

Briefing 08/41 September 2008

# Communities in control: Real people, real power

## Improving local accountability; consultation

This briefing provides details of the latest consultation paper following on from the white paper, *Communities in Control; real people, real power*, as part of the government's wider agenda to support the further modernisation, and strengthening of, participatory democracy. The consultation paper '*Improving local accountability*' looks at the role of the local councillor and the enhanced role of overview and scrutiny functions. It sets out a range of policies to achieve this, building on work in progress from the 2006 White Paper. This briefing is provided to local authority chief executives, councils leaders and all APSE contacts

### Key issues

This briefing looks at a number of issues in relation to overview and scrutiny including:

- The role of overview and scrutiny functions
- The statutory basis of the overview and scrutiny function
- Improving overview and scrutiny
- Using overview and scrutiny as a means to improve public services

### 1. Introduction

The '*Improving local accountability*' consultation paper is part of the Government's wider agenda to modernise democratic systems, and to strengthen participatory democracy. Government believes this can be achieved using the mechanisms described in the *Communities in Control* White Paper, which embraces the concept of greater community empowerment.

In line with '*Communities in Control*' a series of further consultation documents will be launched exploring views on:

- **Improving local accountability** – covering developing and strengthening overview and scrutiny, new powers to hold local officers to account and facilitating the work of councillors.
- **A consultation paper on the making and enforcement of byelaws** – on the content of regulations to devolve the making of byelaws to councils and improving their enforcement through the introduction of fixed penalty notices.

- **A consultation on a revised code of conduct for members** - to be launched in mid September 2008 about reviewing the model code of conduct for members with a view to making any revised code in time for introduction following the 2009 local elections.
- **A consultation paper on mayors** - to be issued mid September 2008, inviting views about on-line petitioning for mayors and reducing the threshold for a petition to trigger a mayoral referendum to below five per cent of local electors.
- **A consultation paper on time off entitlements** – to be issued at the end of September 2008 on extending the right to time off for public duties to people serving in a wider range of roles and encouraging people to take on roles in independent, voluntary or community sector organisations, with a view to implementation by secondary legislation in April 2009.
- **A review of the code of recommended practice on local government publicity** - to be launched at the end of September 2008, looking at whether the code should be revised and updated and whether it should be a statutory code or guidance.

## 2. The statutory basis for overview and scrutiny functions

The statutory framework for overview and scrutiny functions was established by Part II of the Local Government Act 2000. The 2000 Act required all councils operating executive arrangements to appoint overview and scrutiny committees. Associated regulations also required those small district councils operating a streamlined committee system (“alternative arrangements”) to appoint one or more similar committees.

The Health and Social Care Act 2001 extended the statutory framework providing a statutory basis for councils to scrutinise local health services and the overview and scrutiny framework was further extended by the Police and Justice Act 2006, which brought bodies preparing a crime and disorder reduction strategy within councils’ scrutiny arrangements.

A number of councils have adopted imaginative and wide ranging approaches to overview and scrutiny (See [APSE Direct News July / August 2008](#) edition for an example of Northamptonshire’s approach). More generally, a 2006 survey<sup>1</sup> showed that over 80 per cent of recommendations from overview and scrutiny had been accepted by the council’s executive or policy committee. The survey helped demonstrate that councils across the country were strengthening the effectiveness of their scrutiny arrangements.

The White Paper *Strong and prosperous communities*<sup>2</sup> recognised in 2006, that whilst overview and scrutiny committees are good at reviewing service outcomes and involving external stakeholders, they are weak at reconciling community opinion or providing a forum for community debate.

The Local Government and Public Involvement in Health Act 2007 enhanced the ability of councillors through overview and scrutiny to champion the interests of local people across a range of local issues. This included providing a new responsibility for overview and scrutiny committees to consider Councillor Calls for Action (CCfA) on issues of local concern. The 2008 White Paper *Communities in Control: Real people, real power* has pledged to further raise the visibility and effectiveness of Council scrutiny functions.

<sup>1</sup> The 2006 survey of overview and scrutiny in local government; the Centre for Public Scrutiny; 2007

<sup>2</sup> Strong and prosperous communities; The Local Government White Paper; Communities and Local Government; 2006



Government is now proposing to implement the 2007 Act provisions, which are designed to enhance councils' scrutiny powers in the context of Local Area Agreements (LAAs). There is already a duty on the LAA's lead council (i.e. the responsible local authority for the LAA, namely the unitary council, London borough council, or in the case of two tier areas the county council) to publish a memorandum relating to their LAA, setting out to local people how partners are going to tackle and measure progress against their LAA. Guidance on Local Strategic Partnerships, including governance, engagement arrangements and implementing LAAs following the 2007 Act is set out in *Creating Strong and Prosperous Communities: Statutory Guidance*.

