

Local Authority governance arrangements and general powers and duties under the Localism Bill (clauses 1 to 37)

The first chapter in the Localism Bill is focused on “lifting the burden of bureaucracy” on councils and increasing their powers and flexibility to act in the best interests of their area. The provisions include devolving significant new powers to councils and introducing new flexibilities in relation to local authority governance.

1. Local Authority Governance

- 1.1 The Bill will put in place provisions permitting authorities to change their governance arrangements – including the power to return to the committee system. The Bill sets out the governance options that will be available to local authorities. They will be as follows:
- Executive arrangements (either Leader and Cabinet or an Executive Mayor and Cabinet);
 - A committee system;
 - Another prescribed system (councils may propose their own system, subject to Secretary of State approval).
- 1.2 Authorities operating executive arrangements must continue to have at least one scrutiny committee. Authorities operating under the committee system may have one or more scrutiny committees. Scrutiny powers are consolidated under the Bill and are currently largely unamended from previous legislation.

Changing Governance Arrangements

- 1.3 The process for changing governance arrangements is a two stage one. First, a resolution of Full Council is required. Following such a resolution, changes to governance arrangements can be made **immediately following the next relevant election**.
- 1.4 This means that **the earliest** that Brighton & Hove City Council could change its governance arrangements (subject to the passage of the Bill as currently drafted) would be **May 2015** and every four years after this time. An alternative approach would be to pursue the third option of “another prescribed system” proposed to the Secretary of State which would be dependent upon Regulations and may not be subject to the same timetable. There is also the possibility that the timetable for the transitional provisions will change as the implications of the potentially long wait are examined during the passage of the Bill.
- 1.5 Different provisions will apply for the 12 largest cities, which must hold confirmatory referenda on adopting an executive mayor after the Bill becomes law, with the leader of the council being a “shadow mayor” in the meantime.
- 1.6 Under certain circumstances a referendum must be held when it is proposed to change governance arrangements. This will include where previous changes to governance were also confirmed by referendum, or where the council decides that they want to subject proposals to a referendum. A referendum will also be

required where a petition requests one and is signed by 5% of local government electors in the area.

- 1.7 Once a referendum has been held in an area, future changes in governance must be based on a referendum as well. This will limit changes in governance arrangements to once in every ten years in those authorities, as the restriction on the number of referendums on governance arrangements remains – that is governance referendums are prohibited within 10 years of the previous referendum.

Powers relating to Executive Mayors

- 1.8 An executive mayor can also be the Chief Executive of the authority, but may not hold the post of Head of Paid Service. Where this occurs the authority must appoint an officer to be responsible for providing advice to councillors.
- 1.9 The Mayor must, under these provisions, set out in a report his/her plans for the operation of the authority, including cross-cutting strategy and staffing.
- 1.10 Any local public service function may be transferred to the Mayor by the Secretary of State. This must be based on a proposal from the Mayor which must be made to the Secretary of State within one year of the most recent election (which means that Mayors in some areas may have different powers to those in others). “Public service” is not defined, but has the potential to be broad.
- 1.11 An elected executive mayor cannot also be a councillor. Transitional arrangements exist whereby a council’s Leader will be its “shadow mayor” in the period leading up to an election, where governance arrangements have changed accordingly. The shadow mayor does not have the powers of the elected mayor in terms of setting out his/her report on plans for the operation and staffing of the authority;

The Committee System

- 1.12 The Bill covers practical and procedural issues in relation to the committee system, in particular, the delegation of powers under a committee system. The Secretary of State will be making further regulations on delegations. It is anticipated that there will be limits on the use of delegated powers for strategic decision making but that significant freedom will attach to the use of those powers for more operational decisions – encouraging a more streamlined approach to committee decision-making.
- 1.13 As set out above, scrutiny committees are not required to be, but may be, operated by committee system authorities. The Bill makes provision for regulations about the precise powers and composition of such committees. Arrangements are set out to cover the responsibilities of health and community safety, flood risk and crime and disorder scrutiny committees.

2. Clarification on Predetermination

- 2.1 The Bill confirms the common law position that a local authority member is not to be taken to have had, or to appeared to have had, a closed mind when making a decision just because that decision maker had previously done anything of relevance to the decision that indicated what view the decision maker took or would or might take. The key point is that a member needs to retain an open mind at the point of taking a decision and that a prior indication of view of a matter does not amount to pre-determination.

