

Local Government and Public Involvement in Health Act 2007

The Act received Royal Assent on 30 October 2007. There were some late amendments to the Bill, particularly relating to transitional arrangements for Local Involvement Networks and the role of Strategic Health Authorities in consultation. A summary of the health and social care aspects of the Act is set out below:

Local Area Agreements, consultation and co-operation with ‘partner authorities’

Primary Care Trusts, NHS Trusts and NHS Foundation Trusts are included in a long list of ‘partner authorities’ that County, Unitary, Metropolitan Borough and London Borough Councils (together with the Council of the Isles of Scilly and the Corporation of the City of London) must consult when preparing draft local area agreements (LAAs). Councils must co-operate with the listed ‘partner authorities’ in determining the local improvement targets to be specified in the draft agreement, having regard to their community strategy and guidance from the Secretary of State.

Comment: OSCs will want to assure themselves that local improvement targets in the LAA are being set in consultation and co-operation between the council executive and partners. They will be particularly interested in the opportunities given to local people and communities to influence the development of the targets (see below).

Local Improvement Targets, co-operation of partner authorities and duty to have regard to targets

Local improvement targets are defined as ‘targets for improvement in the economic, social or environmental well-being’ of the authority’s area that ‘relates to the authority, one or more partners or one or more other persons acting or having functions exercisable’ in the authority’s area. ‘Partner authorities’ must co-operate with Councils in determining the local improvement targets to be specified in the draft LAA. Councils and ‘partner authorities’ must have regard to local improvement targets specified in the LAA which relate to them.

Comment: OSCs will want to be assured that partner authorities are co-operating with councils in setting improvement targets. OSCs will also want to check that councils and partners are ‘having regard’ to relevant targets. ‘Having regard’ implies that targets cannot be ignored.

Scrutiny of local improvement targets

The Act provides for Joint Overview and Scrutiny Committees of County and District Councils (described as a 'group of partner authorities') to make reports and recommendations about local improvement targets. District Councils are able to make reports and recommendations to related County Councils about local improvement targets in the County Council's LAA. Under separate provisions (see below), County Councils might have to respond to and 'have regard' to reports and recommendations from District Council OSCs.

Comment: The 'group of partner authorities' appoint the joint scrutiny committee. That group includes the County Council, so without the County Council's participation there is no 'group' and thus no prospect of forming a joint committee under these provisions. In this scenario, District Councils would need to rely on their own OSCs to make reports and recommendations to County Councils or rely on their ability to form joint OSCs under previous legislation.

Joint Strategic Needs Assessment

An assessment of 'relevant needs' must be prepared in relation to the area of a responsible local authority by the responsible local authority and its partner PCTs. The authority must publish the assessment of relevant needs in relation to its area. In preparing the assessment the authority and the PCT must co-operate and County Councils must consult District Councils.

'Relevant needs' are those which appear to the responsible local authority and the partner PCT to be capable of being met to a significant extent by the exercise of functions by the local authority and could also be met or affected to a significant extent by the exercise of functions by the PCT or vice versa.

Comment: OSCs will want to assure themselves that Councils and PCTs are co-operating around the assessment, the robustness of the information relied on to make the assessment and that local people and communities have opportunities to feed their views into the assessment.

Strengthening Scrutiny

Executives must respond to OSC reports and recommendations within 2 months by considering the report or recommendations, saying what action (if any) it proposes to take and publishing the response (if the OSC published its report or recommendations).

OSCs can make reports and recommendations to the 'partner authorities' listed as having to co-operate with councils around Local Area Agreements – health service bodies are included in the list of partner authorities that have co-operate around the LAA and 'have regard' to targets, but are excluded from this part of the Act because they are covered by provisions in previous legislation (health scrutiny legislation).

Comment: There *may* be an opportunity for District Councils to engage in a form of health scrutiny as a result of regulations that might define 'associated authorities' that District Councils can require information from. However, it is possible that NHS bodies will be excluded from any list of 'associated authorities' as they are already subject to scrutiny under health scrutiny legislation.

Local Involvement Networks

Councils to make contractual arrangements for LINKs

Local authorities with social services responsibilities must make contractual arrangements for the activities specified below to be carried on in their area from 1 April 2008:

- Promoting and supporting the involvement of people in the commissioning, provision and scrutiny of local care services (health services and social services)
- Enabling people to monitor and review the commissioning and provision of local care services relating to:
 - the standard of provision
 - whether and how local care services could be improved
 - whether and how local care services ought to be improved
- Obtaining the views of people about their needs for and their experiences of local care services
- Making such views known and making reports and recommendations about how local care services could or ought to be improved to people responsible for commissioning, providing, managing or scrutinising local care services

The person who is to carry on the specified activities in the local authority area as the result of the contractual arrangements made by the authority is defined as 'a local involvement network' or LINK. The contractual arrangements are a way of providing independence for the LINK from the council by contracting a Host (see below) to set up and support the LINK.

