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The Local Government and Public Involvement in Health Bill Committee Stage Report

This is a report on the Committee Stage of the *Local Government and Public Involvement in Health Bill*, produced in response to a recommendation of the Modernisation Committee in its report on *The Legislative Process* (HC 1097, 2005-06).

This is a pilot Committee Stage Report and we would welcome all feedback on its content and format. This should be sent to papers@parliament.uk or to the Director of Research Services, Rob Clements (x3622).

The Bill seeks to enact many of the provisions of the local government white paper – *Strong and prosperous communities* (Cm 6939). The main themes from the white paper are (1) empowerment of communities: measures include delegation to councils of the power to create parishes and introduction of a community call for action, (2) making local government more effective and accountable through changes to leadership and electoral arrangements, the standards regime and the two-tier structure, (3) strengthening the community leadership role of councils, and (4) simplifying the performance and inspection framework. There are also a number of measures designed to enhance patient and public involvement in health and social care.

Keith Parry

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Summary of Bill

The *Local Government and Public Involvement in Health Bill* gives legislative effect to many of the proposals contained in the local government white paper, *Strong and prosperous communities* (Cm 6939), published in October 2006. Four major themes of the white paper give rise to measures in the Bill.

Firstly, the Government aims to create more effective and accountable local government and, in this context, the provisions on council restructuring and new leadership arrangements are likely to be among the more controversial. The Bill provides for:

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

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

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

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

- Devolving the power to create parishes, and other forms of community governance, to district and unitary authorities; allowing parishes to be created in London;
- Introducing a “community call for action” procedure whereby councillors may involve overview and scrutiny committees in resolving issues of concern to their constituents;
- Revising the duty on best value authorities to require them to secure the participation of local people in service design and delivery.

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

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

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

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

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

Among the more significant changes made to the Bill in committee were:

- Measures to enable local authorities to create joint waste authorities;
- A statutory duty on local authorities and PCTs to co-operate in producing a joint strategic needs assessment of the health and social care needs of the local area.

Ministerial undertakings given in committee included commitments to place limits on the proposed power of the Secretary of State to direct local authorities to submit restructuring proposals, and to include NHS trusts among the group of partner authorities within LAAs.

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

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I Introduction

The *Local Government and Public Involvement in Health Bill* was introduced into the Commons on 12 December 2006 and was debated on second reading on 22 January 2007.¹ Committee stage commenced with evidence-taking sessions on 30 January 2007, and continued until 8 March. A Library research paper – *The Local Government and Public Involvement in Health Bill* (RP 07/01, 10 January 2007) – provides briefing on the main provisions of the Bill. A Bill Gateway is available on the intranet and the progress of the Bill, together with relevant documentation, can be tracked on the parliamentary internet.²

II Second reading

The second reading debate on 22 January 2007 was opened by **Ruth Kelly**, Secretary of State for Communities and Local Government. She said that the Bill implemented the majority of proposals contained in the white paper, *Strong and prosperous communities* (Cm 6939). The paper had resulted from extensive consultation and she believed the Government had forged a “high degree of consensus in the local government community.” She explained that the short deadline for unitary proposals was to avoid a lengthy period of distraction for local authorities. The Bill represented “...the start of a devolutionary process” which would take in the conclusions of the comprehensive spending review and the Lyons Inquiry. The principle behind the Bill was that local people are best placed to determine local issues. It contained “...significant proposals to empower communities, enhance the leadership role of local government and bring about a radical change in the nature of the relationship between central government and local government and its partners.”

Caroline Spelman, Conservative Shadow Secretary of State, moved a reasoned amendment, as follows:

That this House declines to give a second reading to the Local Government and Public Involvement in Health Bill because it fails to provide the freedom and powers to meet the needs of communities as claimed by the White Paper; would lead to further centralisation because of the new power for the Secretary of State to direct councils to restructure; would lead to the costs of restructuring falling on over-burdened council tax payers; fails to return powers on housing, planning, transport, learning and skills from unelected regional bodies to local government; fails to impose an upper limit for the number of performance targets used by central government to micro-manage local government; fails to give NHS patients and the public an independent and investigative public services watchdog, or a national voice for patients; and fails to fulfil the Government’s pledge in the White Paper ‘Our health, Our care, Our say’ to give local councillors a commissioning role in public health.

¹ HC Deb 22 January 2007 cc1144-1253

² http://www.publications.parliament.uk/pa/pabills/200607/local_government_and_public_involvement_in_health.htm

Mrs Spelman elaborated on the themes in the motion. On restructuring, she said the House was being asked to grant the Secretary of State power to “abolish or rearrange great swathes of local government” without warning or consultation. On council leadership she attacked the Government for refusing to let councils decide for themselves whether they wanted a cabinet or a committee system. Many of the measures in the Bill might seem localist but “...beneath the surface do nothing to loosen the stranglehold of central government over local government.” But its biggest failings, she said, were in not addressing the problem of council tax levels and in not abolishing costly and unaccountable regional assemblies.

