



Scrutiny Programme Board

SPECIAL MEETING

Date: Thursday, 10 February 2011

Time: 6.00 pm

Venue: Committee Room 3 - Wallasey Town Hall

Contact Officer: Mark Delap
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AGENDA

1. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST/PARTY WHIP

Members are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they are.

Members are reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they are subject to a party whip in connection with any item(s) to be considered and, if so, to declare it and state the nature of the whipping arrangement.

2. ALLOCATION OF CALL-IN NOTICE (Pages 1 - 4)

The views of the Scrutiny Programme Board are sought with regard to the allocation of the Call-In Notice in relation to the Parks and Countryside Services Procurement Exercise (PACSPE) – Invitation to Tender/Project Scope Definition (Cabinet minute 287 (13 January 2011) refers), which has been submitted by the Leader and Deputy Leader of the Labour Group, Councillor S Foulkes and Councillor P Davies.

It is entirely a matter for the Board whether it chooses to consider the Call-In itself, or to refer it to one or more of the themed Overview and Scrutiny Committees. Members should note that the call-in should be

considered by overview and scrutiny no later than 18 February 2011. In anticipation of the Board allocating the call-in notice to the Sustainable Communities Overview and Scrutiny Committee, consultations have taken place with the Chair and spokespersons for that meeting to take place.

3. THE LOCALISM BILL AND ITS IMPLICATIONS FOR SCRUTINY (Pages 5 - 18)

4. CONSIDERATION OF POLICY BRIEFING NOTES (Pages 19 - 54)

In accordance with minute 41 (5 January 2011) (attached), the Committee is requested to give consideration to two Policy Briefing documents produced by the Centre for Public Scrutiny, in relation to matters contained within the Localism Bill.

5. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR



Metropolitan Borough of Wirral

SCRUTINY COMMITTEE CALL-IN PROCEDURE (Standing Order 35)

Decision of Cabinet to be called in:

Date of meeting	January 13 th 2011
Minute number	287
Subject	PACSPE Invitation to tender/project scope definition

Reason(s) for call-in:

See attached sheet

Called in by [signature(s) to be inserted]:

Councillor	<i>Steve Jones</i>	(Party Leader) OR
Councillor	<i>Phil Jones</i>	(Deputy Leader) OR
Councillors:		
(1)	_____	
(2)	_____	
(3)	_____	
(4)	_____	
(5)	_____	

***Received by:**

Signature:	Date	Time
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On behalf of the Borough Solicitor and Secretary		
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Referred to:

Select Committee ()	Date
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*This form must be received by the Borough Solicitor and Secretary by **no later than 5.00 pm** on the fifth working day following notification that the minutes have been published.

STANDING ORDER 35

CALL IN MECHANISM

1. When a decision is taken by the Cabinet, a committee of the Cabinet or an individual Cabinet member (other than one referred to full Council or which is certified urgent by a unanimous decision of the Cabinet) and notified to all members of the Council (by electronic and/or other means) any Leader or Deputy Leader of a political group or any five members of the Council may by notice in writing submitted to the Borough Solicitor and Secretary within five working days of such notification require that the decision be not implemented and be referred to the relevant Select Committee for scrutiny within a further ten working days from receipt of the notice. Any such notice must specify the decision in question, the reason for call-in and be signed by the members concerned. The relevant Chief Officer and all members will be notified of a call-in immediately and no action will be taken to implement the decision until the call-in procedure has been completed. A decision of the Cabinet, a committee of the Cabinet or an individual Cabinet member may be called in only once.
2. When a matter is referred to a Select Committee the Chair of that committee may require the presence of the relevant Cabinet member and any Council officer to answer questions on that matter and may require the production of appropriate documents or reports in the custody of the Council or may call for additional reports.
3. If the Select Committee disagrees with the decision it may either ask Cabinet to reconsider the decision or refer it to full Council for consideration if it considers that the decision is contrary to the policy framework or not in accordance with the budget. The Chair of the Select Committee shall have the opportunity to explain the Committee's views to the Cabinet or Council as appropriate.
4. If the Select Committee agrees with the decision the relevant Chief Officer may implement it. In the event of any political group not agreeing with the majority decision of the Select Committee it may prepare a written minority report for consideration by Council when the minutes of the Select Committee are considered. Any such report must be handed to the Borough Solicitor and Secretary in accordance with Standing Order 12(2). The Leader of the relevant group or his/her representative will have an opportunity to explain the minority report to the Council and Council may discuss and vote for or against such a report without prejudice to any decision already implemented.

Reasons for Call in of Minute 287
PACSPE Invitation to Tender/Project Scope

1. The report contains substantial exclusions to the original proposals.
2. There is no costing of these exclusions.
3. There is no reason given for these exclusions.
4. There is no clear indication of what is now included in the potential contract.
5. There is no revised figure given for the new contract value.
6. There is no indication of any revised figure for potential savings.
7. There is no information on the potential impact on staff or staff organisation.
8. It is impossible for members to ascertain from this report whether or not, on the revised contract value, the outsourcing will provide the Council with value for money.
9. The report states that “the proposed exclusions from the scope of this procurement exercise outlined in 3.3 and form of contract in 4.0 will be used to inform the formal OJEU advertisement and Pre-Qualification Questionnaire to commence shortly”. If this happens before members are provided with a further report giving them the full information necessary on which to take a decision to move to tender, they will be put in the position of placing a tender before they even know the value of the contract to be advertised.
10. The lack of any precise knowledge of the in house value of the services to be tendered, or of any detailed breakdown of the individual services, and the lack of any work done on an in house bid which was precluded by Cabinet, means there will be no accurate yardstick against which to gauge any subsequent tenders and make decisions on whether the outsourcing will deliver savings or provide value for money.
11. If savings are minimal it will be important to factor in the lack of future financial flexibility created by the letting of a long term contract.
12. No opportunity has been given to staff to see if they can meet in house any new savings targets while retaining flexibility for the Council.
13. At the call in held in July, the Director of Technical Services stated that any major changes to the procurement exercise would mean that the exercise itself would be subject to further review.
14. Reducing the value of the contract by what looks to be almost half must qualify as a major change.
15. No review has been instigated.

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WIRRAL METROPOLITAN BOROUGH COUNCIL

SCRUTINY PROGRAMME BOARD

10 FEBRUARY 2011

SUBJECT:	THE LOCALISM BILL AND ITS IMPLICATIONS FOR SCRUTINY
WARDS AFFECTED:	ALL
REPORT OF:	DIRECTOR OF LAW, HR AND ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	LEADER
KEY DECISION	NO

1.0 EXECUTIVE SUMMARY

- 1.1 At the last meeting of the Scrutiny Programme Board held on 5 January 2011 the Director of Law, HR and Asset Management reported further to Minute No. 32 (3) (Scrutiny Training) (26 October 2010), that the new Localism Bill could have implications to the way the Council's Scrutiny Function operates in the future and that a further report will be presented once more information was received from the Government.
- 1.2 Also, at the meeting the Democratic Services Manager circulated the following two documents that had been produced by the Centre for Public Scrutiny (CfPS) in relation to matters contained within the Localism Bill, for Members information:
- Changing Governance Arrangements Policy Briefing 4 – December 2010
 - Localism Bill and Grant Allocation Policy Briefing 7 – December 2010
- 1.3 Consequently, it was agreed that a Special Meeting of the Board be arranged for 6.00pm Thursday, 10 February 2011, to give further consideration to the Localism Bill and the implications as set out in the above mentioned scrutiny documents, produced by the CfPS.
- 1.4 This report has been written to assist Members by briefing them on the key elements of the Localism Bill and highlighting information in respect of overview and scrutiny contained therein. It is to be read in conjunction with the two CfPS documents detailed above and included as the next items of business on the agenda for this special Scrutiny Programme Board meeting.

2.0 RECOMMENDATION(S): That

- (1) the Scrutiny Programme Board is asked to note The Localism Bill and the implications for Overview and Scrutiny; and
- (2) the Scrutiny Programme Board is kept updated on the passage of the Bill as it moves

toward Royal Assent.

3.0 REASON(S) FOR DECISION

This report has been prepared to brief Members on the Localism Bill and its implications for Overview and Scrutiny. No decisions are required.

4.0 BACKGROUND

The Government's flagship Localism Bill was published on Monday, 13 December 2010. Running to 406 pages, 7 parts, with 207 clauses and 24 schedules, it is an extremely significant piece of legislation which looks to devolve decision-making powers from Whitehall to communities and their local democratically-elected representatives. Local Government Minister, Grant Shapps has written to every council to highlight measures in the Localism Bill that he says will "help place councillors centre stage in their communities with more clout than ever before to get things done for the people they serve". These include freeing councillors from restrictions that prevent them from championing local issues: measures in the new Bill will reform the rules that have barred them from taking part in decisions where they had campaigned or expressed a predisposed view. The Localism Bill will change the law to allow councillors to campaign on local issues and champion the needs of their residents.

5.0 SUMMARY OF THE BILL

- The Bill devolves more powers to councils and neighbourhoods and gives local communities greater control over local decisions like housing and planning.
- The Bill contains numerous provisions in relation to Local Government. These include a general power of competence for Local Authorities (LAs), governance arrangements for LAs including new provisions for directly elected mayors, the abolition of the standards board regime and requirements for LAs to set senior pay policy statements.
- A key element of the Bill is to provide for community empowerment with powers to enable people to instigate local referendums on any issue, to approve or veto in a referendum a council tax increase deemed to be excessive, to express an interest in running local authority services and to provide local community groups with an opportunity to bid to buy assets of community value.
- Reform of the Planning system is another key element of the Bill with provisions to abolish regional strategies, provide for neighbourhood plans, make pre-application consultation compulsory and make changes to planning enforcement.
- The Bill contains provisions to reform social housing including measures to offer flexible tenancies for new social tenants, create a new system of council housing finance, provide assistance for tenants to exchange their social rented property, transfer the functions of the Tenants Services Authority to the Homes and Communities Agency and make changes to the system for tenants to make a complaint about their social landlord.

- Finally, the Bill also contains a number of provisions for London that provide the Mayor with additional powers to secure an Olympic legacy and incorporate the role of the Homes and Communities Agency in relation to London into the Greater London Authority.

6.0 OVERVIEW AND SCRUTINY

The Bill seeks to consolidate a wide range of scrutiny legislation into a single place (although provisions relating to crime and disorder remain in the Police and Justice Act 2006, and health provisions remain in the NHS Act 2006). It replaces the relevant provisions in the 2000 Act in full. It also restates the law relating to health scrutiny.

