

GOVERNANCE COMMITTEE MEETING

Agenda Item 11

Brighton & Hove City Council

Subject: Update on the Implementation of the Local Government and Public Involvement in Health Act 2007

Date of Meeting: 7 July 2009

Report of: Interim Director of Strategy & Governance

Contact Officer: Name: Oliver Dixon Tel: 291512
E-mail: oliver.dixon@brighton-hove.gov.uk

Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

This report informs Members about those governance provisions in the Local Government and Public Involvement in Health Act 2007 ('the LGPIH Act') of most relevance to the council, and the current situation with respect to implementation.

2. RECOMMENDATIONS:

It is recommended that Members –

- (1) Note the latest situation as regards the implementation of key governance provisions in the LGPIH Act; and
- (2) Instruct officers to keep the Governance Committee informed about the implementation of any outstanding provisions in the Act relevant to the council

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The LGPIH Act contains a range of devolutionary and deregulatory measures intended to ensure that local government:
 - Gives local people more influence over the services and decisions that affect their communities
 - Provides effective and accountable strategic leadership
 - Operates in a performance framework which supports empowerment and secures better outcomes for all
 - Leads local partnerships to provide better services for citizens
- 3.2 The Act, which gave statutory effect to much of the local government White Paper 'Strong and Prosperous Communities', received royal assent in October 2007, since when 9 separate commencement orders have brought

most provisions into effect in stages. The key outstanding areas are detailed in paragraphs 3.17 and 3.19 below.

3.3 Part 3 of the Act requires all but the smallest councils to adopt **executive arrangements**. Brighton & Hove City Council complied in May 2008, with the adoption of a leader and cabinet executive. Under the legislation, the earliest the council could opt for a change to those governance arrangements and switch to a directly elected mayor would be October 2010.

3.4 Part 4 relates to **community governance** and enables –

(i) existing parish councils to change their title from ‘parish’ to ‘neighbourhood’, ‘community’ or ‘village’. There is no indication that Rottingdean Parish Council, the only parish council in the city, wishes to undergo a such a change;

(ii) local people to petition the council to create one or more new parish councils within the city boundary. A petition is valid only if supported by the requisite number of signatories, which varies according to the size of the area to which the petition relates:

Size of petition area	Minimum no. of signatories
Fewer than 500 local govt electors	50% of electors
500-2500 local govt electors	At least 250 of the electors
More than 2500 local govt electors	At least 10% of the electors

Following a valid petition, the council would be required to carry out a community governance review in accordance with the procedure set out in Part 4, chapter 3. To date, no such petitions have been submitted.

3.5 Part 5 makes provision for the co-operation of English authorities with local partners.

3.6 Chapter 1 of Part 5 requires the council to consult named partners in preparing a **local area agreement** (LAA) and to submit the draft for Secretary of State approval. Once the LAA is in place, the council and its partners must have regard to every local improvement target specified in the agreement, in carrying out their functions.

As the council and its partner authorities across the city had already established a local area agreement before it became a legal requirement to do so, nothing further was needed to comply with the LGPIH Act. The Local Strategic Partnership (LSP) and Public Service Board provide the framework through which the council and its partners give due regard to LAA targets.

- 3.7 Chapter 2 of Part 5 came into force on 1 April 2009. Its provisions relate to **overview and scrutiny committees** and permit –
- (i) any Member to refer a local government matter to the relevant O & S committee for consideration, through the facility known as Councillor Call for Action; and
 - (ii) any O & S committee –
 - (a) to make a report or recommendation to the authority or executive, requiring them to consider and respond within 2 months; and
 - (b) to make a report or recommendation to a partner authority concerning a local improvement target which relates to that partner and is specified in the LAA; and to require the partner to have regard to the report or recommendation in exercising its functions
- 3.8 Regulations prevent Members from referring a matter to O & S which relates to individual planning or licensing decisions, or which is vexatious, discriminatory or not reasonable to be included in the O & S committee's agenda. Furthermore, the LGPIH Act specifically excludes any Councillor Call for Action powers relating to health or crime and disorder matters as these are dealt with under separate legislation.
- 3.9 Regulations regarding information that partner authorities must provide and which may not be disclosed to an O & S committee have yet to be made. The government consulted on the scope of these in autumn 2008 and, in their response, indicated their intention to make "limited regulations" that struck the right balance between clarity and flexibility. In an update published in March 2009, they told councils to expect the regulations "over the next few months".
- 3.10 A detailed report on the provisions referred to at 3.7(ii) above was considered and noted by the Overview and Scrutiny Commission on 10 March 2009. The report is reproduced at Appendix 1, for information.
- 3.11 Few changes are needed to the council's procedure rules to accommodate Councillor Calls for Action, as the constitution already allows any member of an O & S committee to place an item on the agenda of the relevant O & S committee. Our procedure rules simply need broadening to allow *any* member to do so. In practice however requests from non-scrutiny Members are already placed on Committee agendas.
- 3.12 Similarly, the constitution already requires the executive to respond to reports or recommendations from O & S within six weeks, which satisfies the requirement at 3.7(ii)(a) above.
- 3.13 It is unlikely that any of the council's O & S committees would need to exercise their power to require a partner authority to have regard to any report or recommendation issued to them; or – once the relevant regulations are made – to offer up certain information. The council's

relationship with its partner authorities is well established and operates on a cordial and co-operative basis, with partners willing to attend and contribute to O & S proceedings, and to provide information when asked. This can be seen in the contribution made by partner agencies to a number of scrutiny panel enquiries.