Andrew Stunell, Liberal Democrat Shadow Secretary, said the Bill represented quantity not quality. It failed to tackle key issues such as electoral reform and local government financing. He questioned the council leadership models proposed by Government and, more fundamentally, why the Government felt bound to intervene at all in the internal management of local authorities. Other comments concerned proposed new mechanisms for public involvement in health, changes to the standards regime and the extent of the Government’s restructuring exercise. He said that the Bill offered no commitment “...to rebuilding a strong democratic society, and no vision for the future of grass-roots democracy.”

At the end of the debate, winding-up speeches were made by **Alistair Burt**, Shadow Minister for Communities and Local Government, and the Communities and Local Government Minister, **Phil Woolas**. The Liberal Democrats voted with the Conservatives in support of the amendment but it was defeated by 283 votes to 206. The House then agreed second reading by 280 to 206.

III Committee stage

A. Commentary and note on evidence

The Bill’s committee stage began on 30 January 2007. The Co-Chairman, Joe Benton, announced that this was an historic occasion in that it was the first time that a Public Bill Committee would be hearing oral evidence on a Bill. Evidence was taken at the first four sessions and written evidence was also received and published. Clause-by-clause consideration of the Bill commenced at the fifth sitting on Tuesday 6 February. Committee proceedings can be viewed on the parliamentary internet.³ The following table shows the pattern of the Committee’s deliberations:

1 st sitting	30 January 2007 (am)	Oral evidence: Local Government Association
2 nd sitting	30 January 2007 (pm)	Oral evidence: District Councils Group (LGA); London Councils; Health Link
3 rd sitting	1 February 2007 (am)	Oral evidence: Unlock Democracy
4 th sitting	1 February 2007 (pm)	Oral evidence: Ministers and officials: DCLG and Department of Health
5 th sitting	6 February 2007 (am)	Structure and boundaries

³ <http://www.publications.parliament.uk/pa/cm/cmpblocalgov.htm>

6 th sitting	6 February 2007 (pm)	Structure and boundaries
7 th sitting	8 February 2007 (am)	Structure and boundaries/ Elections
8 th sitting	20 February 2007 (am)	Elections/ Executive arrangements
9 th sitting	20 February 2007 (pm)	Executive arrangements/ Parishes
10 th sitting	22 February 2007 (am)	Parishes
11 th sitting	22 February 2007 (pm)	Parishes/ Local Area Agreements/Overview and scrutiny
12 th sitting	27 February 2007 (am)	Byelaws/ Best value/ Audit Commission
13 th sitting	1 March 2007 (am)	Standards of conduct
14 th sitting	1 March 2007 (pm)	Standards of conduct/ Valuation Tribunal for England/ Public involvement in health
15 th sitting	6 March 2007 (am)	Patient and public involvement in health
16 th sitting	6 March 2007 (pm)	Patient and public involvement in health
17 th sitting	8 March 2007 (am)	Wales/ Miscellaneous/ New clauses
18 th sitting	8 March 2007 (pm)	New clauses/ Final provisions/ Schedules

Written evidence was submitted by the following organisations:

Bring Back Democracy	LGPI 14
Calderdale Patient and Public Involvement in Health Forum	LGPI 12
Centre for Public Scrutiny	LGPI 1
Commission for Racial Equality	LGPI 3
Committee on Standards in Public Life	LGPI 17
Electoral Reform Society	LGPI 5
Health Link	LGPI 10
Local Government Association	LGPI 7
Local Government Information Unit	LGPI 9
London Councils	LGPI 2
Mayor of London	LGPI 11
National Association of Local Councils	LGPI 13
NHS Confederation	LGPI 6
North Yorks and York Patient and Public Involvement in Health Forums	LGPI 15
Patient and Public Involvement Specialist Forums of North East England	LGPI 8
Unlock Democracy	LGPI 4
Worcestershire Patient and Public Involvement in Health Forums	LGPI 16

The arrangement of this paper follows the broad pattern of the Bill. Within each section, significant amendments made or new clauses added are noted, as are any ministerial undertakings given in committee. Major areas of debate are also indicated even where no amendments were carried.

B. Structure and boundaries

1. Ministerial undertakings: power to direct

The Bill provided the Secretary of State with a power to direct, as well as to invite, local authorities in two-tier areas to make proposals for single-tier government. The power to direct was opposed by the Local Government Association from the outset. Matthew Warburton, LGA Head of Strategy, had written:

This has been defended as necessary to provide a statutory framework for future rounds of restructuring, and to allow 'tidying-up' restructuring when the greater part of an area has been restructured and what remains leave no viable basis for two tiers. Neither argument justifies such wide powers. The White Paper proposed a single round of bids, not a long-term agenda for unitary government. Any need to tidy up around successful bids could be met by powers specifically limited for that purpose.⁴

Ruth Kelly referred during second reading to a Government commitment to narrow the scope of the power to direct.⁵ Sir Jeremy Beacham, LGA Vice Chairman, gave evidence to the Committee and pressed for the power of direction to be "...limited in terms of both time and object."⁶ Phil Woolas, Local Government Minister, said in his oral evidence that the Government was seeking to redefine the power in a way that would satisfy the LGA.⁷ The matter was debated in the Committee's fifth sitting when Alistair Burt moved an amendment to clause 2 designed to remove the power. He said:

Our central concern is that the Bill provides the Government with significant, unlimited power to make directions to local authorities to merge and change shape, and effectively to redraw the local government map of England and Wales.