Comment: OSCs will want to make sure the Executive are taking LINKs seriously by facilitating wide conversations with local people, groups and communities about the 'look and feel' of the local LINK. The outcomes of these conversations should inform the contractual and performance management arrangements with a Host so that the Host has the right skills to create and support the local vision for the LINK. The Dept of Health has given social services authorities £10,000 to get the process started and OSCs will want to find out what the Executive is doing with this money. They will also want to scrutinise how councils' full allocations for LINKs (a 3 year non-ring fenced allocation contained in the Area Based Grant) is being spent.

Exclusions from being a Host or a LINK

The contractual arrangements must be made with a person (called 'H' in the Act) commonly referred to as a 'Host'. Local authorities, NHS Trusts, NHS Foundation Trusts, PCTs or Strategic Health Authorities cannot be Hosts. The Host, local authorities, NHS Trusts, NHS Foundation Trusts, PCTs and SHAs cannot be Local Involvement Networks.

Comment: This is to ensure that LINKs are independent of local councils and the NHS (but see note on transitional arrangements below which might mean that some councils need to support LINK activity until they are able to appoint a Host).

LINKs able to co-operate together

There is provision for local involvement networks to co-operate with other local involvement networks – what the Act calls 'other English networks'.

Comment: LINKs will need to develop relationships with health and care commissioners, providers and scrutineers that cover not only their own areas but those of neighbouring LINKs. In these circumstances it makes sense for the work of LINKs to be co-ordinated through co-operation with other LINKs. This provision also enables the prospect of a national body for LINKs.

Secretary of State to make regulations

The Secretary of State must make regulations to require arrangements made for local involvement network activity to include prescribed provisions about:

- ways in which certain decisions of a LINK are taken
- authorisation of individuals as 'authorised representatives'
- use of money by LINKs resulting from arrangements made by local authorities
- consequences of contravention by a LINK of any provisions of the arrangements

Providers of health and social care services must:

- respond to requests for information made by a LINK
- deal with reports and recommendations made by a LINK
- deal with any reports or recommendations from a LINK that have been referred by another services provider

Services providers are:

- NHS Trusts
- NHS Foundation Trusts
- PCTs

- Local authorities
- Persons prescribed by S of S (to be set out in regulations)

Service providers will be under a duty to allow authorised representatives of LINKs to enter and view and observe the carrying on of activities on premises owned or controlled by the services provider. The Secretary of State may describe:

- the types of premises covered and excluded
- the types of activities 'carried on' included or excluded
- any conditions that need to be satisfied before the duty arises
- any limit to the extent of the duty
- conditions and restrictions on the carrying out of any viewing or observation
- the authorisation of individuals by a LINK
- any limits to the number of authorised representatives and the hours during which the duty applies

Viewing and observation must be carried out for the purposes of LINK activities.

Comment: The Bill was amended fairly late on in the process in order to provide some common standards relating to how LINKs are governed, how people are authorised to undertake the 'entering and viewing' role and how that role should be exercised responsibly. The Dept of Health is currently consulting on draft regulations that relate to LINK activities. The consultation closes on 21 December 2007 and can be found at: http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_078794

Referrals to OSCs

LINKs can refer matters relating to social care services to an OSC. The referral must be in relation to a LINK activity as defined in the Act (see above). The committee must acknowledge receipt and keep the referrer informed of the committee's actions. The Secretary of State may specify the time by which the acknowledgement must be given.

OSCs must decide whether or not their powers are exercisable in relation to the referral and if they are, they must decide whether or not to exercise them. If it decides to exercise its powers, the OSC must have regard to information it has received from the LINK.

Comment: OSCs and LINKs are encouraged to begin an early dialogue about developing a protocol for managing expectations around referrals.