- 3.14 Indeed, the quality of the council's relationship with its partners means it can engage them in a strategic dialogue about overview & scrutiny, with the LSP taking a co-ordinated approach towards city-wide services. A paper on this, prepared by the Head of Overview and Scrutiny and the Head of Partnerships and External Relations, is due to be taken for discussion to the LSP meeting on 15 July 2009.
- 3.15 Councillor Call for Action powers in respect of crime and disorder matters are provided for in sections 19 and 20 of the Police and Justice Act 2006, which came into force on 30 April 2009, and were the subject of a separate report to the Governance Committee on 28 April 2009.
- 3.16 Best practice guidance on the operation of Councillor Call for Action was published in February 2009 by the Centre for Public Scrutiny jointly with the Improvement and Development Agency.
- 3.17 Part 6 will introduce a new procedure for making specified **byelaws**. Regulations, which the government say will be in place "by summer 2009", will specify the byelaws for which the Secretary of State's confirmation will no longer be required, and which the local authority will be permitted to enforce by fixed penalty notice. The proposed list of byelaws subject to the new regime is set out in Appendix 2.
- 3.18 Under Part 7, and since 1 April 2009, local authorities have been under a **duty**, where they consider it appropriate, **to involve** representatives of local people in the exercise of their functions by providing information, consulting, or involving in some other way. The Community Engagement Framework, approved by Cabinet and adopted by the LSP at the end of 2008, is the platform that supports the council and its partners in fulfilling the duty to involve.

The Stronger Communities Partnership¹ will be responsible for overseeing the implementation of the Framework and for monitoring its impact. In addition, the O & S Commission will use its new powers to monitor public authorities' adherence to the framework and to undertake specific scrutiny panel investigations on priority areas to improve engagement, including the involvement of local people in the exercise of council functions.

¹ The Stronger Communities Partnership is made up of representatives from the Voluntary and Community Sector, Registered Social Landlords, the Police, the Primary Care Trust and the City Council including the Cabinet Member responsible for Community Affairs and Inclusion. The Stronger Communities Partnership reports back to the LSP

3.19 Amendments to the model **code of conduct for members** are expected under Part 10 and in light of the consultation exercise by DCLG in 2008. The government's response to the consultation was due by the end of March but has been delayed until at least June. Officers will update members once the position becomes clear.

4. FINANCIAL & OTHER IMPLICATIONS:

4.1 Financial Implications:

The cost of implementing a community governance review following a valid petition (see paragraph 3.4), should one arise, would need to be met within existing budgets.

Minimal additional costs are expected as a result of the enhanced scrutiny powers introduced under Part 5 of the Act.

In considering whether to introduce a new byelaw under the new local procedure, once permitted by regulations, the relevant Cabinet Member would need to consider the costs associated with its introduction. There is potential for costs to be recovered to some extent from the collection of fixed penalties of up to £75 per offence.

Initial costs of implementing the Community Engagement Framework (and related duty to involve) will be met from pump priming funding of £20,000 in 2009/10 and £20,000 in 2010/11 through reward grant made under the Local Public Service Agreement. However, full implementation is likely to require additional funding from council and other LSP partner funds which will need to be identified before this implementation takes place.

Finance Officer Consulted: Anne Silley

Date: 24 June 2009

4.2 Legal Implications:

Members are being asked to note the report and to instruct officers to keep them updated. They may, if they consider it appropriate, make a recommendation to Council, the Cabinet or Scrutiny as appropriate.

Relevant legislation is identified and explained in the body of the report.

Lawyer Consulted: Oliver Dixon

Date: 16 June 2009

4.3 Equalities Implications

The duty to involve, given effect by the Community Engagement Framework, is designed to help reduce inequality. The council must provide representatives of local persons with appropriate information about services, policies and decisions which affect them or might be of interest to them and which, importantly, support involvement.

- 4.4 Sustainability Implications: The sustainability of local communities is supported by the duty to involve
- 4.5 Crime & Disorder Implications: None directly associated with this report
- 4.6 Risk & Opportunity Management Implications: The purpose behind the LGPIH Act, summarised in paragraph 3.1, provides the council with a range of opportunities to improve its leadership, partnership working and level of influence afforded to local people. Failure to capitalise on these opportunities could result not only in a depressed CAA rating but legal challenge in cases where the council had failed in one of more of its new statutory duties.
- 4.7 Corporate / Citywide Implications: Part 5 of the Act is entirely dedicated to local authorities' engagement with local partners, through local area agreements and the accountability afforded by scrutiny. The provisions in this part of the Act support effective city leadership, one of the council's five priorities.

SUPPORTING DOCUMENTATION

Appendices:

1. Scrutiny Legislation Update report of 10 March 2009 to Overview and Scrutiny Commission
2. Proposed list of byelaws no longer requiring confirmation by the Secretary of State

Background Documents

1. Strong and prosperous communities - The Local Government White Paper: final implementation plan. Published by DCLG in March 2009.