Mr Woolas confirmed that the Government was committed to narrowing the direction-making power, possibly by time-limiting it for one year and combining that with a formal undertaking to use it only to deal with residual areas affected by a successful proposal. The Conservative amendment was withdrawn.⁸ The Minister subsequently circulated a draft amendment along the above lines for tabling at report stage.⁹

2. Other significant areas of debate

Andrew Stunell moved an amendment to clause 2 which would have set a time limit on the power to invite proposals for unitary structures. He said that the Liberal Democrats were in favour of the present window of opportunity for restructuring but wished to ensure that councils did not waste unnecessary resources and effort in future because of the *possibility* of further reorganisation. Phil Woolas assured the Committee that there were no plans for a further round of reorganisation but said that the power to invite was required to address circumstances where a structural change became necessary in order to make sense of a boundary change. The amendment was negated on division.¹⁰

⁴ Matthew Warburton, "What we want from the Bill", *Municipal Journal*, 11 January 2007 pp14-15

⁵ HC Deb 22 January 2007 c1159

⁶ PBC Deb 1 February 2007 c13

⁷ PBC Deb 1 February 2007 c86

⁸ PBC Deb 6 February 2006 cc124-141

⁹ Dep 07/539

¹⁰ PBC Deb 6 February 2007 cc117-123

The issue of public consultation over proposals for unitary structures had been discussed in the evidence-taking sessions¹¹ and was debated in Committee. Alistair Burt asked how authorities could be expected to demonstrate public support for a proposal given the short deadline. In his reply, the Minister emphasised the importance of wider consultation during the next stage of the process.¹²

Measures to restrain those authorities facing dissolution from disposing of assets and entering into major contracts were discussed at some length. Robert Syms, Conservative Shadow Local Government Minister, moved an amendment to clause 24 which would have allowed an authority in this position to use its reserves to reduce council tax if it wished to do so. The Minister opposed the amendment, stating that: “We do not want to restrict local authorities’ freedom unreasonably, but we want to act in the long-term interests of the council tax payer.”¹³ The amendment was withdrawn, as was a later amendment which sought to vary the date specified in clause 27 (31 December 2006) after which restrictions apply to contract negotiation and to asset disposals. The Minister gave assurances that there would not be a long-term ‘blight’ on decision-making in the councils affected.¹⁴

C. Elections

1. Amendments made and new clauses added: combined local and European Parliament elections

The Government’s new clause 19 amended the *Representation of the People Act 1983* to provide the Secretary of State (and Assembly Government ministers in Wales) with the power to move the date of local elections to the same day as that of the European Parliament elections when they fall in the same year. The Government took powers in the *Local Government Act 2003* to do this at the time of the last EP elections in 2004. But the Parliamentary Under-Secretary, Angela E. Smith, noted that that power had applied only for the 2004 elections, and this was a “recurring issue”.

She said that the measure was designed to enhance voter convenience and cited improved turnout figures for the 2004 EP elections over those for 1999. Nevertheless, she acknowledged that it might not always be appropriate to combine elections. An order implementing a change of date would be subject to affirmative resolution procedure and would therefore require parliamentary approval. The clause was agreed and added to the Bill as clause 39.¹⁵

2. Ministerial undertakings: moving from all-out elections

Clause 32(6) of the Bill prevents a council from moving back to part-council elections once it has opted for all-out elections. This one-way process was criticised in oral evidence sessions by Gordon Keymer, Chairman of the Conservative District Councils

¹¹ PBC Deb 1 February 2007 cc88-89

¹² PBC 6 February 2007 cc151-162

¹³ PBC Deb 6 February cc185-192

¹⁴ PBC Deb 8 February 2007 cc199-204

¹⁵ PBC Deb 8 March 2007 cc589-599

Group in the LGA, and by Peter Facey, Director of Unlock Democracy.¹⁶ Andrew Stunell raised the matter in the ministerial evidence session¹⁷ and subsequently spoke to a set of amendments in Committee which were designed to allow authorities to move in either direction.¹⁸ A number of Labour Members made clear their opposition to the one-way process. Among them, Sir Peter Soulsby thought that the restriction would make councils less likely to want to experiment while Patrick Hall said that it was the wrong approach - "It is not devolution, and I hope that Ministers will reflect upon that."

