidence, for the purposes of court proceedings, of the terms of the decision, or nature of the action, which they describe.

### **Accounting**

#### **Section 238: Amendments relating to capital finance and accounting practices**

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

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

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## **Contracting Out**

### **Section 239: Contracting out**

569. The Deregulation and Contracting Out Act 1994 gives the Secretary of State the power to make an order enabling bodies which are local authorities for the purposes of that Act to contract out the functions specified in the order. One such order was made in 1996 to permit the contracting out of investment functions – something which authorities often wish to contract out to private-sector specialists. The Act will bring the definition of “local authority” for the purposes of the Deregulation and Contracting Out Act 1994 broadly in line with the definition of a “local authority” used for the purposes of the “prudential” capital finance system, in Part 1 of the Local Government Act 2003. This will in particular enable a new order which applies to a wider class of bodies to be made on the contracting out of investment functions.

## **PART 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

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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".

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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.

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### ***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

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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).

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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:

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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.

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### **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).

### **COMMENCEMENT DATE**

632. Section 245 makes provision about commencement. In general the provisions of the Act will be brought into force by order made by the Secretary of State. Certain provisions of the Act will come into force on the day on which the Act is passed; these are set out in *subsection (1)* of section 245. Certain provisions will come into force at the end of two months beginning with the day on which the Act is passed; these are set out in *subsection (2)* of section 245. Certain provisions will be brought into force in relation to Wales by order made by the Welsh Ministers; these are set out in *subsection (3)* and *(4)* of section 245.

### **HANSARD REFERENCES**

633. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
<i>House of Commons</i>		
Introduction and First Reading	12th December 2006	Vol. 454 Col. 750
Second Reading	22 <sup>nd</sup> January 2007	Vol. 455 Cols. 1144-1259
Committee	30 <sup>th</sup> January 2007 – 8 <sup>th</sup> March 2007	Official Report, Local Government and Public Involvement in Health Public Bill Committee: 1 <sup>st</sup> – 18 <sup>th</sup> sittings
Report	17 <sup>th</sup> May 2007 22 <sup>nd</sup> May 2007	Vol. 460 Cols. 773-864 Vol. 460 Cols. 1136-1236
Third Reading	22 <sup>nd</sup> May 2007	Vol. 460 Cols 1236-1246
<i>House of Lords</i>		
Introduction and First Reading	23 <sup>rd</sup> May 2007	Vol. 692 Col. 645
Second Reading	20 <sup>th</sup> June 2007	Vol. 693 Cols. 220-296
Committee	5 <sup>th</sup> July 2007	Vol. 693 Cols. 1135-1163; 1167-1222 Vol. 693 Cols. 1286-1306;

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	10 <sup>th</sup> July 2007	1326-1355; 1362-1382
	11 <sup>th</sup> July 2007	Vol. 693 Cols. 1423-1457; 1475-1496
	16 <sup>th</sup> July 2007	Vol. 694 Cols. 25-77; 89-124
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