When the Act is passed this will mean that provisions relating to scrutiny will be found in Part 1A of the 2000 Act, beginning with section 9F (with some additional content in Schedule A1 of the 2000 Act). Specific provisions relating to overview and scrutiny in local government can be found in Schedule 2 of the Bill.

Scrutiny Powers which will now be covered by the Bill are:

- 9FA(1) – authorities operating either Executive or Committee arrangements must have scrutiny committees;
- 9FA(2) - scrutiny committees must have the power to review, scrutinise, and make reports and recommendations on matters whether or not they relate to executive responsibilities (and issues that affect the inhabitants of the area);
- 9FA(2)(f) – powers to review and scrutinise matters relating to the health service (in upper tier/unitary authorities);
- 9FA(3) – powers to set up joint scrutiny committees;
- 9FA(4) – call-in;
- 9FA(5) – a limiting function prohibiting O&S functions from exercising any functions other than these, crime and disorder scrutiny or any functions conferred by regulations. However, the provision in 9FA(2)(e) on looking at any issue affecting local people means that this should not restrict scrutiny’s remit too much;
- 9FB – statutory scrutiny officers (still only for counties and unitaries, not shire districts);
- 9FC & 9FD – councillor call for action. Further regulations can be made on this provision, which may simply reiterate the content of the existing regulations on CCfA exclusions;
- 9FE – duty of the executive to respond to recommendations, further to notification by scrutiny – the executive must comply with the requirements in the notification (which gives scrutiny the power to require the executive to give reasons for rejecting recommendations) and must respond in two months;

- 9FF – partners to “have regard to” scrutiny recommendations, but still no power to compel attendance at meetings;
- 9FG – exclusion of exempt/confidential information under the 1972 Act (although it may be that the Government’s planned changes to the FOI regime will see s100A of that Act and the Schedule 12A provisions changing in due course);
- 9FH – powers of districts to make recommendations to county councils, subject to regulations;
- 9FI – powers relating to flood risk management, further to recommendations made in the Pitt Review;
- 9FJ – requests for information from partner authorities;
- Schedule A1 – paragraph 6 – education co-optees;
- Schedule A1 – paragraph 11 – voting rights for co-optees;

As it stands, Schedule 2 contains a couple of errors in drafting that will require correction at a later stage, including:

- Reference, in relation to health, to Primary Care Trusts, which are about to be abolished.
- Reference to Local Area Agreements and local improvement targets, which are about to be abolished.

6.1 Governance arrangements - overview

The Bill requires that all authorities operate governance arrangements in one of three forms:

- Executive arrangements (either Leader, cabinet and scrutiny or executive mayor, cabinet and scrutiny);
- Committee system;
- Another prescribed arrangement (where a local authority submits a proposal to the Secretary of State (SoS) for a different form of governance, which the SoS must then approve).

Authorities operating executive arrangements must continue to have at least one scrutiny committee, and the scrutiny provisions in the rest of the Bill will apply to them. Authorities operating under the committee system may have one or more scrutiny committees. It has not been made clear, but “fourth option” councils could be recognised as operating under a committee system for the purposes of the Bill, making it unnecessary for them to undergo the possibly lengthy “change in governance” procedures. This also leaves the way open to current “fourth option” councils to retain, or dispense with, their scrutiny

committees, at their discretion, once the Bill is enacted and comes into force.

6.2 Changing governance arrangements

This is a two stage process. 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. Different provisions will apply for the 12 core 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.

6.3 Executive arrangements – leader/cabinet, executive mayor/cabinet

Scrutiny powers under executive arrangements, as noted above, have been consolidated in the Bill largely unamended from previous legislation.

6.4 Powers relating to executive mayors:

- An executive mayor can also be the Chief Executive of the authority, but may not hold the post of Head of Paid Service (which must be confirmed by Council but which requires two-thirds voting against to be defeated);
- Where this occurs the authority must appoint an officer to be responsible for providing advice to councillors;
- The Mayor must, if these provisions are adopted, set out in a report his/her plans for the operation of the authority, including cross-cutting strategy and staffing;
- Any local public service function may be transferred to the Mayor by the Secretary of State (SoS) . This must be based on a proposal from the Mayor which must be made to the SoS within one year of the most recent election. “Public service” is not defined, but has the potential to be broad;
- 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;
- Mayors will retain the power through regulations to appoint an “assistant” (a political assistant who will be an officer of the council, analogous to the current position to support to group offices)

Scrutiny in mayoral authorities would also need to be carried out under the understanding that, with executive power being more concentrated than in other arrangements, the role of non-executive councillors would be especially important. For authorities making the transition – the 12 core cities, in the first instance – a careful consideration of the powers and functions of scrutiny will need to be taken over the next year to eighteen months.

6.5 The committee system

The relevant part of the Bill relates to practical, procedural issues - in particular, delegation of powers under a committee system.

6.6 Scrutiny powers under the committee system

Scrutiny committees may be operated by committee system authorities. The Bill makes provision for regulations about the precise powers and composition of such committees, which will hopefully be proportionate in nature. It should be noted that none of the provisions applying to executive arrangements (set out above) will apply to committee system Overview and Scrutiny Committees, save for specific powers are limited to scrutiny in flood risk authorities, although subsection 2 does clearly indicate that regulations may well implement those sections unamended.

Health and community safety scrutiny responsibilities are covered too. For health, scrutiny powers and duties will continue, albeit operated through the committee system rather than by a scrutiny committee per se – a relevant committee can take on the powers for health scrutiny as if it is an O&S committee. For crime and disorder scrutiny under the committee system, a committee is to be designated as the crime and disorder committee if scrutiny committees have been set up, but if not there is no requirement to conduct scrutiny in this way. The situation for wider partnership scrutiny is unclear. For committee system authorities, it may be that such scrutiny and accountability will be delivered through the service committee system.

7.0 LOCALISM BILL – MORE GENERAL IMPLICATIONS FOR ACCOUNTABILITY

7.1 There are major changes in areas of planning and housing which may affect scrutiny business, particularly insofar as they suggest a new approach to strategy. The section on community empowerment is worthy of note.

7.2 Community empowerment

This includes the “community right to challenge”, a different approach towards “assets of community value” and provisions for local referenda, particularly in the case of council tax rises.

7.3 Referendums

The provisions on referendums can be treated as, in part at least, a beefing-up of the powers recently introduced on petitions, which the Bill will repeal. In the Bill, if 5% or more of people in an area sign a petition requesting a referendum on an issue a referendum will be triggered following a Council resolution on the matter in question. It will be for the council to decide whether it would be “appropriate” to hold a referendum.

A Member or Members of an authority may also request a referendum. Under these circumstances it will be for the council to decide whether it would be “appropriate” to hold a referendum. The authority/authorities concerned are not actually bound to give effect to the results of the referendum but, after it has taken place, must indicate what, if any action they propose to take.

Particular provisions exist for referenda on council tax increases. Schedules 5 and 6 of the Bill set out the full details.

Scrutiny's involvement in this area would probably be limited, although scrutiny could have a role in investigating issues that could be subject to referenda, or where a referendum is planned. There could be scope to link up issues of particular public concern which might be subject to referenda through the use of CCfA, or through call-in where they relate to proposed council decisions.

Community right to challenge – under these provisions, a “relevant body” (a charity, voluntary group, employee mutual) may express an interest in running local public services. They can do this at any time, unless an authority decides only to accept such expressions in a certain period (minimum periods may be set out in regulations). The authority must consider whether to accept the expression of interest, taking into account social, economic and environmental considerations - the grounds for rejection will be set out in regulations from the Secretary of State.

As and when an expression of interest is accepted, a procurement exercise must be carried out. This opens up the possibility that, following the procurement exercise, a contract will be awarded to run the service to an organisation other than that which expressed an interest in the first place.

Scrutiny's involvement in this area could be significant. While scrutiny cannot become involved in detailed contract management, an investigation of these issues could be a part of a wider review of council procurement. Scrutiny could also help the authority to develop the criteria, based on social, economic and environmental considerations, used to come to a judgment on accepting expressions of interest.

As and when services are delivered by charities/mutual's/voluntary groups, scrutiny could exercise a watching brief over the issue.

Assets of community value – under this part of the Bill, authorities must prepare a list of local assets of community value (based on the authority's own judgment but also “community nomination” of appropriate assets). These can be any assets/land owned by anyone in the area. There must be a procedure by which the inclusion of any asset on the list can be reviewed. Owners of assets can request such a review. Where a “community nomination” is made for inclusion on the list but it is unsuccessful, it is to go onto a separate list of unsuccessful nominations, which should also include the reasons given for its rejection from the main list. Where the owner of such an asset proposes to sell it, a moratorium applies. They must notify the authority, and community interest groups (as defined by the authority in question) who will have the right to bid to buy it.

Scrutiny's involvement in this area could be most useful at the beginning of the process, as the list is being formulated. Scrutiny could help to identify community assets based on discussion with local people – perhaps as part of a small, time-limited scrutiny review. This would ensure that the process for putting the list together is transparent, and accurately reflects public views. Scrutiny could also be consulted on the local definition for “community interest group”, and included in the list of consultees itself.

7.4 Planning

This part of the Bill covers a wide range of planning issues. Some of the operational issues around planning decision-making are less relevant, but in strategic terms the broad changes to the Town and Country Planning Act regime are significant, and deserve consideration by practitioners. Some include:

- Abolition of Regional Spatial Strategies;
- Changes to the operation of the Community Infrastructure Levy (previously s106 agreements); Changes to various parts of the Local Development Framework approach, including minor changes to the adoption of Development Plan Documents and the approach to the preparation of local development schemes;
- Neighbourhood planning (in particular the duty being placed on those who are seeking planning permission to directly consult local people on proposals, and other community consultation proposals);
- Various provisions relating to enforcement;
- Changes to the way that national planning policy statements are developed;
- The abolition of the Infrastructure Planning Commission, but the retention of powers by the SoS for planning proposals of national significance.

7.5 Housing

The main focus of likely scrutiny interest here will be social housing tenure reform, and reforms to tenant scrutiny. Other proposals include changes to the law around homelessness and the powers of the Housing Ombudsman. The Homes and Communities Agency remains, although its powers in London will now be directly given to the Mayor.

Social housing tenure reform/tenants' rights – housing authorities must prepare tenancy strategies, covering the types of tenancy granted, the circumstances in which tenancy will be granted and length of terms and circumstances in which tenancies will be renewed. The Bill does not specify this, but such strategies will involve giving additional clarity to choice-based lettings arrangements. Flexible tenancies are also being created as a halfway house towards secure tenancies, which apply to many properties.