The Minister, Angela E. Smith, rehearsed the arguments in favour of whole-council elections which was the Government's preferred system. She pointed out certain complications that would arise from accepting the amendment, for example:

[If] county councils that hold whole-council elections chose to move to thirds, that would have an impact on the electoral cycle of district councils in those areas. Also, because county councils are based on single-member wards, it would create some difficulty in organisation.

But she accepted that "...a strong case has been made for the Government to reflect on the issue."

D. Executive arrangements

The governance arrangements of local authorities generated a good deal of debate although no significant amendments were made to this part of the Bill. Andrew Stunell moved an amendment to clause 39 (now clause 40), seeking to remove the option of a directly-elected executive which he called "unworkable" and "dysfunctional". Phil Woolas, Local Government Minister, pointed out in his response that the idea had come from local government itself. Despite Conservative support, the amendment was defeated.¹⁹

A Liberal Democrat amendment to clause 41 (now clause 42 - changing governance arrangements) was intended to give local authorities discretion to decide their own governance arrangements including, if desired, a return to a committee system. Members debated the strengths and weaknesses of the committee system and the relationship between a council's performance and its governance arrangements. The Minister said:

My argument is not that strong leadership follows necessarily from an executive arrangement, or that an alternative arrangement cannot produce a strong leader. I think that strong leaders come out of strong political parties and a healthy body politic, which I think all of us have an interest in fostering. My argument is rather that the Government's proposals are more likely to lead to strong and accountable leadership and are more likely to be fit for purpose for the new responsibilities and the extra powers that we intend to give to local authorities.²⁰

¹⁶ PBC Deb 30 January 2007 c40; 1 February 2007 c71

¹⁷ PBC Deb 1 February 2007 cc91-2

¹⁸ Amendments to clauses 31 and 32 new clauses 6 and 7. The lead amendment was subsequently withdrawn. See PBC Deb 8 February 2007 cc207-212 and 20 February 2007 cc215-226

¹⁹ PBC Deb 20 February 2007 cc247-265

²⁰ PBC Deb 20 February 2007 cc277-8; this debate at cc266-283

The amendment was supported by the Conservatives but was rejected on division.

Among other issues raised in this part of the Bill were:

- minimum numbers of councillors forming an executive;
- removal of the requirement for a public referendum to be held before a mayoral system can be introduced;
- extension of the minimum period that may elapse between referendums.

E. Parishes

Issues relating to parishes which were aired in debate included:

- The power to appoint councillors to a parish council on the basis of their role in the community. Andrew Stunell considered that the proposal would undermine the democratic nature of parish councils. Clause 55 (now clause 56) was nevertheless agreed to on division.²¹
- Community governance reviews - Devolution of the decision-making power to local authorities was generally welcomed but Alistair Burt, for the Conservatives, voiced concern on a number of issues, including the lack of an appeal mechanism for existing parish councils facing termination after a review. The Minister, Angela E. Smith considered that the checks and balances in the procedure were adequate and there was always the “backstop” of judicial review.²²
- Parishes in London – This was the subject of both oral and written evidence from London Councils.²³ Robert Neill (Conservative) moved an amendment to clause 77 (now clause 78), seeking to prevent the establishment of parishes in London, which he considered an unnecessary disturbance to existing governance structures. The Minister thought it only fair that Londoners should have the same rights as everybody else. She emphasised that statutory guidance would require councils to have regard to community cohesion when deciding on parish creation. The amendment was withdrawn after debate.²⁴

²¹ PBC Deb 20 February 2007 cc295-301

²² PBC Deb 22 February 2007 cc317-9. The Government published notes for the Committee on clause 75 (guidance on community governance reviews) – see DCLG, *Statement of intent: statutory guidance: community empowerment*, 5 March 2007, at: <http://www.communities.gov.uk/index.asp?id=1508243>

²³ PBC Deb 30 January 2007 cc46-50; written evidence (LGPI 2) at: <http://www.publications.parliament.uk/pa/cm/cmpbllocalgov.htm>

²⁴ PBC Deb 22 February 2007 cc321-338

F. Co-operation

1. Amendments made and new clauses added: Joint strategic needs assessments

The local government white paper had contained a commitment to legislate for a new statutory partnership for health and well-being with a duty to co-operate for PCTs and local councils.²⁵ A DCLG press release on the day of second reading gave further details:

An amendment to the Bill will allow local authorities and Primary Care Trusts to deliver truly integrated health care that is more responsive to the needs of individuals and the communities they serve. It will require them to work together to produce a strategic assessment of the health, health care and social care needs of the local area. For example this might mean more emphasis on tackling obesity or a greater focus on home care which allows older people to be cared for in their own homes. These priorities will then form part of the overarching community strategy for the area and could be supported by funding from the Local Area Agreement or other mainstream sources.²⁶

