

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

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Structural and Boundary Change in England

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.
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 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.
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.

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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 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.

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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.

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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 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.

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. 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:
- 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.

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95. *Subsection (2)* defines a “relevant authority” as one which is to be dissolved by order made under section 7 or 10 and which is specified or falls within a description of authority specified in the direction.
96. *Subsection (3)* defines “capital contract” and “non-capital contract”. A capital contract means a contract in relation to which the consideration payable by the authority would be capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003.
97. *Subsection (4)* provides that the person(s) whose consent is required as specified in the direction, may be the Secretary of State or such authority or other person as he thinks appropriate. He may identify a different person for different matters that require consent or in relation to different authorities or types of authorities.

Section 25: Directions: further provision about reserves

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

Section 26: Directions: supplementary

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

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

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

Section 28: Contraventions of direction

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

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.