

## Local Involvement Networks Summary Local Government and Public Involvement in Health Act 2007



### Introduction

The Act received Royal Assent on 30 October 2007. The Act provides a legislative framework for a number of proposals in the Local Government White Paper 2006; copies of the Act can be downloaded from the NHS Centre for Involvement website: [www.nhscentreforinvolvement.nhs.uk/LGPIHAct/](http://www.nhscentreforinvolvement.nhs.uk/LGPIHAct/).

A number of legislative provisions made in the Act relate to health and social care:

#### Part 5 – Partnerships and Scrutiny

The Act introduces a duty on ‘named partners’ to cooperate with another in the development and agreement of Local Area Agreements (LAAs), which have been given a statutory basis. The Act also provides powers for Overview and Scrutiny Committees (OSCs) to review and scrutinise the actions of key local public service providers, as well as empowering councillors to raise issues with Overview and Scrutiny Committees through a ‘councillor call for action’.

#### Part 14 – Patient and public involvement in health and social care

The Act abolishes Patient and Public Involvement Forums and introduces Local Involvement Networks (LINKs). LINKs will be networks of local people and groups that will ensure local communities can monitor service provision, influence key decisions and have a stronger voice in the process of commissioning health and social care. LINKs will cover the geographical area of Local Authorities that have social services responsibilities. To enhance their independence, LINKs must be hosted by a body other than a Local Authority or an NHS body. The task of finding the Host has been given to Local Authorities.

There were some late amendments to the Bill, particularly relating to transitional arrangements for Local Involvement Networks (LINKs) and the role of Strategic Health Authorities in consultation.

## 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 with 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

Local Authority Overview and Scrutiny Committees (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. Local Involvement Networks will be a key vehicle for councils and partners to find out from local people and groups about their priorities for improvement.

## 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. LINKs will be able to provide valuable intelligence about how local improvement targets are impacting upon the health and social care of local people.

## 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, 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. LINKs may well form 'constituencies of interest' that focus on health and social care for particular communities, for instance within a District Council area. They will be able to inform joint OSCs about how local improvement targets are influenced by local people.

## 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 Primary Care Trusts (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. LINKs will be a key vehicle for councils and PCTs to find out about health and social care needs of local people and groups.

## Strengthening Scrutiny

Council executives (often called 'cabinets') must respond to OSC reports and recommendations within two 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 – NHS bodies are included in the list of partner authorities that have to 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 that is now consolidated into the NHS Act 2006).

## 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 – for example if PCTs and NHS Trusts are defined as 'associated authorities'. 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 care and social care).
- 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; and
  - 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 body that will carry out these activities is defined as a 'Local Involvement Network' (LINK). The contractual arrangements made by the Authority are a way of providing independence for the LINK from the council by contracting a Host to set up and support the LINK.

## Comment

OSCs will want to make sure their Council Executive (or Cabinet) are taking LINKs seriously by facilitating wide discussions 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 Department 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 three year non-ring fenced allocation contained in the Area Based Grant) is being

spent. Details of the allocation for each Local Authority can be found at [www.nhscentreforinvolvement.nhs.uk/docs/linksbulletin8.pdf](http://www.nhscentreforinvolvement.nhs.uk/docs/linksbulletin8.pdf).

Many councils have decided that they need to follow European Union tendering rules when seeking a Host. The timescales involved may mean that councils are unable to contract with a Host before 1 April 2008.

The Department of Health has written to councils expressing its view that the role of Hosts is materially different from Forum Support Organisations and so it does not believe that TUPE regulations will apply.

As a result of late amendments to the Bill regarding transitional arrangements and governance issues for LINKs, the Secretary of State is to make regulations that will affect the specifications that councils will need for Hosts.

## 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 (this is to create independence between councils, the NHS and LINKs). The Host, Local Authorities, NHS Trusts, NHS Foundation Trusts, PCTs and SHAs cannot be Local Involvement Networks (in other words they cannot carry out LINK activities themselves – the Host must reach out to local communities to engage local people and groups in carrying out the activities of LINKs).

### Comment

These arrangements are designed 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 will use the skills of the Host to help them plan and carry out their work and will need to tell councils how they think the Host is performing its role. This will help councils to judge whether Hosts are meeting their contractual requirements.

## 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 social 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; and
- 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; and
- 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; and
- Persons prescribed by the Secretary of State (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; and
- 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 Parliamentary 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. These are aspects which councils will need to include in contracts with Hosts and so the regulations will need to be published before any contracts can be finalised.



## 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. 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. Previous guidance from the Centre for Public Scrutiny about how OSCs and PPIFs could work together may be helpful ([www.cfps.org.uk/publications](http://www.cfps.org.uk/publications)).

## 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 30<sup>th</sup> 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; and
- 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; and
- 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 ongoing basis via a number of mechanisms that meet different needs. LINKs are particularly encouraged to focus on people and groups that are traditionally 'hard to reach' 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 long 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 and brings people together to carry out LINK activity (whichever is earlier). The Department of Health is encouraging councils that think they might not be able to find a Host by 1 April 2008 to begin to think about the alternative arrangements they might make for ensuring LINK activity can take place. For example, this might be through the council bringing together people involved in community/user groups and PPI activities to undertake LINK work, supported by the council as 'transitional Host' until an arms length Host is in place and people have been brought together to carry out LINK activity.

## 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 requirement to involve where there is an 'impact' at the point of delivery 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 appears to be a response to the High Court judgment 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. There is useful guidance already available from the Centre for Public Scrutiny about how OSCs should tackle consultations about 'substantial' service changes ([www.cfps.org.uk/publications](http://www.cfps.org.uk/publications)).

## **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; and
- 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.

## Appendix

### Acronyms

- National Centre for Involvement – NCI;
- Patient and Public Involvement – PPI;
- Department of Health – DH (not DoH);
- Local Involvement Networks – LINKs;
- Early Adopter Programme sites – EAPs or EAP sites;
- Overview and Scrutiny Committee – OSC;
- Local Authority – LA;
- Local Area Agreements – LAAs;
- Strategic Health Authority – SHA; and
- Primary Care Trust – PCT.

### Glossary

- **Commissioning** – The process of identifying a community's social and/or health care needs and finding services to meet them
- **Local Area Agreements** – Three-year funding arrangement between central Government and a local area.
- **Overview and Scrutiny Committees** – Overview and Scrutiny Committees of all local authorities with social services responsibilities have the power to examine health services. This contributes to local authorities' wider role in health improvement and reducing health inequalities for their area and their populations.
- **Community strategy** – Document setting out a vision for the future of a local area, aiming to benefit everyone living and working in the area. Strategies describe the long term vision and include a number of shorter-term actions.
- **Non-ring fenced grant** – Funding from central Government to a Local Authority relating to an initiative or service where there are no restrictions or conditions on how the Local Authority should spend that funding.
- **Area Based Grant** – Funding from central Government to Local Authorities to provide local services. Authorities are free to decide the money will be used, and to negotiate with partner organisations about how priorities set out in Local Area Agreement are to be funded.
- **TUPE regulations** – Regulations designed to protect the rights of employees in a transfer situation enabling them to enjoy the same terms and conditions, with continuity of employment, as before.