These measures were the subject of new clause 20 which was agreed and added to the Bill as clause 91. The Minister, Phil Woolas, said that the provisions would strengthen the clauses on local area agreements by requiring the responsible local authority (i.e. the local authority responsible for social services) and the PCT(s) to produce a needs assessment. In two-tier areas, county councils must consult districts. He said that there would be supporting statutory guidance to make it clear that the local authority should take into account the findings of the needs assessment in setting targets for the LAA and in preparing the sustainable communities strategy.²⁷

2. Ministerial undertakings: List of partner authorities

Tom Brake, for the Liberal Democrats, moved an amendment to clause 79 (now clause 80) which sought to include NHS Trusts and Foundation Trusts in the list of “partner authorities” whose co-operation would be statutorily required in Local Area Agreements. In oral evidence, Sir Simon Milton had provided an example of the contribution an NHS Trust might make to a local alcohol harm reduction strategy.²⁸ In Committee, Mr Brake cited the importance of hospitals as major local employers and as generators of road traffic. The Minister, Phil Woolas, accepted that the inclusion of many NHS Trusts was desirable but not those Trusts which provide regional and national services (such as Great Ormond Street). He said:

The Government, however, recognise the importance of NHS trusts and foundation trusts and it is our intention, following representations and comments, to name them in the Bill in such a way as to avoid the Great Ormond Street

²⁵ *Strong and prosperous communities*, Cm 6939, October 2006, volume II, p17

²⁶ DCLG, “Kelly sets out timetable for devolution – new measures to improve health and waste services unveiled”, *News release 2007/0007*, 22 January 2007, <http://www.communities.gov.uk/index.asp?id=1002882&PressNoticeID=2336>

²⁷ PBC Deb 8 March 2007 c601; this debate at cc599-603

²⁸ PBC Deb 30 January 2007 c25

problem but to include them as partner authorities. I hope that the Committee will welcome that commitment.²⁹

In the light of this undertaking, the amendment was withdrawn.

3. Other significant areas of debate

The Government published a note for the Committee on clauses 78 to 91 (now clauses 79 to 93).³⁰ This explains the background to the Bill's provisions on Local Area Agreements and an outline of the issues which are expected to be included in the guidance to local authorities and partners.

Members from all parties were keen to press for additions to the list of partner authorities specified in clause 79 (now clause 80). Various types of organisation were recommended for inclusion including schools and colleges, housing associations and the Highways Agency. Mr Woolas, accepted that the list was "not immune to change" but argued against the inclusion of most other types of organisation with the exception of NHS Trusts and Foundation Trusts (see above).³¹

Other aspects of LAAs which were discussed in relation to proposed amendments included:-

- Formal involvement of the voluntary sector in LAAs;
- Maximum limits to be set on the number of designated targets;
- Involvement of MPs in revision of LAAs.

In all cases, the amendments were withdrawn.³²

Two main issues addressed in discussion of overview and scrutiny provisions were:

- The distinction between a community call for action under this Bill, and a CCFA on a crime and disorder matter (as provided for in the *Police and Justice Act 2006*);³³
- The nature and extent of the power to require information from partner authorities.

Both issues had been referred to in written evidence from organisations including the Local Government Association, Local Government Information Unit and the Centre for Public Scrutiny. In each case, the amendments were withdrawn following explanations from the Minister.

²⁹ PBC Deb 22 February 2007 c352; this debate in cc340-356

³⁰ DCLG, *Statement of Intent: Statutory Guidance: Place-shaping*, 5 March 2007, <http://www.communities.gov.uk/index.asp?id=1508243>; The second part of the paper provides notes for the Committee on clauses 105 and 106 (proposed guidance to best value authorities).

³¹ PBC Deb 22 February 2007 c347; this debate in cc340-356

³² These proceedings can be found at: PBC Deb 22 February 2007 cc356-373

³³ The Government published a note for the Committee on clause 92(3) –excluded matters – see DCLG, *Statement of intent: statutory guidance: community empowerment*, 5 March 2007, at <http://www.communities.gov.uk/index.asp?id=1508243>

G. Byelaws

Tom Brake moved an amendment to clause 97 (now clause 99) which was designed to ensure that *all* government departments, not just the DCLG, give up their bye-law confirming powers. The Minister assured the Committee that the Bill allowed for devolution of such powers from other Secretaries of State and that there was an intention to pass over such responsibilities in respect of libraries and museums (DCMS), and tattooing (Department of Health) once the Bill was passed. The amendment was withdrawn.³⁴

H. Audit Commission

1. Ministerial undertakings: consultancy work for local authorities

In the debate on second reading, Andrew Stunell had objected to provisions in the Bill which removed the right of the Audit Commission to undertake consultancy work for local authorities.³⁵ In Committee, he repeated his objections to clause 122 (now clause 124), citing instances where the Commission had helped authorities to improve poor performance. The Parliamentary Under-Secretary, Angela E. Smith, said that the Government had reacted to concerns that there was a potential conflict of interest in the Commission operating both as a “critical friend and as an external regulator”. There was also a value for money issue in that the Government also funds the Improvement and Development Agency which provides similar services. Nevertheless, she said:

The comments made on Second Reading and in Committee today resonate with us, and we taken them on board...We shall reflect on the concerns that have been expressed, rethink, and introduce proposals later to the Committee or the House to address it.³⁶

I. Commission for Local Administration (Local Government Ombudsman)

1. Amendments made and new clauses added

The Government made certain commitments in the local government white paper to modernise and clarify the role and working practices of the Local Government Ombudsman.³⁷ New clauses introduced by the Government on this subject were mostly minor and/or technical in nature and were added without debate. However, one specific white paper commitment – to allow complaints to be made in ways other than in the traditional written form (for example by e-mail) – was implemented at committee stage. Clause 138 provides for complaints to be made electronically. Another clause introduced in committee (now clause 136) amends the requirement in section 23 of the *Local*

³⁴ PBC Deb 27 February 2007 cc385-391

³⁵ HC Deb 22 January 2007 c1172

³⁶ PBC Deb 27 February 2007 c409. This debate in cc399-400 and 406-410

³⁷ *Strong and prosperous communities*, Cm 6939, October 2006, pp37-8

Government Act 1974 for Commissioners to retire at 65 years. The new clause stipulates that a Commissioner must be appointed for a period not exceeding seven years, which is in line with the terms of appointment of the Parliamentary Ombudsman.³⁸

J. Standards of conduct

1. Amendments made and new clauses added

a. Remit of code of conduct

Phil Woolas, Local Government Minister, moved amendments designed to clarify the wording of clause 131 (now clause 141 – ‘conduct that may be covered by the code’). The amended wording provided that the principles governing conduct of members which may be specified by order, and the provisions which may be included in a code of conduct, includes principles and provisions which are to apply at all times. The Minister explained that the Government’s aim was that the code should not cover a councillor’s private life but any criminal conviction should be “taken on board” by the standards committee.³⁹ He said that, in the light of the judgement in the Livingstone case⁴⁰, the law had to be amended in a way which...

“makes the remit of the code of conduct appear tougher in law, but allows the code itself, which is public, to be restricted. In other words, the law has to be widened and clarified so that the code can be narrowed.”

The amendments were agreed after lengthy debate.⁴¹

b. Undertakings to observe the code

Another Government amendment to clause 131 (now clause 141) provided that councillors in authorities which had not adopted a code of conduct (and to whom, therefore, the mandatory provisions of the model code would apply) must give an undertaking to comply with those provisions. In similar vein, the Government’s new clause 17 (now clause 142 of the Bill) required an authority which had not adopted a code of conduct to maintain a copy of the mandatory model code as part of its constitution. Both amendment and new clause were agreed.⁴²

c. Employees: politically restricted posts

Government amendments to clause 149 and new clause 18 (now clauses 160 and 161 respectively) provided for the Secretary of State to give general advice, following

³⁸ PBC Deb 8 March 2007 cc603-4

³⁹ The Committee on Standards in Public Life queried in written evidence why this intention could not be made explicit on the face of the Bill (LGPI 17, para 5)

⁴⁰ High Court judgement in the case of *Ken Livingstone v the Adjudication Panel for England*, 19 October 2006. Mr Justice Collins set aside the Mayor’s suspension and ruled that the relevant section of the *Local Government Act 2000* refers to the code applying only when a member is performing his official duties and not when he is off-duty. The Mayor of London submitted written evidence on this issue to the Committee (LGPI 11)

⁴¹ PBC Deb 1 March 2007 cc419-437

⁴² PBC Deb 1 March 2007 cc437-8; 8 March 2007 cc558-9

consultation, to assist standards committees in determining which officer posts should be politically restricted, and for standards committees to have regard to that advice.⁴³

2. Ministerial undertakings

a. *Debate on code of conduct*

Strong views were expressed during discussion of clause 131 (now clause 141) on the constraints which the code placed on councillors wishing to speak out on local issues, including planning and licensing matters. The Minister undertook to seek a debate on the revised code of conduct:

The Government support the idea of having a debate on the code. The statutory instrument that will introduce it will be subject to the negative procedure, which will require a Member to pray against it. I undertake to speak to the Leader of the House about this because if a debate was possible, it would help to give people confidence in the code, as well as giving hon. Members the opportunity to speak about it.⁴⁴

b. *Notification of allegations*

Robert Syms moved an amendment to clause 132 (now clause 143) requiring a local standards committee - or the Standards Board where appropriate - to copy an allegation to the person against whom it has been made. This, he said, was a matter of “natural justice.” The Minister said he had a “strong tendency to agree” with the amendment but asked the Committee to give him time to consult the Standards Board. The amendment was withdrawn.⁴⁵

c. *Politically motivated complaints*

In debate on clause 133 (now clause 144 – ‘information to be provided to the Standards Board’), Neil Turner spoke of the costs in time and money of handling vexatious and politically-motivated complaints. He wanted the Board to publish figures showing which political party had lodged complaints and what the costs were. Mr Woolas undertook to write to the Standards Board to see whether it had a view on the matter.⁴⁶