Schedules 16 and 17 of the Bill makes provisions relating to standards of social housing. Responsibility for regulating social housing passes to the Homes and Communities Agency. The HCA, in its role as the regulator, will take on responsibility for ensuring that key standards are met, and will be able to accept submissions from a number of stakeholders in reaching this judgment, including bodies representing tenants' interests.

Scrutiny's involvement in this area is likely to link closely with any work on choice based lettings. Tenancy strategies will be important documents, and the scrutiny committee may want to investigate their development and the extent to which they assist both in housing supply and housing mobility. The HCA's regulatory powers over standards of social housing are powers of which scrutiny needs to be aware, particularly in the context of recent work conducted by the Tenant Services Authority (who are being abolished) and their work in encouraging more tenant involvement in investigations in service standards.

8.0 CONCLUSIONS

The Bill is a lengthy document and there is much further work to be carried out regarding its implications for the Council and its Scrutiny Function. This report covers the general points of the Bill and the provisions that related to scrutiny. The Bill's second reading was on 17 January 2011. Attached to the report as Appendices 1 and 2 are: Progress on the Bill; and the Local Government Associations response to the second reading. It is now proceeding to the Committee stage, and is not likely to be passed until late 2011, with most provisions likely to come into force in early 2012.

9.0 OTHER OPTIONS CONSIDERED

There are no other options as this report is for information only.

10.0 CONTRIBUTIONS TO THE COUNCIL'S STRATEGIC OBJECTIVES

These will be identified in detail when the various provisions within the Bills are clearer and become law.

11.0 FINANCIAL IMPLICATIONS

Costs Associated With Managing Petitions and Referenda.

12.0 LEGAL IMPLICATIONS

Significant from a Constitutional perspective.

13.0 HUMAN RESOURCE IMPLICATIONS

Implications for Electoral staff with support for referenda.

14.0 RISK MANAGEMENT IMPLICATIONS

These will be identified in detail when the various provisions within the Bill are clearer and become law.

15.0 CRIME PREVENTION AND COMMUNITY SAFETY IMPLICATIONS

None

16.0 HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

16.1 **Human Rights Implications** - None

16.2 **Equalities Implications** - None

16.3 **Equality Impact Assessment (EIA)**

(a) Is an EIA required? No

(b) If yes has one been completed?

17.0 ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

None

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APPENDICES

Appendix 1 Progress on the Bill.

Appendix 2 Local Government Associations response to the Localism Bill second reading.

REFERENCE MATERIAL

Decentralism and Localism Bill: an essential guide.

SUBJECT HISTORY

Council Meeting	Date

Localism Bill 2010-11

Type of Bill:

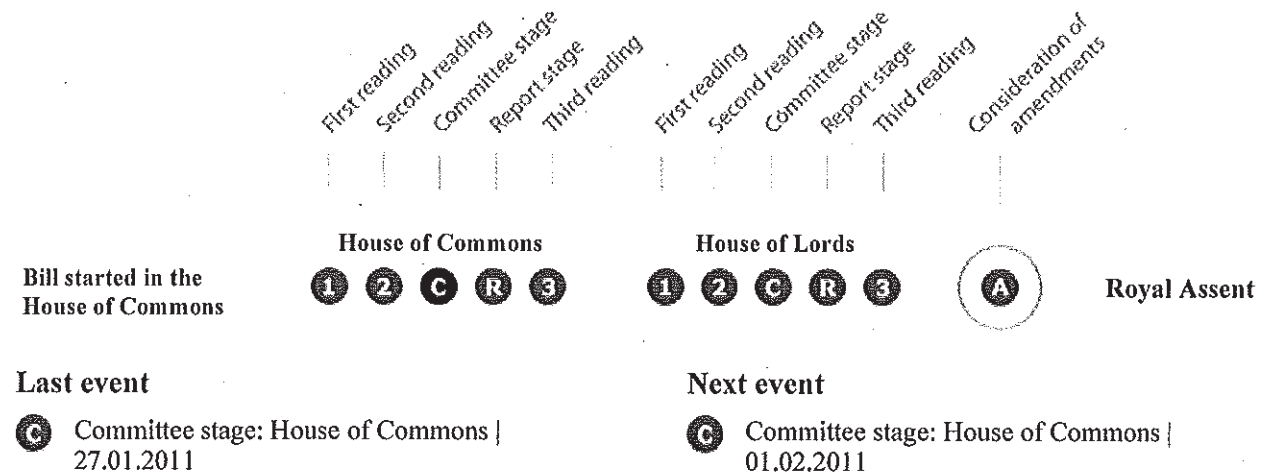
Government Bill

Sponsor:

Eric Pickles

Communities and Local Government[Latest Bill](#)[Explanatory Notes](#)[All Bill documents](#)

Progress of the Bill



[All previous stages of the Bill](#)

Latest news on the Bill

The Bill was presented to Parliament on 13 December 2010. On 17 January 2011 the House of Commons debated the main principles of the Bill. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny. The Localism Bill Committee is now accepting written evidence. It heard oral evidence on Tuesday 25 January on the first sitting and second sitting and will hear further oral evidence on Thursday 27 January.

Summary of the Bill

The Bill will devolve greater powers to councils and neighbourhoods and give local communities more control over housing and planning decisions.

Key areas

The provisions relating to councils include:

- giving councils a general power of competence
- allowing councils to choose to return to the committee system of governance and allowing for referendums for elected mayors in certain authorities
- abolishing the Standards Board regime and the model code of conduct, and introducing local accountability and a criminal offence of deliberate failure to declare a personal interest in a matter
- giving residents the power to instigate local referendums on any local issue and the power to veto excessive council tax increases
- allowing councils more discretion over business rate relief
- providing new powers to help save local facilities and services threatened with closure, and giving voluntary and community groups the right to challenge local authorities over their services.

The housing provisions will

- abolish the requirement to have a Home Improvement Pack
- reform the Housing Revenue Account system
- provide for a new form of flexible tenure for social housing tenants
- allow local authorities to discharge their duties to homeless people by using private rented accommodation
- give local authorities the power to limit who can apply for social housing within their areas
- abolish the Tenant Services Authority and provides for a transfer of functions to the Homes and Communities Agency
- amend the way in which a social tenant can make a complaint about their landlord
- improve the ability of social tenants to move to different areas.

The planning and regeneration provisions will

- abolish Regional Spatial Strategies
- abolish the Infrastructure Planning Commission and return to a position where the Secretary of State takes the final decision on major infrastructure proposals of national importance
- amend the Community Infrastructure Levy, which allows councils to charge developers to pay for infrastructure. Some of the revenue will be available for the local community
- provide for neighbourhood plans, which would be approved if they received 50% of the votes cast in a referendum
- provide for neighbourhood development orders to allow communities to approve development without requiring normal planning consent
- give new housing and regeneration powers to the Greater London Authority, while abolishing the London Development Agency.

Stay up to date

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When will the Bill become law?

What happens after the Bill has been passed? When does the law change?

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Do you have expertise or a special interest in matters contained within a Government Bill? Submit your views to the Commons Public Bill Committee.

Appendix 2



LGA responds to Localism Bill second reading

LGA press release - 18 January 2010

Responding to the second reading of the Localism Bill, LGA Chairman Baroness Margaret Eaton, said: "Councils are looking to the Localism Bill to put residents and councillors in control of their local area by freeing them from the bureaucratic tangle of Whitehall regulation.

"The main thrust of the Bill offers many of the things we've been asking for. In particular, giving councils a General Power of Competence provides greater freedom to make decisions based on local needs. We are very pleased to see this long awaited and much-needed measure.

"However, the Bill identifies 142 powers for central government to lay down regulations, issue guidance and otherwise direct how localism will work. We think that threatens to undermine some otherwise positive attempts by Ministers to give people at neighbourhood level greater control over public services and planning.

"We don't believe central government has a role in setting council tax or directing how income from Community Infrastructure Levies should be spent. We will be seeking amendments to give councils greater autonomy on those issues.

"We also want the Bill amended to reduce Whitehall influence over neighbourhood planning, rules governing who can buy local assets like pubs and post offices, and which bodies have the right to bid to deliver local public services."

ENDS

Author: LGA media team
Contact: 020 7664 3333

Page updated: 21 Jan 2011

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SCRUTINY PROGRAMME BOARD

5 January 2011

41. MINUTES

The Director of Law, HR and Asset Management presented the minutes of the meetings held on 26 October, 11 and 30 November 2010.

Further to minute 32 (3) (Scrutiny Training) (26 October 2010), he reported that the new Localism Bill could have implications to the way the Council's Scrutiny Function operated in the future and that a further report would be presented once more information had been received from the Government; and the political groups had had an opportunity to consider the way forward.

The Democratic Services Manager presented two documents for Members' consideration that had been produced by the Centre for Public Scrutiny (CfPS) in relation to matters contained within the Localism Bill.

In response to a comment from a Member in relation to minute 32 (4), the Democratic Services Manager indicated that the request to the Health and Well Being Overview and Scrutiny Committee to invite the Director of Public Health to provide an overview of health scrutiny to all Members of the Council, would be considered at its meeting on 18 January 2011.

Resolved –

- (1) That the minutes of the meetings held on 26 October, 11 and 30 November 2010, be approved.**
- (2) That a Special Meeting of the Board be arranged for 6.00pm Thursday 10 February 2011, to give further consideration to the following documents, produced by the Centre for Public Scrutiny (CfPS) –**
 - (i) Changing Governance Arrangements
– Policy Briefing 4 – December 2010**
 - (ii) Localism Bill and Grant Allocation
– Policy Briefing 7 – December 2010**

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better scrutiny for better government

The Centre for Public Scrutiny promotes the value of scrutiny and accountability in modern and effective government and supports non-executives in their scrutiny role

PRESS RELEASE: Government reforms could mean 'weaker accountability', warns CfPS

Last updated: 18 January 2011

New research from the independent Centre for Public Scrutiny among councillors and officers responsible for scrutiny of council officials and decision-makers has found concerns amongst practitioners about the implications of government proposals to reform councils' governance arrangements.

As the Localism and Decentralisation Bill receives its Second Reading in Parliament, almost two-thirds (62.8%) of councils responding to the CfPS Annual Survey of Overview and Scrutiny in Local Government anticipate it will have a major impact on scrutiny in their authority. More detailed research to follow these findings up revealed that three-quarters (73.4%) of those responding said that they feared that where councils chose to return to a traditional committee system of decision-making (as permitted under the Bill), this system would be weaker at holding decision-makers and officials to account than the current system of overview and scrutiny committees independent from the council executive.