Annual reports

The arrangements made by local authorities for the carrying on of LINK activities must include provision of reports for each financial year (by the 30th

of June) to be prepared by the LINK or by the Host if not done by the LINK. Copies of annual reports are to be publicly available and copies sent to:

- relevant local authorities
- relevant PCTs and SHAs
- relevant OSCs
- the Secretary of State
- any others people prescribed by the Secretary of State

The annual report must include:

- anything the Secretary of State directs
- details of amounts spent by the Host in respect of LINK activity and what the amounts were spent on
- details of amounts spent on 'non-networked' activity and what the amounts were spent on

Comment: Publishing annual reports about their activities is one of the ways LINKs can be accountable to local people but should not be the only way. LINKs should use the skills of the Host to keep in touch with local people, groups and communities on an on-going basis via a number of mechanisms that meet different needs. They are particularly encouraged to focus on people and groups that are traditionally 'heard to hear' and this is unlikely to be achieved simply through publishing an activity report once a year.

Transitional arrangements

Councils that have the duty to make contractual arrangements with a Host to ensure that LINK activities are carried out in their areas may be subject to a temporary duty 'to ensure that until the relevant time there are means of carrying on LINK activities in the authorities area'. The temporary duty relates to councils that do not have a Host in place by 1 April 2008.

Comment: This was a late amendment to the Bill to cover situations where councils have not appointed Hosts by the time LINK activity needs to take place (1 April 2008). Examples of reasons why councils might not have contracted a Host in time are:

- few organisations with skills to turn the vision for the local LINK in to reality
- the lead time for procurement (in cases where EU procurement rules apply)

It is expected that the temporary duty will last until 30 September 2008 or the point at which a Host is appointed (whichever is earlier). The Dept of Health is encouraging councils that think they might not be able to find a Host by April 2008 to begin to think about the alternative arrangements they might make. For example, this might be through the council supporting people currently involved in PPI to undertake LINK activity until a Host is in place.

Consultation about health services

Duty on NHS bodies to involve

The new 2007 Act has amended Section 242 of the NHS Act 2006 (previously Section 11 of the Health and Social Care Act 2001) which related to the duty on NHS bodies to involve and consult service users.

Under the new Act Strategic Health Authorities, Primary Care Trusts, NHS Trusts and NHS Foundation Trusts must make arrangements for people who receive or may receive services to be involved in:

- planning of the provision of those services
- developing and considering proposals for changes in the way those services are provided, and
- decisions to be made affecting the operation of those services

The Act says that people can be 'involved' either by being consulted or provided with information or in other ways. The Act also says that 'involvement' can be either direct or through representatives.

The NHS needs to involve people in the development and consideration of proposals for changes in the way services are provided and decisions about the operation of services only if implementation of the proposal or decision would have (at the point when those services are received by users) an impact on:

- the manner in which the services are delivered, or
- the range of health services available to those users

The Secretary of State is going to issue guidance about the discharge of the duty to involve that will include when, or how often, involvement is to be carried out and the form to be taken by such involvement.

Comment: The Act clarifies that people do not need to be consulted about changes in service-provider where the manner of service delivery and range of services available remain the same. This clarification appears to be a response to the High Court judgment last year involving a change of service-provider of GP services in North East Derbyshire. Provisions in the original Bill that sought to clarify the nature of 'significant' changes are missing from the Act. This means that NHS bodies are still required to consult relevant OSCs about proposals for 'substantial' changes to services.

Additional Duties on Strategic Health Authorities to involve

The Secretary of State will make regulations requiring each Strategic Health Authority to make arrangements which secure that health service users are, directly or through representatives, involved (whether by being consulted or provided with information, or in other ways) in prescribed matters. Guidance will be issued about this duty that SHAs must have regard to.

The Secretary of State may make regulations enabling SHAs to direct a PCT that people who would otherwise be involved in a particular matter by the PCT are not to be involved in that matter by the PCT. The circumstances when this might happen are where the people concerned are to be involved (whether by the SHA or by the SHA and PCT acting jointly, or otherwise) under arrangements made or to be made by the SHA.

Reports on consultation

Strategic Health Authorities and Primary Care Trusts must prepare reports about consultations they have carried out, or propose to carry out, before making commissioning decisions, and on the influence that the results of consultation have on commissioning decisions.

“Commissioning decisions” in relation to a Strategic Health Authority means decisions as to the carrying-out of functions exercisable by it for the purpose of securing, by arrangement with any person or body, the provision of services as part of the health service.

“Commissioning decisions” in relation to Primary Care Trusts, means decisions as to the carrying out of its functions under Parts 4 to 7.

The Secretary of State may give directions as to—

- (a) the periods to be covered by reports
- (b) the matters to be dealt with by reports
- (c) the form and content of reports
- (d) the publication of reports
- (e) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions

Comment: OSCs have always been keen to ensure that ‘involvement’ has given local people opportunities to ‘influence’ change. These provisions mean that the NHS will need to report directly to communities about the difference that involvement has made to decisions about health care.