K. Joint waste authorities⁴⁷

1. Amendments made and new clauses added

The Local Government Association said in its initial briefing on the Bill that it was keen to see additional measures that would enable councils to create joint waste authorities and

⁴³ PBC Deb 1 March 2007 cc460-2; 8 March 2007 c589

⁴⁴ PBC Deb 1 March 2007 c432. A DCLG consultation exercise on amendments to the model code ended on 9 March 2007. See <http://www.communities.gov.uk/index.asp?id=1505696>

⁴⁵ PBC Deb 1 March 2007 cc446-7

⁴⁶ PBC Deb 1 March 2007 cc452-454

⁴⁷ This section contributed by Edward White, Science and Environment Section

thereby achieve economies of scale in waste treatment and disposal services.⁴⁸ A report on waste management by the Innovation Forum had highlighted the benefits of joint waste working in two tier areas, but had also drawn attention to the legal obstacles involved in current arrangements, including the fact that there must be a 'lead authority' to enter into contracts or employ staff. A statutory basis for partnership working with other authorities would overcome the limitations of working through joint committees and give certainty to potential lenders and contractors. Further information, and a link to the report, can be found on the website of the Environment Department (DEFRA).⁴⁹

Ruth Kelly affirmed at second reading that an amendment to the Bill would make provision for these matters. A DCLG press release, issued on the same day, stated:

A further amendment will enable local authorities to work together to deliver waste services that will improve recycling rates and result in less landfill and lower carbon emissions, as well as greater efficiency. Any group of two or more authorities will be able to apply to Government to voluntarily transfer waste disposal, collection or street cleaning functions to a joint waste authority. This will mean there are more partnership options open to authorities to improve waste services, and to invest in new, more sustainable facilities at affordable cost. This will be particularly important in shire areas and will ensure waste collection and disposal activities are joined up. In addition there are potential savings of £150 million - that can be reinvested in other local priorities.⁵⁰

The Environment Department (DEFRA) said the Bill will achieve better-integrated and cost-effective waste services by strengthening councils' hands when negotiating new contracts with waste management companies. It will also spread the cost for new infrastructure and encourage savings through economies of scale.

Local Environment Minister Ben Bradshaw said the new powers would be particularly important in shire areas," which have a two-tier structure of local government, to ensure waste collection and disposal are joined up.⁵¹

The new clauses, which now form part 11 of the Bill as amended, were welcomed by both Conservative and Liberal Democrat frontbench members of the Committee.⁵² The main provisions may be summarised as follows:-

- The Bill will enable two or more local waste authorities in England to submit a proposal to the Secretary of State to become a joint waste authority. To do this the local waste authority must carry out a waste function under either:

⁴⁸ LGA briefing on the Local Government and Public Involvement in Health Bill, 13 December 2006, <http://www.lga.gov.uk/Briefing.asp?lsection=64&id=SXC3E1-A783EC78&ccat=1199>; see also written evidence from LGA at: <http://www.publications.parliament.uk/pa/cm/cmpblocalgov.htm>

⁴⁹ <http://www.defra.gov.uk/environment/waste/localauth/partnerwork/jwa.htm>

⁵⁰ DCLG, "Kelly sets out the timetable for devolution – new measures to improve health and waste services unveiled", *News release 2007/007*, 22 January 2007, <http://www.communities.gov.uk/index.asp?id=1002882&PressNoticeID=2336>

⁵¹ DEFRA, "New powers will help local authorities work together on waste", *News release 17/07*, 22 January 2007, <http://www.defra.gov.uk/news/2007/070122a.htm>

⁵² PBC Deb 8 March 2007 cc581-7

- Part 2 of the Environmental Protection Act 1990 (c. 43) (waste on land);
 - Part 4 of that Act (litter etc);
 - Section 32 of the Waste and Emissions Trading Act 2003 (c. 33) (joint municipal waste management strategies: England).
-
- Any proposal must be subject to a formal consultation involving relevant electors and any other interested parties.
 - Any proposal must then be approved by the Secretary of State before authorities can merge functions. At this stage the proposal may also be amended.
 - The Bill provides the Secretary of State to issue guidance and regulations regarding the matters that must be included in a proposal and the procedure for formulating and submitting a proposal.
 - Welsh Ministers may by order make provisions applying similar legislation to Wales.

The Local Government Association commented favourably on the new measures set out in the Bill. They regard such simple cost saving measures as an important mechanism in easing the pressure on waste authorities as recycling targets increase. The following was taken from a recent press release:

LGA key message on addition clause – Joint Waste Authorities

The LGA has lobbied hard for the bill to be amended to include powers for councils to create Joint Waste Authorities - enabling councils to work with neighbouring authorities to create economies of scale in waste collection and disposal.

Local government is working hard to ensure that waste reduction targets are met. This effort comes at a high cost to councils and the LGA believes that they must have every possible tool available to them to meet the challenge.