While some have argued that the old committee system (abolished by the Local Government Act 2000) gave back-bench and opposition councillors more opportunities to have their say on council proposals, the CfPS research found that over 42% of respondents (42.5%) believed that bringing it back was unlikely or highly unlikely to give backbenchers more power, with a further 34% believing it will make no difference whatsoever.

These concerns may lie behind other findings which suggest that almost two-thirds of authorities are unlikely or highly unlikely to change their arrangements (60.5%), with 18.7% saying they thought it likely or very likely and the remainder yet to decide. Only 2, according to the research, have taken any formal steps towards amending their constitution, while just 3 have set up a working group to investigate the idea.

Jessica Crowe, Executive Director, CfPS, says: "Our research reveals some important concerns amongst officers and members with scrutiny responsibilities about the implications of the government's proposals for democratic accountability. While we support the principle that local authorities should be able to determine their own governance arrangements, this research indicates some key areas of potential weakness. Councils will need to take specific steps to demonstrate that any proposed change to their arrangements meets the Secretary of State's previously expressed view that "all he needs to know" is that local authority governance arrangements are "accountable, transparent and open."

The supplementary research identifies the top five benefits of strong, independent and effective overview and scrutiny arrangements, which must not be lost in any change to a different system of governance to ensure the government's aims of "accountable, transparent and open" decision-making are met:

1. Holding decision-makers to account in public
2. Members carrying out in-depth policy development and review
3. Independent 'critical friend' challenge of decisions by those not involved in making the original decision
4. Members hearing evidence directly from members of the public, service users and experts
5. Members working together on a cross-party, non-party political basis to get things done.

Jessica Crowe, Executive Director, CfPS, says: "These benefits demonstrate the value that strong and effective scrutiny can add to democratic governance arrangements. In particular the opportunity for members of the public to work directly with councillors and contribute their views and experience of council (and other partners') services in order to shape decisions about future services must not be lost going forward. Where scrutiny works effectively, CfPS's experience and research over the years that we have been supporting scrutiny and scrutineers demonstrates that it:

- Acts as an independent 'critical friend' to provide challenge
- Involves the public and enables the voice of communities to be heard in decision-making
- Is led by members acting in an independent-minded, non-partisan way
- Provides public accountability, leading to improvements in services

"These principles must be carried forward into any reformed governance arrangements, and CfPS will be seeking to work with local authorities and others with an interest in accountability to ensure this happens."

ENDS

Notes to editors:

1. CfPS is an independent registered charity that works to promote and support effective public scrutiny and accountability.
2. The CfPS Annual Survey was carried out with local government overview and scrutiny members and officers by CfPS using Survey Monkey on-line over autumn/winter 2010. 76% of councils in England and Wales have responded to date. The supplementary research was conducted with 63 councils during the same time period.
3. Eric Pickles's quotation comes from an interview with Iain Dale for Total Politics magazine in June 2010.
4. A longer briefing on the Bill can be found on the CfPS website [here](#) and more detail on the implications of changing local authorities' governance arrangements can be found [here](#).

For more information call Dushana Pinfield on 020 7187 7363.

Changing governance arrangements



Policy Briefing 4

December 2010

This briefing explores some of the issues around the power in the Localism Bill to allow local authorities to introduce a committee system for decision-making.

CfPS believes that the split between executive decision-making and the overview and scrutiny function has paid dividends in local government. However, there are several authorities who have stated that they wish to change their structures when permitted. This briefing will help those authorities to thoroughly examine the options. It is the first major publication on the committee system in ten years and provides an up to date picture of the framework and key considerations for authorities which might be considering a change in their governance arrangements.

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6. [Alternative Approaches](#)
7. [Conclusion](#)

1. [Introduction](#)

- 1.1 Further to policies formed by both the Conservatives and Liberal Democrats in opposition, the Localism Bill will put in place provision permitting authorities to change their governance arrangements – including providing the power to return to the committee system.
- 1.2 The Bill sets out the governance options that will be available to local authorities. They will be as follows:
 - A Leader and cabinet ;
 - An executive mayor and cabinet;
 - A committee system;

-
- Another prescribed system (councils may propose their own system, subject to SoS approval).
- 1.3 Any authority – other than the 12 core cities with an executive mayor - will be able to operate a committee system, following a resolution of Council and a relevant council election, and/or through referendum. A detailed explanation of the procedures for changing governance arrangements can be found in our Policy Briefing 7 on the Localism Bill. However, it is clear that in talking about the “committee system” this could be something analogous to the pre-2000 governance system operating in authorities. Equally, the Bill gives the power for committee system authorities to operate scrutiny committees, and so for some a more streamlined model, more akin to the “fourth option”, could apply. In committee system authorities, the responsibility to carry out flooding scrutiny, health scrutiny and community safety scrutiny will continue (even though such work may not occur at scrutiny committees). Later in this briefing we will touch on different models and consider which might work best in different sorts of authorities, should the decision be taken that governance arrangements should change.
 - 1.4 The CfPS has launched a brief survey to establish the likely extent of any plans to change political management structures and is carrying out detailed research as part of the Annual Survey of O&S in Local Government to get a clear picture of how many authorities would choose an option to return to the committee system, and this will inform our approach in early 2011. We will be engaging closely with authorities planning to change their executive arrangements as part of our Accountability Charter programme.
 - 1.5 We strongly believe that the cabinet/scrutiny split constitutes the most effective, flexible and proportionate form of governance for local authorities, and that the overview and scrutiny function has – contrary to what some commentators have said, and further to considerable research we have carried out on this topic – proved itself up and down the country by bringing a new attitude and approach to accountability in local authorities, making a significant impact and opening up decision making. The forthcoming Health and Social Care Bill will be extending scrutiny powers in recognition of the value of independent scrutiny. However, we realise that localism means that authorities should have the freedom, based on local democracy, to choose their own governance arrangements, and so want to ensure that in those authorities who do wish to change, the benefits of a culture of scrutiny will continue, even if the structures may not.
 - 1.6 Throughout this document we have referred to the “cabinet/scrutiny split”, but for the purposes of this paper readers should take this as including

those authorities who have already adopted the “strong leader” model and those who have an executive mayor, as the challenges faced are similar.

2. The committee system and the executive-scrutiny split: key differences

- 2.1 The “committee system” is a style of governance involving councillors sitting on committees which make decisions, receive briefing and commission reviews to develop policy. Most authorities last used such a system in 2000 (or thereabouts). The change to the executive/scrutiny split was brought in by the Local Government Act 2000 to address what were perceived as significant shortcomings in the committee system. Some of these issues are set out in the Audit Commission paper, “We can’t go on meeting like this”, published in 1990.
 - 2.2 Since 2000 most local authorities have operated with an executive and scrutiny split – either a Leader, cabinet and scrutiny or mayor, cabinet and scrutiny model of governance. These arrangements also have their strengths and weaknesses and whilst not universally effective they have found success in many authorities. Following on from the committee system they have developed areas that were often overlooked under the old system and can also provide lessons to learn from in adopting a new governance system.
 - 2.3 The arguments for and against various systems of governance have been rehearsed many times, and will by necessity be different for every authority, because of differing political and managerial cultures. However, the old committee system did have some significant drawbacks inherent to its operation. Authorities considering the pre-2000 committee system as a model on which they wish to base a post-2011 decision-making structure will need to bear these shortcomings in mind.
 - 2.4 Many councillors elected since 2000 will not have experienced the committee system and may be interested in hearing both sides of the argument and seeing the research undertaken on previous committee systems.
 - 2.5 In those authorities that retained a committee system (for the most part, “fourth option” councils –district councils with a population of less than 85,000) a streamlined committee system has evolved since 2000. These councils provide interesting examples for those authorities considering a change to their executive arrangements.
- ## 3. Changes to decision-making and the nature of local service delivery since 2000

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- 3.1 Since 2000, a number of changes have occurred in the local government landscape. We think that the pre-2000 committee system would be ill-equipped to meet these challenges.
 - 3.2 Changes include:
 - 3.3 Greater delegated powers for councillors and officers have changed the culture of decision making and led to a swifter decision-making process and clear operational responsibility for officers.
 - 3.4 Councillors have gained significant powers to hold partners to account through the scrutiny process – in particular, health and policing partners, as well as various others.
 - 3.5 Councils have recognised that often the big issues for the community need to be tackled through public services working together and have entered into formal partnerships to achieve this. Councillors attend in a representative role with a need for authority to agree to decisions. To enable productive partnership working committee systems will need to offer an element of delegation to councillors identified to represent the authority beyond that of the previous system. Shared services and outsourcing are other important issues here that will affect decision-making and accountability.
 - 3.6 Best value reviews carried out until 2005 have given way to cross party councillor-led reviews through overview and scrutiny committees. Many of these are delivered through “task and finish” groups, and are free from the application of the party whip. These reviews have enabled councillors from different groups to explore issues of common concern and seek improvements.
 - 3.7 Many authorities will find that service departments, and the corporate core, have fewer resources available to manage any increase in decision making and briefings through committees and less resource available in central teams that previously clerked such committees. Authorities planning a committee system will need to consider what resources will be required for managing the decision making of the authority.
 - 3.8 Committee systems will also have to be planned to reflect public sector reform being brought forward by the coalition government such as Police and Crime Panels, Health and Wellbeing Boards, mutuals and Local Enterprise Partnerships.