### **3. Requiring information from partner authorities**

One of the main criticisms of the White Paper; *Creating Strong and Prosperous Communities* was the fact that whilst the paper aspired for greater partnership working between local authorities and other partners the regulatory ability for local authorities to hold partners to account on key targets in for example areas such as Local Area Agreements was at best perceived as weak.

The '*Improving local accountability white paper*' proposes a number of measures to help local authorities work better with partners and to promote better local accountability including that partners should make available, to the lead local authority, any information that relates to targets set under the LAA.

The proposals exclude information for which separate provision is made under the Police and Justice Act 2006 and the National Health Service Act 2006. However it would include information to a lead authority in a unitary area that relates to an LAA target; and in a two tier area for information to made available to district councils by the lead council or a partner in the LAA any information that is relevant to a target in connection with that area, single tier area or the legitimate well being of that area.

Therefore it is proposed that information must be provided where that information:

- Is information in relation to any target which relates to that partner?
- Relates to an agenda item of the overview and scrutiny committee concerned
- Has been requested by that overview and scrutiny committee.

Information that relates to personnel data under the Data Protection Act 1998 would be excluded as would information subject to commercial confidentiality and where the information requested is already publicly available.

The proposals do not set out a prescriptive timetable for requests for information to be acted upon and suggests that such matters are subject to the detail of local circumstances

#### **APSE Comment**

The use of information is a key tool in allowing local authority scrutiny functions to legitimately act on behalf of the community in scrutinising decisions, made by others, that can impact on communities, in particular those decisions that directly relate to action and targets that can be outside of direct local authority control but nevertheless have an impact on the services, well being of an area and finance of the local authority.

However the commercial confidentiality exclusion could prove to be a hindrance to genuine exploration of partnership arrangements if it is claimed too widely. Whilst at tendering stages there may be a genuine need for companies to write into arrangements a 'commercial and in confidence' exception this ought not continue in a manner, during the delivery of a contract, to prohibit effective monitoring of those delivering contracts for services paid for by the public purse. Overview and scrutiny committees have a genuine interest in a detailed level of information and securing transparency in the information that they receive is critical to them.

#### **4. Publication of scrutiny reports, recommendations and responses**

The 2007 Act strengthened the provision of scrutiny by requiring responses from the local authority or the authority's executive committee to scrutiny reports and recommendations. It is proposed that this provision is further enhanced by providing that where committees publish their report or recommendations the authority or executive must also publish their response.

In addition provisions relating to the publication or exclusion of confidential information will be extended to local authority executives. The requirement will be to act in accordance with S21D of the Local Government Act (as amended by the 2007 Act) in relation to the publication of confidential information.

#### **5. Establishment of joint county council and district overview and scrutiny committees**

New provisions will allow for the establishment of joint county council with one or more district councils to establish joint scrutiny committees and district council committees with broadly the same powers as the lead local authority committee. The purpose of the joint committees would be to work collaboratively to and make reports and recommendations about the attainment of local improvement targets.

Where a joint committee reports to a local authority or local authority executive it is proposed that response times would be two months.

##### **APSE Comment**

The degree of co-operation and collaboration envisaged by the establishment of joint committees is to be welcomed however APSE would be concerned if such proposals were to duplicate work already undertaken in one or more of the areas. However the provisions would extend the 'call-in' powers to joint scrutiny committees that did not extend to them as part of the 2007 Act. This seems a sensible approach to creating a level playing field whether the scrutiny function is performed by a lead authority or a joint county and district overview and scrutiny committee.

#### **6. Enhancing the powers in district overview and scrutiny committees and scrutiny in small district councils operating a streamlined committee system.**

It is proposed that regulations following on from powers established under the 2007 Act will enhance scrutiny powers for district councils, broadly mirroring those available to lead councils. This would include

- District overview and scrutiny committees making reports and recommendations on matters relating to a local improvement target to the relevant county council or county council executive.

- The county council or executive to respond within two months to a district scrutiny report or recommendation
- Associated authorities will be required to have regard to reports and recommendations made by district overview and scrutiny committees.
- These provisions would apply to those smaller districts operating streamlined ('Alternative arrangements')

## **7. The 2008 White Paper commitments**

The White Paper introduces proposals to promote local democracy and participation and to encourage councils to be more innovative about how they do this. Building on the 2007 Act provisions it is intended that powers will be extended to matters outside of LAA targets.

It is also proposed that a new power will be established for county and district councils to establish area scrutiny committees where they wish to do so, combining existing resources into a new partnership. It is also intended that dedicated resources for scrutiny be established on a similar basis to the monitoring officer provisions under the Local Government and Housing Act 1989. As established in the consultation on the Local Petitions and Calls for Action Consultation the White Paper proposes a new duty on local authorities to respond to all petitions, including electronic petitions relating to local authority functions or other public services where the local authority shares delivery responsibilities.

Therefore where petitioners appeal if they are dissatisfied with a response it is envisaged that a local authority's response to a petition should be considered by the overview and scrutiny committee. As overview and scrutiny committees are independent of the executive they would then be responsible for considering councillor calls for action.