Currently, whilst some options do exist for councils wishing to deliver their waste functions jointly, there remain legal obstacles to any approach that would establish an 'independent' executive waste board, made up of Councillors from the participating councils. This can be a particular barrier as, at present, the most readily available formal partnership vehicle is a Joint Committee, which requires a 'lead authority' to enter into contracts or employ staff.

A power to establish Joint Waste Authorities would give councils the option with mutual agreement, to establish an 'independent' executive waste board if they believe this to be the most effective way to create economies of scale. This has been supported by Innovation Forum research on joint working in waste management.⁵³

⁵³ LGA, *Local Government and Public Involvement in Health Bill, Additional Clauses: Joint Waste Authorities*, 8 March 2007, <http://www.lga.gov.uk/Briefing.asp?lsection=64&id=SXBD87-A7840C67&ccat=1199>

L. Patient and public involvement in health and care

1. Amendments made and new clauses added: Duty to allow entry to LINK representatives

In response to concerns that LINKs' powers to enter and observe might be thwarted, the Government agreed to an amendment to clause 156 (now clause 175), moved by Patrick Hall, specifying that the Secretary of State 'shall' (rather than 'may') make regulations requiring service providers to allow access to local involvement network (LINK) representatives.⁵⁴

2. Ministerial undertakings: LINKs

- Alistair Burt moved an amendment to clause 153 (now clause 172) which sought to add "monitoring the quality of the delivery of care services" to the functions of the proposed local involvement networks (LINKs). After lengthy debate, Phil Woolas said: "We support the point about monitoring and maybe there is a way for us to incorporate it."⁵⁵ The amendment was withdrawn.
- A further amendment to clause 153 was withdrawn after the Minister agreed to make explicit in departmental guidance the need to make LINK reports public.⁵⁶
- Clause 153(3) – now clause 172(3) - gives the Secretary of State powers to make regulations "...for the purpose of adding to, varying or omitting" specific activities of LINKs. Mr Woolas undertook to reword the clause and remove the word "omitting."⁵⁷
- The Committee discussed the possibility of imposing statutory obligations on independent (as well as public sector) providers to respond to LINKs. The Minister said: "We will ensure that independent providers of publicly funded health and social care comply with LINKs' powers by ensuring that commissioners of the service include the requirement – in this case, the obligation for access – within the contracts, through the directions of the Secretary of State."⁵⁸

3. Other significant areas of debate

There was substantial discussion on patient and public involvement in health and social care (now part 13 of the Bill). Some of the major issues are mentioned above in relation to ministerial undertakings. Other issues which were explored in Committee included:

- the funding, form and remit of LINKs;
- whether to establish a national body to co-ordinate the work of LINKs;

⁵⁴ PBC Deb 6 March 2007 cc538-548

⁵⁵ PBC Deb 1 March 2007 c484; this debate in cc470-486

⁵⁶ PBC Deb 6 March 2007 c494

⁵⁷ PBC Deb 6 March 2007 c500

⁵⁸ PBC Deb 6 March 2007 c536

- possible additions to the types of organisation which may not become LINKs;
- the extent of the duty on NHS bodies to involve and consult patients and the public.

The abolition of Patient Forums was opposed and clause 160 (now 179) abolishing their functions was pressed to a division. It was nevertheless agreed by 11 votes to 8.⁵⁹

⁵⁹ PBC Deb 6 March 2007 cc551-563

Appendix – Membership of the Public Bill Committee

The members of the Local Government and Public Involvement in Health Bill Committee were as follows:-

Chairmen: Mr Joe Benton, Mr Christopher Chope

Members:

Blackman-Woods, Dr Roberta (City of Durham) (Labour)
Brake, Tom (Carshalton and Wallington) (Liberal Democrat)
Brown, Lyn (West Ham) (Labour)
Burowes, Mr David (Enfield, Southgate) (Conservative)
Burt, Alistair (North East Bedfordshire) (Conservative)
Dunne, Mr Philip (Ludlow) (Conservative)
Fabricant, Michael (Lichfield) (Conservative)
Gwynne, Andrew (Denton and Reddish) (Labour)
Hall, Patrick (Bedford) (Labour)
Levitt, Tom (High Peak) (Labour)
Neill, Robert (Bromley and Chislehurst) (Conservative)
Pugh, Dr John (Southport) (Liberal Democrat)
Seabeck, Alison (Plymouth, Devonport) (Labour)
Shaw, Jonathan (Chatham and Aylesford) (Labour)
Smith, Angela E. (Basildon) (Labour)
Soulsby, Sir Peter (Leicester South) (Labour)
Stunell, Andrew (Hazel Grove) (Liberal Democrat)
Syms, Mr Robert (Poole) (Conservative)
Turner, Mr Neil (Wigan) (Labour)
Waltho, Lynda (Stourbridge) (Labour)
Woolas, Mr Phil (Oldham East and Saddleworth) (Labour)

Clerks: John Benger, Christopher Shaw, Alan Sandall