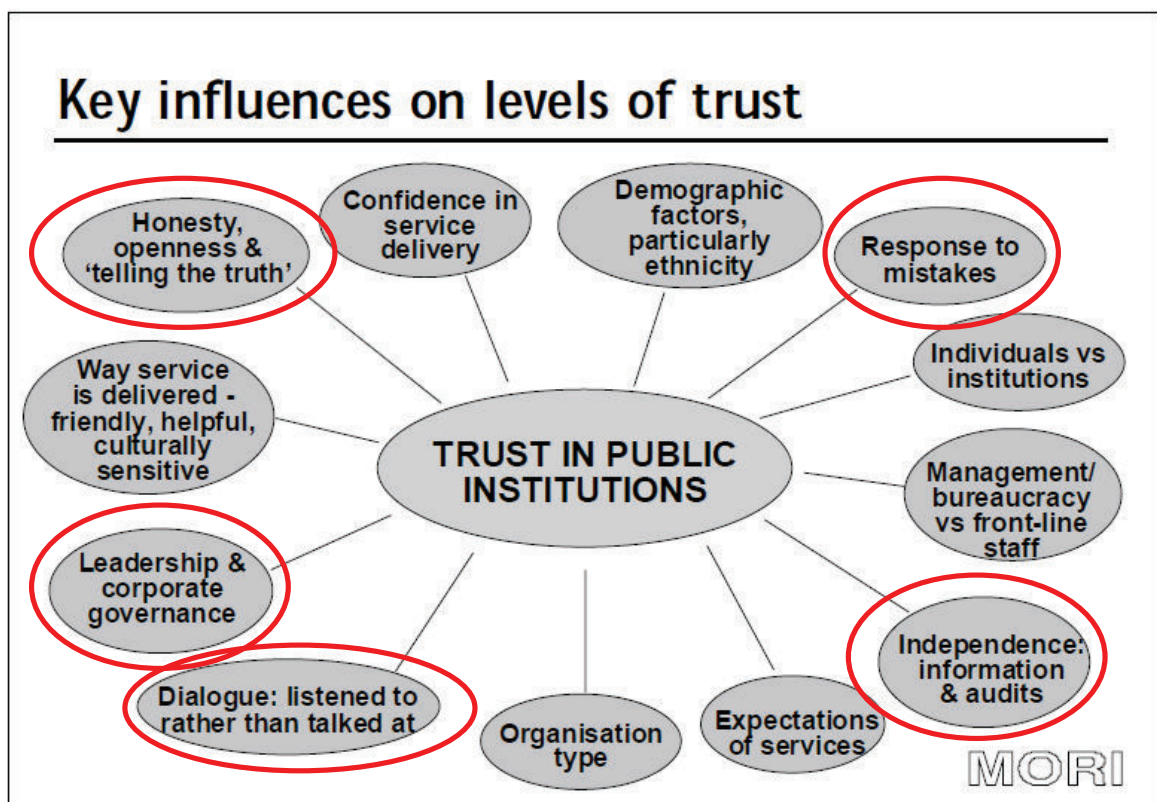
4. Wider implications: the importance of culture

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- 4.1 Below (at section 5), we will set out a series of risks, and mitigations, relevant to discussions of changing governance arrangements. These all suggest that any proposals around changes to decision-making in local authorities should be considered in the light of cultural concerns around accountability, openness, transparency and democracy. Systems should be designed to respond to and tackle issues in a way that enhances the genuinely effective involvement of councillors, and the public, in the decision-making process.
- 4.2 An undue focus on the structures of governance rather than these cultural concerns may well lead to problems that councillors and officers thought may have been unique to the cabinet/executive mayor model being equally applicable to any other decision-making system. Public frustration that changing governance arrangements has not led to greater transparency, involvement and accountability may well increase, particularly in times of economic austerity.
- 4.3 Where authorities are considering changing their executive arrangements, they should have regard to the CfPS principles of good scrutiny and our foundations of good democracy. Any new structure should:
- allow scope for individual or collective decision-making within a transparent structure (for example, through the Forward Plan and the cabinet and portfolio holder decision process and call-in that operates under the cabinet system);
 - recognise that a number of leading councillors will always lead strategic direction and development of policy, and that the Cabinet system formalises more transparently that which already existed in many authorities
 - engage with partner bodies in a realistic way, allowing individual councillors (whether they are committee chairs or Cabinet councillors) to represent the council on outside bodies and partnership boards with clear delegated decision-making authority;
 - give a strong role to all councillors in directing strategy and policy, and in (proportionate) performance management;
 - provide the maximum possible opportunities for actively engaging the public in influencing policy and improving services, with there being a specific way to feed public views into the decision making process (not limited to consultations carried out by officers);
 - limit the bureaucratic and administrative burdens on authorities of the decision-making process;
 - enable councillors to work together on a cross-party basis to resolve issues of local concern;
 - provide a means for all councillors to hold to account the work of the authority.

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- 4.4 Although there may be a strong desire to return to the committee system in some authorities, they need to guard against risks inherent in that system. We still think that the independence, flexibility and creativity within executive/scrutiny arrangements provide the best opportunity to balance transparency, democracy, involvement and the necessary expediency of decision-making. It is unrealistic to assume that the only options available to authorities are a wholesale return to the committee system, or sticking with what currently exists. There will be ways and means for authorities to use a decision to return to the committee system to put in place something that will be more streamlined.
- 4.5 In a way this reflects the proposals for structural change made by research published by the Audit Commission in 1990. These proposals focused on committee frequency, strategic clarity and councillor training. This may result in systems that look similar to a fourth option approach – a streamlined committee system with a scrutiny or policy review function providing independent recommendations for action. This, in turn, bears some similarity with the practice, adopted in some authorities in the 80s and 90s (for example, Kirklees), of appointing cross-party task and finish groups beneath decision-making committees to investigate given topics and make recommendations, as a forerunner to the current executive/scrutiny arrangements. We can envisage through these means a continued, objective scrutiny function, feeding into decision-making committees, rather than through independent overview and scrutiny committees.
- 4.6 Adopting this approach alongside a committee system which accepts the need for a significant amount of delegated decision making and a clear role for councillors in strategy and policy formulation, rather than operational matters could present an approach for authorities who wish to make the transition. It should not be noted though that the Government propose to enact secondary legislation which will go into detail about the delegation of powers in due course.
- 4.7 What is important to realise is that any governance system allows both good and bad practice. Any system relies on the goodwill and ability of those involved – councillors and officers – to be effective. Returning to the committee system will not automatically lead to open, democratic decision-making. But equally, a blind adherence to the suggestion that the cabinet/scrutiny split always works as intended is a flawed argument too.
- 4.8 Most important is the culture of accountability in decision-making in the authority. Scrutiny is about councillors coming together to investigate, to research, and to probe, and to make objective evidence-based recommendations for improvement, on a cross-party basis. It is a means to provide internal assurance that business is being transacted properly,

that issues of local concern are being considered, that stakeholders have a voice and that mistakes are being learned from.

- 4.9 These are not principles that are unique to one system of governance. In our view, however, a split between executive and scrutiny functions provides the best means to make sure such principles are adhered to. Conflicts of interest are less likely to occur because councillors are not as likely to be investigating and reviewing decisions or policies that they have made themselves. There is also more space for horizon-scanning and policy development that can be crowded out under different structures where the focus of agendas is always on making today's decisions, rather than planning ahead for tomorrow's problems.
- 4.10 Equally, where decision-making works well and is transparent, there is significant opportunity for scrutiny to influence and direct council policy, through making evidence-based recommendations to the council's cabinet and other partners. Where it works well, it can also help improve governance in many of the areas that matter most to the public, as this diagram from MORI shows in relation to influences on levels of public trust in institutions, where we have ringed those where effective scrutiny can make a particular contribution:



4.11 With the prevalence of ward budgets and devolved decision-making, it seems likely in the future that – in their wards, at least – the potential for direct, operational involvement by backbench councillors in service delivery (being able to get things done) is likely to increase in importance anyway, with individual councillors being given more independence to use funds for the benefit of local people.

5. Learning from Previous Systems of Governance

5.1 Should local authorities wish to review their governance arrangements, an approach should be adopted that recognises that both main approaches (executive scrutiny split and committee system) have their strengths. **Four key risks** that local authorities exploring a change should consider – and how to plan for them - are set out below:

Risk	Learning from previous systems		Possible action to take
	Positive views	Negative views	
<p>1. That a committee-based system would leave councils ill-equipped to handle proactive cross-partnership decision-making, where discussions often occur and decisions are made at partnership boards. This could hinder partnership working, disenfranchise partners and turn effective partnerships into talking shops with decisions having to be taken back to local authority committees for ratification</p>	<p>Supporters of the committee system argue that it allows more councillors to be involved directly in making and influencing decisions that affect the lives of residents</p>	<p>In many authorities, the committee system led to an undue focus on operational management, with councillors duplicating the activity of officers rather than exercising a discrete leadership role. The absence of delegated decision making for individual councillors, incompatible cycles and schedules of meetings and service specific decision making means the pre-2000 committee system was not set up for the increase in partnership working that has occurred in the last ten years.</p>	<p>There is a need for any system of governance based on committee decision-making to focus on key strategic issues affecting the area, integrating the decision-making process with existing partnership arrangements.</p> <p>Delegated decision-making under certain circumstances to the chair would be advisable for example to enable timely partnership-based decisions to be made.</p> <p>There would also have to be an understanding that a volume of decisions need to be delegated to officers.</p> <p>Opportunities for providing and demonstrating accountability would need to be established; for example through one or more overview and scrutiny committees</p>

Risk	Learning from previous systems		Possible action to take
	Positive views	Negative views	
<p>2. That decisions will be reached in silos by committees lacking strategic co-ordination.</p> <p>Councillors would lack other ways to get involved in policy development and review currently provided by scrutiny.</p> <p>This raises the potential problem of needing more meetings to sort through cross-cutting decisions. Swifter decisions also require either more meetings (with increased costs) or more delegated decision-taking by the chair, both of which are problematic.</p>	<p>Committee supporters argue that it is more democratic, in that it allows all councillors to be involved in the decision-making process and develop specialist knowledge, which aids succession-planning</p>	<p>Experience suggests that crucial decisions were often made at political group meetings rather than openly “in committee” - it has been suggested that in many authorities, committee chairs acted as a de facto cabinet, making decisions behind closed doors with political management techniques (the whip) being used to ensure their committees’ assent. Of course, political control remains an issue with the executive/scrutiny split as well.</p> <p>Furthermore, the necessarily close relationship that the silo-based approach demands between councillors and departmental officers raises other problems. In some authorities, the Audit Commission found that leading councillors were so closely involved in the organisation “that</p>	<p>Committees’ structures must build in consideration of cross-cutting issues to short-circuit the ping-pong between different bodies that each have an interest in the issue. Central co-ordination of the committee system is required to ensure a strategic approach to the authority’s decision making and policy development. Corporate policy and review officers undertaking a committee manager or lead officer role for each committee, should plan and schedule decisions to reduce overlap and speed up decision making.</p> <p>Independent, cross-cutting means for policy development and formulation – such as that currently provided through the scrutiny process - will help to resolve problems.</p>

Risk	Learning from previous systems		Possible action to take
	Positive views	Negative views	
		<p>they abandoned their representative roles and become apologists for, rather than controllers of, whatever the organisation does. Many authorities have found that the space for considering purpose, direction and results was squeezed out". This could be said of executive cabinet councillors under the current system, except that overview and scrutiny provides space to both consider wider issues and challenge the cabinet.</p>	
<p>3. Additional costs through transition and operation of a committee system and potential loss of relevant skills if the resource needs of the system are not properly planned.</p>	<p>Supporters of the committee system argue that it is more cost effective and proportionate than the cabinet/mayoral system.</p>	<p>In some authorities, the pre-2000 committee system led to significant demands on officer and councillor time, especially if poorly managed. For example one authority was convening 302 meetings per year solely to deal with education issues, while another authority, with a larger education budget,</p>	<p>The risk needs to be mitigated by carefully planning any transition to new executive arrangements rather than making the assumption that changing them will result in financial savings. Some specific resource will need to be committed for managing committees and supporting councillors to provide challenge and</p>