### **APSE comment**

APSE welcomes the recognition of the role of overview and scrutiny and the commitment to establish dedicated resources. However local authorities in light of new burdens such as the freedom of information act and more recent new duties such as the '*Duty to involve*' under the revised best value arrangements already face considerably new burdens. Therefore whilst dedicated resources would be welcome and examples of best practice exist where councils have already dedicated resources to overview and scrutiny APSE would press government to consider the funding issues associated with a greater, though nevertheless welcome role for scrutiny.

## **8. Increasing the viability and accountability of local public officers**

Councillors can be held to account through the ballot box but the consultation paper draws out arguments first cited in the Communities in Control paper that seeks to raise the visibility and accountability of local public officers which includes:-

- Chairs and chief executives of local public bodies attending regular public hearings
- A new right for people served by local service providers and agencies to petition to hold local officers to account

As part of these proposal it is envisage that job descriptions for chairs and chief executives would reflect a requirement to attend public meetings, that such public meetings take place close to

the community (E.g. a church hall or leisure centre) and that the public body develops a local petition arrangement e.g. the number of signatures required and the format that it must take.

In addition it would be for Government to specify the minimum standards for the various elements of the scheme and in particular the definition of the local officer to whom the provision would apply. For example replicating the definition of statutory officers and non statutory chief officers defined under the Local Government and Housing Act 1989\*

*\*Statutory chief officers' as defined by section 2(6) of the Local Government and Housing Act 1989 are the chief education officer, the chief officer of a fire brigade maintained under the Fire Services Act 1947, the director of social services, and the officer having Responsibility for the administration of the authority's financial affairs. Similarly, 'non statutory chief officer' is defined in section 2(7) as a) a person for whom the head of the authority's paid service is directly responsible; b) a person who as respects all or most of the duties of his post is required to report directly or is directly accountable to the head of the authority's paid service; and c) any person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority.*

### **APSE Comment**

In the case of direct service provision for local services the relationship between the officer, the elected member and the area served by the service is often a close and dynamic relationship whereby service changes are regularly made in response to citizen concerns or issues raised by elected members. However, where services are more remotely provided, there may well be a need for greater accountability and yet it is not clear from the consultation paper how greater accountability of employees of those providing public services can be addressed if they are not 'an officer' of the local authority.

In practice the vast majority of Chief Executives and senior managers already regularly contribute to public meetings and attend overview and scrutiny committees to respond to concerns. In addition, in the vast majority of cases, there is an effective relationship between officers and elected members whereby officers are themselves held to account for actions taken in response to the policy direction and achievement of objectives set by their elected members.

These proposals could well be misused and have an adverse impact upon the employment relationship between an officer and the council as employer and raise some interesting questions. For example in terms of how the outcome of public meetings and or petitions could be used in any disciplinary related action against an officer and issues of fairness and transparency and may even raise breach of contract issues. Moreover a local authority has a duty of care to protect its employees from harassment and any provisions of accountability must be equally matched by sufficient protection from undue or malicious misuse of these provisions. Indeed consideration must also be taken of work life balance issues where many in the public sector feel 'time poor' due to increasing burdens. The consultation paper is insubstantial in expressing how this mechanism would operate in practice but one way to achieve a more transparent and democratically accountable process to 'holding local officers to account' would be to ensure an appropriate elected member chair at any public meetings.

APSE would be concerned if the 'holding an officer' to account provisions were used to undermine the accountability role of locally elected members by, in the view of the public, abdicating responsibility to an officer level.

## **9. Facilitating the work of councillors**

The paper makes a number of proposals relating to the introduction of remote voting and participation through teleconferencing and other means following recommendations in the 'Councillor Commission' report. It is proposed that legislation is brought forward to allow authorities to modify voting and attendance procedures and would need to extend these changes to ensure that the public were able to retain their ability to witness proceedings.

Provisions would be required to ensure that contact with those present remotely at meetings would be maintained and that at least audio contacts with all participants is maintained throughout procedures. Local authority standing orders would need to reflect how meetings would be handled or ceased if contact were to be lost.

### **APSE comment**

As recognised by the *Councillor Commission* report the involvement in local political activity is deteriorating and in part this is due to the often difficult circumstances in which people need to attend council meetings and committees. It is considered to be a barrier especially to the participation of those with dependant carer responsibilities and women in particular. It is sensible to embrace technological resources which are increasingly providing an efficient and reliable alternative to physical attendance at meetings but safeguards need to be put in place to ensure training and skills are present before moving to new systems and all possible security measures to safeguard the legitimacy of voting processes. Processes ought not to be a substitution in its entirety for regular face to face meetings.

APSE's new Citizen Engagement advisory group will focus on these issues in its inaugural meeting in September. Should you wish to take part in this new advisory group which is open to senior officers, elected members and trade union representatives from member authorities only please email [mbaines@apse.org.uk](mailto:mbaines@apse.org.uk)

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