3. Standards

- 3.1 The existing standards regime, including the requirement to adopt a code of conduct for members, the Standards Board and the procedures for determining complaints about conduct, is abolished.
- 3.2 In its place, the Bill imposes on all authorities a general duty "to promote and maintain high standards of conduct by members". There is a power to adopt a code of conduct that is expected of members, but there is no requirement to have such a code.
- 3.3 Where an authority has a code, if the authority receives a written allegation that a member has/may have failed to comply with its code of conduct then it must (a) consider whether it is appropriate to investigate the allegation; and (b) if it decides that is appropriate, investigate the allegation "in such manner as it thinks fit". If, whether following an investigation or otherwise, the authority finds that a member has failed to comply with its code of conduct, it "may have regard to the failure in deciding whether to take action in relation to the member and what action to take".
- 3.4 As an interim measure, guidance has been given that existing standards cases are to proceed but that a sanction in excess of censure should not be imposed.
- 3.5 In Brighton & Hove, the Council will need to consider whether to revise its existing code, adopt a new code or withdraw its code without replacing it. Equally the role of the Standards Committee will need to be reviewed as its statutory function has been removed. In view of the obligation set out in the Bill for councils to promote and maintain high standards of conduct, there may be support for maintaining some level of standards framework to ensure that, if complaints are made or issues raised, a consistent and proportionate approach is adopted.
- 3.6 In addition to general conduct issues, the Bill makes provision for registration of members' interests. The Secretary of State is empowered to make regulations requiring monitoring officers of local authorities to establish and maintain a register of the interests of members. Those regulations may include provision as to the sanctions that local authorities can impose on members who do not comply with the registration requirements, and requirements to make the registers public. Failure to comply with these regulations can also be an offence, leading to fine and disqualification from acting as a member of a local authority

4. Policy statements on senior staff pay

4.1 Authorities will be required to publish senior pay policy statements annually, with the first one to be published by 31 March 2012. The statement will set out the authority's policies for the financial year relating to the remuneration of its chief officers and must cover policies on:

- (a) the level and elements of remuneration for each chief officer;
- (b) the remuneration of chief officers on recruitment;
- (c) increases and additions to remuneration for each chief officer;
- (d) the use of performance related pay for chief officers;
- (e) the use of bonuses for chief officers;
- (f) the approach to payment of chief officers on their ceasing to be employed by the authority;
- (g) the publication of and access to information relating to remuneration of chief officers.

4.2 These provisions will relate to the Chief Executive, statutory and non statutory Chief Officers and the Monitoring Officer. They are in addition to the provisions of the Accounts and Audit (Amendment Number 2) (England) Regulations 2009 which are already in force and introduced a legal requirement for reporting remuneration of senior employees to increase transparency and accountability in Local Government. This data must be published by 31st January 2011 and Brighton & Hove Council is making the relevant preparations to comply with the new requirements.

5. General Power of Competence

5.1 The very first provision in the Bill creates a general power to act which effectively puts local authorities on a similar legal footing to individuals. As creatures of statute, local authorities have always been required to identify a specific statutory power for all actions. The general power of competence will change that by enabling local authorities to "do anything that individuals generally may do". This includes doing things "in any way whatever" that are unlike anything local authorities or other public bodies may currently do. Where the general power of competence allows Councils to do something, it can be done anywhere in the UK or elsewhere, for a commercial purpose or otherwise and with or without charge.

5.2 This new general power is framed very broadly and the Government has stated that it is designed "to give councils the legal reassurance and confidence to innovate and drive down costs to deliver more effective services."

5.3 There are restrictions on the power, as it is subject to a number of types of limitation:-

- Existing legislative restrictions will continue to apply to the exercise of the general power. This includes any limitations on existing local authority powers which overlap with the new general competence power;
- Any subsequent limitations expressed in legislation passed after the Bill becomes law will apply;

- Specific limitations in the Bill itself state that authorities cannot use the general competence power to make or alter provisions about the discharge of council functions by committees, joint committees or officers. The power cannot be used to alter models of local governance or to alter the existing restrictions on authorising or delegating the performance of functions.
 - **Limits on the power to charge:** if an authority is providing a service for a non-commercial purpose and the service provision is or could be covered by the general competence power, then the authority can charge for the service only if the authority has no statutory duty to provide the service, the person has agreed to the provision of the service and there would be no power to charge in the absence of the Localism Bill provisions and section 93 of the Local Government Act 2000. Any charges which are levied for a service delivered under the general power for non-commercial purposes must not exceed the costs of providing that service.
 - **Limits on using the power to do things for commercial purposes:** authorities cannot use the power to do something for a commercial purpose under the general power if it has a statutory duty to do/provide it. Anything done for a commercial purpose must be done through a company.
- 5.4 This is a widely drawn, substantive power, expressly broader than the current well-being power (which is repealed). The Courts will continue to apply administrative law principles to the exercise of the new powers. This means that Councils will still need to act reasonably and fairly, in conformance with Convention rights and consistently with their fiduciary duty to the public purse.