Risk	Learning from previous systems		Possible action to take
	Positive views	Negative views	
<p>Service Decision-making committees required a greater number of committee clerks, policy officers and senior departmental officers to attend and service their needs than has been experienced in most executive systems. Relevant skills to support committees and councillor review activity through staff recruited to support scrutiny may be lost during the transition.</p>		<p>only convened 32 (and that is far more than authorities convene at present).</p>	<p>accountability for other public service providers. In response to this and other risks this is likely to be best provided by a small number of policy and review officers liaising between councillors, chief officers, partners and councillor support services. Central co-ordination in this way will avoid duplication between committees and lead to efficient decision making.</p> <p>The risk can also be mitigated by developing a well structured system. Recognising that it will not be appropriate under all circumstances to make decisions at a committee, empowering the chair to make delegated decisions at external or partnership bodies will help facilitate a streamlined system. Councillors' understanding of the operation of the system through training and development will also be important.</p>

Risk	Learning from previous systems		Possible action to take
	Positive views	Negative views	
<p>4. That councils will overlook the need to build into their new arrangements open, deliberative forums such as scrutiny that demonstrate accountability and provide the public with opportunities to effect change and influence services.</p>	<p>Those supportive of the committee system argue that the committee system lasted for over 100 years and was understood by the public. Councillors or the public attending committees can see debates taking place in public between political parties, thus enhancing transparency.</p>	<p>A system of formal committee-based decision-making offers few opportunities for the public to get directly and actively involved in shaping decisions alongside councillors. At formal committee meetings the public tend to be either passive observers of proceedings or asking for their views to be considered via a deputation or petition which will often be unconnected to the agenda items under discussion.</p> <p>Governance arrangements since 2000 have included more opportunities for the public to actively influence policies and services, thus enhancing participative democracy. Flexible Overview and Scrutiny evidence gathering provides a forum where councillors and the public can interact on more equal terms, with</p>	<p>Care would need to be taken when developing policies that additional consultation is carried out to ensure the public are still able to have their say. Providing for informal review groups to work underneath decision-making committees and through a cross cutting service improvement committee would continue to provide opportunities for direct interaction and collaboration between councillors and the public in reviewing services incorporated into a committee system of decision making.</p>

Risk	Learning from previous systems		Possible action to take
	Positive views	Negative views	
		opportunities for the public to be co-opted, appear as expert witnesses, and give testimony as to their experience of services and collaborate with councillors informally in task and finish groups, and in some cases at committee meetings themselves.	

6. Alternative Approaches

6.1 The Government's openness to different forms of governance creates an opportunity for authorities to think beyond the committee system and to consider their approach to governance in the light of other changes they may be making to the services they provide and the kind of authority they wish to become. The Centre for Public Scrutiny would encourage authorities to consider governance arrangements in this context rather than deciding on their governance structure in a policy vacuum that ignores other changes.

6.2 Some possible typologies of different approaches to service organisation and delivery and a suggested kind of governance structure that would be appropriate for each are set out below. They are intended to be illustrative of different kinds of approach, and not prescriptive, nor models of "best practice." The Centre for Public Scrutiny can provide support to local authorities seeking to explore alternative governance arrangements:

6.3 **The Community Budgeting Council**

For the council taking forward the lessons of Total Place with its partners, providing pooled budgets to the local partnership to spend as they see fit to tackle the priorities and problems they have collectively identified.

An approach to governance could be developed through a Public Service Board, involving senior leaders with decision-making power particularly over committing resources. Non-executives could be members of the PSB as in a company board model, or there could be a separate 'scrutiny' body with power to challenge, review and question. This could be based in the council or organised jointly with councillors and other non-executives.

6.4 **The 'Virtual' Commissioning Council**

For the council that sees itself as an enabling and coordinating body, rather than as a direct provider of services or as a strong strategic leader of other partners. Councillors have a limited strategic role to agree the services they wish to see commissioned and a very local, neighbourhood champion-based role in their ward or division.

Governance could be lean and regulation light through a strategic, commissioning cabinet and light-touch scrutiny system with a local focus on outcomes for local people. Ensuring clear lines of accountability and reporting are built into commissioning arrangements so that all providers know that they are expected to account to scrutiny if asked will be important to ensure public accountability. Alternatively a highly streamlined committee system could work, although committees' work would be limited to setting commissioning strategies and monitoring contract outcomes since there would be few services over which councillors could exercise direct control.

6.5 **The Municipal Council**

For the council that sees itself as the guardian of public assets and the interests of all the community. The council will work in partnership with others where a clear case can be made for it being in the best interests of the community and may seek to supplement the primacy of the council's representative democracy form of governance with a wide range of ways for people to engage with the council in whatever more participative ways suited them and their lives.

Having fairly tight control over services could be important for members of this council in order to deliver their desired outcomes. There may be a strong focus on using their democratic mandate to scrutinise and influence other service providers. A committee system could work here, as well as an executive and scrutiny system, but the need for flexibility and efficiency as well as strong, clear democratic leadership would mean slimmed down committees at the very least. A single scrutiny committee with flexible structures underneath for policy development and review and strong local scrutiny by ward/division councillors would work well.

6.6 The Collaborative Council

Here individual councils may choose to collaborate and share services between them, as sovereign organisations pooling decision-making for particular, limited purposes. This might be to make management efficiencies or to collaborate to achieve shared goals (eg the Association of Greater Manchester Authorities).

As these collaborative arrangements are likely to affect only part of the participating councils and to develop gradually over time, there is a danger that governance arrangements may not keep up. Authorities may be left with a mixture of governance systems and the risk of duplication and inefficiency. If the councils involved have cabinet-scrutiny systems of governance, then delegated powers could be used to enable joint decision-making and where this exists, joint scrutiny could exist as well. With a committee system there is a danger that a plethora of new committees could reduce the efficiencies sought by the initial drive to join things up and would be complex to arrange across authorities given the need for political balance.

7. Conclusion

- 7.1 Ultimately, it will be for local authorities and their councillors to make the choice of whether or not to choose a committee system, or something like it. We think, as we have explained, that the cabinet system works well – not just because it is convenient and expeditious, but because it enables the council to foster a strong, value-adding and highly effective scrutiny system.
- 7.2 We think that a committee system following the traditional pre-2000 model would be ill-equipped to deal with today's challenges and approaches, particularly partnership working.

-
- 7.3 But we also think that there are ways and means of integrating the values of scrutiny within a hybrid committee system that – if the authority’s culture is open and values the influence and roles of all councillors – could see effective scrutiny continuing, albeit in a new, probably more flexible way.

Further reading

- “We can’t go on meeting like this” (Audit Commission, 1990), available on the CfPS website
- “The internal management of local authorities in England” (Department of the Environment, 1991)
- “Report of working party into local authority decision-making” (Department of the Environment, 1993)
- “Modern local government: in touch with the people” (Department for the Environment, Transport and the Regions, 1998)
- “National surveys of overview and scrutiny in local government” (CfPS, 2003-2009)
- “Control Shift” (Conservative Party Green Paper, 2009)
- “Accountability Works!” (CfPS, 2010)
- “Between a rock and a hard place” (CfPS, 2010)
- Localism Bill 2010-11

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Localism Bill and grant allocation



Policy Briefing 7

December 2010

This is a briefing on the Localism Bill and the 2011-13 grant allocation, both of which were published on Monday 13 December. This briefing reflects changes in practice and law which, for the most part, apply in England only. In Wales, local government is devolved. However, it should be noted that a number of the provisions relating to community assets also apply to Wales, and those applying to nationally significant infrastructure projects apply to all three home nations.

The grant allocation involves a maximum cut of 8.9% to local government's "spending power", with the effect of cuts being "dampened" for the first year through the use of an £85 million fund made available by the Department for Communities and Local Government (CLG).

The Localism Bill proposes profound changes to a large number of aspects of local public service provision. In particular, greater flexibility in council governance arrangements are proposed. This briefing will summarise these changes, and comment on the broader accountability implications of the rest of the Bill.

The Bill is extremely long, and impacts on (through partial or total repeal) a number of other relating legislative provisions. This briefing is not a detailed discussion of every aspect of the Bill – readers are recommended to refer directly to the Bill, and relevant sections are footnoted throughout to facilitate this.

Contents

1. Grant allocation – implications for scrutiny
2. Localism Bill – changes for governance and scrutiny
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1. Grant allocation – implications for scrutiny

- 1.1 The Secretary of State, the Rt Hon Eric Pickles MP, announced on 13 December the grant allocations for English councils for 2010 to 2012. In a statement to the House of Commons, he stated that no council would receive a cut in their “spending power” of more than 8.9% in either year. An £85 million fund has been put in place for “dampening” the cuts of councils who would otherwise have had cuts of more than 8.9% imposed (37 authorities are in this category). The average, Mr. Pickles stated, was to be 4.4%. One county, Dorset, would actually receive an increase of 0.1% next year.
- 1.2 The “spending power” calculation, however, is not a reflection solely of the grant allocation. Spending power incorporates the formula grant, specific grants, council tax and NHS funding for social care. Stripping out the other elements and focusing exclusively on the formula grant – as previous supposition about the level of the grant has done – demonstrates that the actual cut for most authorities will, in year 1, be somewhere between 14 and 17 per cent. As expected, the cuts are “front-loaded” – they will require the most significant savings to be made over the first two years of the cycle of the recent Comprehensive Spending Review.
- 1.3 Implications for scrutiny - This emphasises how vital it will be that non-executive councillors take a lead in investigating proposals for service redesign and financial savings. Given that the financial impact of the funding settlement will be as bad, or worse than expected, for most authorities, councils will be making some difficult decisions about the future over the next few months. In some cases these decisions will be taken with partners – in some, inevitably, decisions will be made unilaterally.
- 1.4 Scrutiny functions in local authorities have an important role to play here in subjecting such proposals to independent analysis, helping the executive and its partners to think about the long term ramifications of decisions being made now – and maintaining a “horizon-scanning” view just when it is most vital. Scrutiny can also provide valuable assurance to the public, and other stakeholders, in acting as a conduit for their views through to the executive, marshalling and channeling concerns and views on proposals in a way that ensures that public debate on these issues can be as constructive and positive as possible. Following the Comprehensive Spending Review and grant allocation announcements, CfPS is about to publish a guide for OSCs about how they can measure the “social value” of services, not just the “cost of services” so that decisions about spending allocations can be informed by what communities value. CfPS will also be producing a guide to the use of value for money methodologies in scrutiny work.

1.5 Opportunities for scrutiny are explored in more detail in Policy Briefing 1, “Future challenges for scrutiny”, published in July 2010.

2. Localism Bill – changes for governance and scrutiny

2.1 Specific provisions relating to overview and scrutiny in local government can be found in Schedule 2 of the Bill. Section numbers given below are those that will be given to those sections when they are enacted as part of the 2000 Act, as amended.

2.2 The Bill seeks to consolidate a wide range of scrutiny legislation into a single place (although provisions relating to crime and disorder remain in the Police and Justice Act 2006, and health provisions remain in the NHS Act 2006). It replaces the relevant provisions in the 2000 Act in full. It also restates the law relating to health scrutiny. When the Act is passed this will mean that provisions relating to scrutiny will be found in Part 1A of the 2000 Act, beginning with section 9F (with some additional content in Schedule A1 of the 2000 Act). CfPS will argue for the amendment of the Bill to give greater consistency of scrutiny powers. Consolidating the location of scrutiny legislation is welcome but the powers are still variable and need to fit with the health and community safety scrutiny models.

a. Governance arrangements - overview

2.3 The Bill requires that all authorities operate governance arrangements in one of three forms¹:

- Executive arrangements (either Leader, cabinet and scrutiny or executive mayor, cabinet and scrutiny);
- Committee system (the details of which are discussed in our separate briefing on the subject, published December 2010 as Policy Briefing 4);
- Another prescribed arrangements (where a local authority submits a proposal to the Secretary of State for a different form of governance, which the SoS must then approve).

2.4 Authorities operating executive arrangements **must** continue to have at least one scrutiny committee², and the scrutiny provisions in the rest of the Bill (set out below) will apply to them. Authorities operating under the committee system **may** have one or more scrutiny committees³. It has not been made clear, but “fourth option” councils could be recognised as operating under a committee system for the purposes of the Bill, making it

¹ s9F(1)

² s9JA(1)

³ s9JA(1)

unnecessary for them to undergo the possibly lengthy “change in governance” procedures (outlined below at 2.5 onwards). This also leaves the way open to current “fourth option” councils to retain, or dispense with, their scrutiny committees, at their discretion, once the Bill is enacted and comes into force. CfPS will be arguing that any changes in governance arrangements incorporate transparency, inclusiveness and accountability.

- 2.5 Changing governance arrangements – the process for changing governance arrangements is a two stage one.⁴ First, a resolution of Full Council is required.⁵ Following such a resolution, changes to governance arrangements can be made **immediately following the next relevant election**⁶.

This means that **the earliest** that any authority can change its governance arrangements (subject to the passage of the Bill) will be:

- Metropolitan districts – 2014
- Counties – 2013
- London boroughs – 2014
- Non-metropolitan districts – 2011 (although the Bill may not have received Royal Assent by this point)

and every four years after this time. It is unclear what the position will be for those authorities that elect by thirds. Different provisions will apply for the 12 core 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.

- 2.6 The provision that changes must be made immediately following an election is likely to cause headaches for Monitoring Officers. They will have to put in place provision for immediate changes to new governance arrangements following an election – including redeployment of staff, in some instances – while the likelihood exists of an opposition party being elected who have campaigned (or voted) against a change in governance arrangements.
- 2.7 Under certain circumstances a referendum must be held when it is proposed to change governance arrangements. This will be where previous changes to governance were also confirmed by referendum, or where the council decides that they want to subject proposals to a referendum. This could provide a partial way around the problems identified in 2.6. The Secretary of State can also require authorities to hold referenda. These provisions mean that, once a referendum has been

⁴ ss9K-9MD

⁵ s9KC

⁶ s9L(2)

held in an area, every future change in governance must be based on a referendum as well, which will limit changes in governance arrangements to once in every ten years in those authorities.

2.8 Sometimes a referendum to change governance arrangements may not be held. This will be the case where governance arrangements have changed within the past ten years⁷, and is designed to prevent frequent changes in such arrangements. This will apply to those 12 English core cities which are being required to adopt executive mayors, as their change in arrangements will have been made by the confirmatory referenda, so they will be caught by this provision and, assuming that a referendum does confirm the change in governance arrangements to one involving an executive mayor, they will not be able to move to another system of governance for another ten years. .

b. “Executive arrangements” – leader/cabinet, executive mayor/cabinet

2.9 Powers relating to executive mayors – provisions here are extremely detailed⁸ but the basic elements are as follows:

- An executive mayor can also be the Chief Executive of the authority, but may not hold the post of Head of Paid Service (which must be confirmed by Council but which requires two-thirds voting against to be defeated);
- Where this occurs the authority must appoint an officer to be responsible for providing advice to councillors;
- The Mayor must, if these provisions are adopted, set out in a report his/her plans for the operation of the authority, including cross-cutting strategy and staffing;
- Any local public service function may be transferred to the Mayor by the SoS. This must be based on a proposal from the Mayor which must be made to the SoS within one year of the most recent election (which means that we may see Mayors in some areas with different powers to those in others). “Public service” is not defined, but has the potential to be broad;
- 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;

⁷ s9MF

⁸ ss9H – 9HO, also part of Schedule A1

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- Mayors will retain the power through regulations to appoint an “assistant” (a political assistant who will be an officer of the council, analogous to the current position to support to group offices)⁹.

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2.10 For scrutiny, there are significant implications here – particularly when the mayor is successful in petitioning the SoS for different powers. Where this happens, there is the possibility of a conflict between scrutiny and other non-executive functions in other public services. Inevitably, in tandem with the SoS giving his consideration to such proposals, scrutiny would also want to consider them.

2.11 Scrutiny powers under executive arrangements – as we have noted above, scrutiny powers have been consolidated in the Bill largely unamended from previous legislation. It is disappointing that the opportunity has not been taken to “tidy up” the legislation and the way that it operates – particularly so as to equalise the mismatch in the powers given over different partners, and the relative powers of counties and shire districts. As we noted earlier we plan to argue for amendments to bring in additional consistency to the legislation here.

2.12 Scrutiny in mayoral authorities would also need to be carried out under the understanding that, with executive power being more concentrated than in other arrangements, the role of non-executive councillors would be especially important. For authorities making the transition – the 12 core cities, in the first instance – a careful consideration of the powers and functions of scrutiny will need to be taken over the next year to eighteen months. CfPS will be seeking to work with these authorities to help them develop robust accountability and scrutiny arrangements.

2.13 Specific scrutiny powers which will now be covered by the Bill are:

- 9FA(1) – authorities operating executive arrangements must have scrutiny committees;
- 9FA(2) - scrutiny committees must have the power to review, scrutinise, and make reports and recommendations on matters whether or not they relate to executive responsibilities (and issues that affect the inhabitants of the area);
- 9FA(2)(f) – powers to review and scrutinise matters relating to the health service (in upper tier/unitary authorities);
- 9FA(3) – powers to set up joint scrutiny committees;
- 9FA(4) – call-in;
- 9FA(5) – a limiting function prohibiting O&S functions from exercising any functions other than these, crime and disorder scrutiny or any functions conferred by regs. However, the provision

⁹ Schedule A1, paragraph 5

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- in 9FA(2)(e) on looking at any issue affecting local people means that this should not restrict scrutiny's remit too much;
- 9FB – statutory scrutiny officers (still only for counties and unitaries, not shire districts);
 - 9FC & 9FD – councillor call for action. Further regulations can be made on this provision, which may simply reiterate the content of the existing regulations on CCfA exclusions;
 - 9FE – duty of the executive to respond to recommendations, further to notification by scrutiny – the executive must comply with the requirements in the notification (which gives scrutiny the power to require the executive to give reasons for rejecting recommendations) and must respond in two months;
 - 9FF – partners to “have regard to” scrutiny recommendations, but still no power to compel attendance at meetings;
 - 9FG – exclusion of exempt/confidential information under the 1972 Act (although it may be that the Government's planned changes to the FOI regime will see s100A of that Act and the Schedule 12A provisions changing in due course);
 - 9FH – powers of districts to make recommendations to county councils, subject to regulations;
 - 9FI – powers relating to flood risk management, further to recommendations made in the Pitt Review;
 - 9FJ – requests for information from partner authorities
 - Schedule A1 – para 6 – education co-optees;
 - Schedule A1 – para 11 – voting rights for co-optees;

2.14 It should be noted that because of these changes, any regulations/guidance issued further to the original legislation will technically lose their force.

2.15 As it stands, Schedule 2 contains a couple of errors in drafting that will require correction at a later stage, including:

- Reference, in relation to health, to Primary Care Trusts, which are about to be abolished. A more sensible form of words would be to refer to “organisation commissioning, or who are commissioned to provide, health services”, and in fact part of section 9 does refer to health services more broadly;
- Reference to Local Area Agreements and local improvement targets, which are about to be abolished;
- The repeated reference to regulations. It seems less than likely that Government will be willing to separately place regulations similar or identical to the existing scrutiny SIs on the statute book. Now that the legal position in those regulations has been made clear, and they have been published further to consultations (mainly in 2009) it seems logical that either their contents be

amalgamated in with the Act, or that the regulation-making powers should be removed entirely. It is certainly disappointing that the Bill reiterates the extremely wide regulation-making powers of previous legislation.

c. The committee system

- 2.16 Much has been made of the pros and cons of returning to the committee system. These issues are dealt with in Policy Briefing 4, referred to elsewhere. The relevant part of the Bill relates to practical, procedural issues¹⁰ - in particular, delegation of powers under a committee system. The SoS will be making further regulations on delegations. It can be expected that there will be substantial 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.
- 2.17 Scrutiny powers under the committee system – we have already noted that scrutiny committees may be operated by committee system authorities. The Bill makes provision for regulations about the precise powers and composition of such committees¹¹, which will hopefully be proportionate in nature. It should be noted that none of the provisions applying to executive arrangements (set out above) will apply to committee system O&S committees, save for specific powers are limited to scrutiny in flood risk authorities, although subsection 2 does clearly indicate that regulations may well implement those sections unamended.
- 2.18 Health and community safety scrutiny responsibilities are covered too. For health, scrutiny powers and duties will continue, albeit operated through the committee system rather than by a scrutiny committee per se – a relevant committee can take on the powers for health scrutiny as if it is an O&S committee¹². For crime and disorder scrutiny under the committee system, a committee is to be designated as the crime and disorder committee **if** scrutiny committees have been set up, but if not there is no requirement to conduct scrutiny in this way¹³. The situation for wider partnership scrutiny is unclear. For committee system authorities, it may be that such scrutiny and accountability will be delivered through the service committee system. This whole area of the Bill is one where CfPS is intending to work with the sector, and Government, to ensure our principles of good scrutiny are embedded in future arrangements.

¹⁰ s9J

¹¹ s9JA(2)

¹² Schedule 3, paragraph 87, inserting a new s247A into the NHS Act 2006.

¹³ Schedule 3, paragraph 89, inserting new subsections s19(9A) and s19(9B) into the Police and Justice Act 2006.

d. General governance

- 2.19 Under section 9P councils must prepare a constitution. Under 9Q, wide powers are provided to the Secretary of State to issue supplementary guidance. Again, it is unfortunate that this wide discretion to issue guidance has been carried over from previous Act, particularly bearing in mind the current Secretary of State's previous comments on regulations and guidance issued by central Government.¹⁴
- 2.20 There is also provision for decision-making functions applying to area committees¹⁵ and, and powers for joint decision-making between authorities¹⁶.
- 2.21 Once the Bill has been passed, we will be updating our guide to scrutiny legislation, "Pulling it all together", to reflect all of these changes and making it clear which sections of existing legislation are being repealed and amended.

3. Localism Bill – more general implications for accountability

- 3.1 The Bill itself is divided into several main parts.¹⁷ The one which has garnered most public attention has been the part relating to community empowerment, but there are some profound changes in other areas – planning and housing particularly – which may affect scrutiny business, particularly insofar as they suggest a new approach to strategy. Below, we have concentrated on the community empowerment provisions.

a. Community empowerment

- 3.2 This includes the "community right to challenge", a different approach towards "assets of community value" and provisions for local referenda, particularly in the case of council tax rises.
- 3.3 **Referendums** – the provisions on referendums can be treated as, in part at least, a beefing-up of the powers recently introduced on petitions, which the Bill will repeal. In the Bill, if 5% or more of people in an area sign a petition requesting a referendum on this issue a referendum will be triggered.¹⁸

¹⁴ Speaking to the LGA Annual Conference in July, he said, "In the past fifty days instead of writing guidance, I've been shredding it. Instead of creating legislation, I've been dumping it. You've been a prisoner of regulation, chained to the radiator with red tape, for too long. I want to liberate you."

¹⁵ a9EA

¹⁶ s9EB

¹⁷ The headings given below do not reflect specific parts or chapters of the Bill – relevant sections have been footnoted.

¹⁸ ss40-41

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- 3.4 A member, or members, of an authority may also request a referendum. Under these circumstances it will be for the council to decide whether it would be “appropriate” to hold a referendum.¹⁹ Particular provisions apply in two-tier areas.
- 3.5 Once a determination is made a meeting must be held to resolve whether or not to hold a referendum.²⁰ The Bill does not state whether this must be a formal meeting of the Council or a committee, or whether it must be public. It also doesn’t state what criteria should be used to decide whether or not to proceed. This seems to be a long stop measure to prevent referenda where one cannot prima facie be declined but where another course of action may be more appropriate.
- 3.6 The authority/authorities concerned are not actually bound to give effect to the results of the referendum but, after it has taken place, must indicate what, if any action they propose to take.²¹
- 3.7 Particular provisions exist for referenda on council tax increases. Schedules 5 and 6 set out the full details.
- 3.8 **Scrutiny’s involvement in this area** would probably be limited, although scrutiny could have a role in investigating issues that could be subject to referenda, or where a referendum is planned. There could be scope to link up issues of particular public concern which might be subject to referenda through the use of CCfA, or through call-in where they relate to proposed council decisions.
- 3.8 **Community right to challenge** – under these provisions, a “relevant body” (a charity, voluntary group, employee mutual) may express an interest in running local public services.²² They can do this at any time,²³ unless an authority decides only to accept such expressions in a certain period (minimum periods may be set out in regulations). The authority must consider whether to accept the expression of interest, taking into account social, economic and environmental considerations²⁴ - the grounds for rejection will be set out in regulations from the Secretary of State.

¹⁹ ss42-43 – provision for making the determination is made in s44. The circumstances in which a referendum can be rejected are actually quite limited. The most expansive provision relates to vexatious or abusive requests.

²⁰ ss46-47

²¹ s52

²² s66

²³ s67

²⁴ s68(5)

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- 3.9 As and when an expression of interest is accepted, a procurement exercise must be carried out.²⁵ This opens up the possibility that, following the procurement exercise, a contract will be awarded to run the service to an organisation other than that which expressed an interest in the first place.
- 3.10 **Scrutiny’s involvement in this area** could be significant. While scrutiny cannot become involved in detailed contract management, an investigation of this issues could be a part of a wider review of council procurement. Scrutiny could also help the authority to develop the criteria, based on social, economic and environmental considerations, used to come to a judgment on accepting expressions of interest.
- 3.11 As and when services are delivered by charities/mutuals/voluntary groups, scrutiny can – as with other contracts – exercise a watching brief over the issue. This should be written into contracts with such bodies.²⁶
- 3.12 **Assets of community value** – under this part of the Bill²⁷, authorities must prepare a list of local assets of community value (based on the authority’s own judgment but also “community nomination” of appropriate assets). These can be any assets/land owned by anyone in the area. There must be a procedure by which the inclusion of any asset on the list can be reviewed. Owners of assets can request such a review.
- 3.13 Where a “community nomination” is made for inclusion on the list but it is unsuccessful, it is to go onto a separate list of unsuccessful nominations, which should also include the reasons given for its rejection from the main list.
- 3.14 Where the owner of such an asset proposes to sell it, a moratorium applies. They must notify the authority, and community interest groups (as defined by the authority in question) will have the right to bid to buy it (although not mentioned in the Bill, this is where community loans from the proposed Big Society Bank would come into play).
- 3.15 **Scrutiny’s involvement in this area** could be most useful at the beginning of the process, as the list is being formulated. Scrutiny could help to identify community assets based on discussion with local people – perhaps as part of a small, time-limited scrutiny review. This would ensure that the process for putting the list together is transparent, and accurately reflects public views. Scrutiny could also be consulted on the local definition for “community interest group”, and included in the list of consultees itself.

²⁵ s68(2)

²⁶ “Small print, big picture” (CfPS, 2008)

²⁷ s71 – s82

b. Planning

3.16 This part of the Bill covers a wide range of planning issues. Some of the operational issues around planning decision-making are less relevant, but in strategic terms the broad changes to the Town and Country Planning Act regime are significant, and deserve consideration by practitioners. Some include:

- Abolition of Regional Spatial Strategies;
- Changes to the operation of the Community Infrastructure Levy (previously s106 agreements);
- Changes to various parts of the Local Development Framework approach, including minor changes to the adoption of Development Plan Documents and the approach to the preparation of local development schemes;
- Neighbourhood planning (in particular the duty being placed on those who are seeking planning permission to directly consult local people on proposals, and other community consultation proposals);
- Various provisions relating to enforcement;
- Changes to the way that national planning policy statements are developed;
- The abolition of the Infrastructure Planning Commission, but the retention of powers by the SoS for planning proposals of national significance.

c. Housing

3.17 The main focus of likely scrutiny interest here will be social housing tenure reform, and reforms to tenant scrutiny. Other proposals include changes to the law around homelessness and the powers of the Housing Ombudsman. The Homes and Communities Agency remains, although its powers in London will now be directly given to the Mayor.

3.18 **Social housing tenure reform / tenants' rights** – housing authorities must prepare tenancy strategies²⁸, covering the types of tenancy granted, the circumstances in which tenancy will be granted and length of terms and circumstances in which tenancies will be renewed. The Bill does not specify this, but such strategies will involve giving additional clarity to choice-based lettings arrangements²⁹. Flexible tenancies are also being created as a halfway house towards secure tenancies, which apply to many properties³⁰.

²⁸ s126

²⁹ See Library Monitor 11, "Choice based lettings".

³⁰ ss130 - 134

3.19 Schedules 16 and 17 of the Bill makes provisions relating to standards of social housing. Responsibility for regulating social housing passes to the Homes and Communities Agency³¹. The HCA, in its role as the regulator, will take on responsibility for ensuring that key standards are met, and will be able to accept submissions from a number of stakeholders in reaching this judgment, including bodies representing tenants' interests.³²

3.20 **Scrutiny's involvement in this area** is likely to link closely with any work on choice based lettings. Tenancy strategies will be important documents, and scrutiny committees may want to investigate their development and the extent to which they assist both in housing supply and housing mobility. The HCA's regulatory powers over standards of social housing are powers of which scrutiny needs to be aware, particularly in the context of the context of recent work conducted by the Tenant Services Authority (who are being abolished) and their work in encouraging more tenant involvement in investigations in service standards.

d. Miscellaneous, including standards, pay, EU fines, London and repeals

3.20 These include:

- The abolition of the current standards regime, with declarations of interest now seen as a prime means to assure standards of appropriate conduct, and with serious issues now to be dealt with through criminal means;
- Removal of the rule against predetermination (which prevents councilors from being involved in making decisions – mainly in planning - where they have already expressed an opinion on the issue);
- Provisions relating to senior officer pay (including the requirement to make a senior pay policy statement – something which scrutiny might well be interested in taking a look at);
- The requirement to hold a ballot when it is proposed to impose a business rate supplement (which may have been prompted by criticism of the imposition of a BRS in London to help fund Crossrail);
- A requirement – that has proved extremely controversial, and which the LGA has strongly criticised – that councils be responsible for paying certain EU fines;
- Changes to London governance which reflect proposals put to the Secretary of State earlier this year by the Mayor, the London Assembly and London Councils – principally, around the creation of Mayoral Development Corporations;

³¹ Schedule 16

³² Schedule 17, amending the Housing and Regeneration Act 2008 to include a new section 198A(6).

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- Repeal of the duty to promote democracy and the duty to have a local petitions scheme (which only came into force recently). Although the petitions power is being repealed, there is some logic in local authorities retaining their existing procedures given that they are already in place, and that local petitioning will be key to the successful operation of the new referendum powers.

Further reading

“Small print, big picture” (CfPS, 2008)

“Accountability works!” (CfPS, 2010)

Local Government Association: “Provisional Local Government Finance Settlement”, briefing published 14 December 2010

Local Government Association: “Localism Bill: on the day briefing”, published 13 December 2010

CLG: “Guide to localism and decentralisation”, published 13 December 2010

Localism Bill 2010-11

Volume I at

<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126part1.pdf>

Volume II at

<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126part2.pdf>