



Scrutiny Programme Board

Date:	Thursday, 9 June 2011
Time:	6.15 pm
Venue:	Committee Room 1 - Wallasey Town Hall

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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. MINUTES (Pages 1 - 4)

To receive the minutes of the meeting held on 2 March 2011.

3. APPOINTMENT OF VICE-CHAIR

The Committee is invited to appoint a Vice-Chair for the ensuing municipal year.

4. CONSIDERATION OF POLICY BRIEFING NOTES (Pages 5 - 38)

The Scrutiny Programme Board 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. At its meeting held on 10 February 2011 (minute 53 refers), the Board had deferred consideration of the documents to a future meeting.

**5. DISCUSSION BRIEF - POWERS OF OVERVIEW AND SCRUTINY
(Pages 39 - 42)**

6. FORWARD PLAN

The Forward Plan for the period June to September 2011 has now been published on the Council's intranet/website. Members are invited to review the Plan prior to the meeting in order for the Scrutiny Programme Board to consider, having regard to the work programme, whether scrutiny should take place of any items contained within the Plan and, if so, how it could be done within relevant timescales and resources.

At its meeting held on 2 March 2011 (minute 58 refers), the Board requested that Chief Officers should consider reducing the number of items within the Forward Plan and should provide more information in future, in respect of Plan key decisions. The Democratic Services Manager will report verbally on this matter.

7. WORK PROGRAMME

The Scrutiny Programme Board is requested to consider what issues should form the basis its work programme for the ensuing municipal year.

**8. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR
(PART 1)**

**9. EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE
PUBLIC**

The public may be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information.

RECOMMENDED – That in accordance with section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by the relevant paragraphs of Part 1 of Schedule 12A (as amended) to that Act. The public interest test has been applied and favours exclusion.

**10. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR
(PART 2)**

SCRUTINY PROGRAMME BOARD

Wednesday, 2 March 2011

<u>Present:</u>	Councillor	AR McLachlan (Chair)	
	Councillors	C Meaden	G Watt
		J Hale	G Davies
		A Bridson	M McLaughlin
		S Mountney	P Gilchrist
		S Taylor	

54 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST/PARTY WHIP

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

Members were reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they were 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.

Councillor Mrs Meaden declared her personal interest in agenda item 4 – Good Scrutiny Awards (see minute 57 post), insofar as it relates to the Alcohol Scrutiny Review, by virtue of her daughter's employment in the Children and Young People's Department.

55 MINUTES

Resolved – That the minutes of the meetings held on 5 January and 10 February 2011, be approved.

56 EQUALITY FRAMEWORK FOR LOCAL GOVERNMENT - COUNCIL PROGRESS TOWARDS EXCELLENT STATUS

At its meeting held on 4 March 2010 (minute 43 refers), the Scrutiny Programme Board considered a report 'Equality and Diversity – Council Progress' and agreed to further develop the scrutiny function to incorporate the criteria of the Equality Framework for Local Government. The Director of Law, HR and Asset Management reported upon the Council's achievements in being awarded Level 3 of the Equality Standard in November 2009 and highlighted the role for scrutiny to ensure that the Council reached 'Excellent' status of the new Equality Framework by November 2011.

An Action Plan for reaching 'Excellent' status, developed by the Corporate Equality and Diversity Team, was currently being refreshed and the Council's Corporate Equality and Cohesion Manager gave a detailed presentation upon the measures that were required. She outlined the requirements of the new Equality Framework

and highlighted the general and specific duties contained within it. She set out the Fairness Agenda contained within the Government's Equality Strategy and referred in particular to the role of scrutiny to demonstrate that the Council had met its general and specific duties and was able to demonstrate improvements and outcomes as a result of its equality objectives. She commented also that the Council's 'Equality Watch Scheme 2009 – 2012' was due to be refreshed, to take into consideration the Equality Act 2010 and, consultation would take place across the Council, with partner agencies and among members of the Council's equality watch scheme.

In response to comments from Members with regard to the new standard report format, the Council's Democratic Services Manager indicated that the template had been agreed by the Executive Team and that all reports should now be prepared in the revised format.

Resolved –

- (1) That the progress made to date with regard to the Equality Standard for Local Government be noted.**
- (2) That each of the five themed Overview and Scrutiny Committees be requested to receive the presentation by the Corporate Equality and Cohesion Manager, to assist them in further developing the Council's scrutiny function so that the Council is on course to achieve Excellent status of the new Equality Framework for Local Government in November 2011.**
- (3) That the presentation be forwarded to Scrutiny Programme Board Members.**
- (4) That the Board places on record its dissatisfaction with the new report template, in that the recommendations appear at the beginning of the report rather than at the end, and recommends that it be further revised following consultation with Members.**

57 **GOOD SCRUTINY AWARDS**

Further to minute 44 (5 January 2011), which supported the content and recommendations of the Final Report of the Alcohol Scrutiny Review and agreed that it be put forward for nomination for a Good Scrutiny Award, the Democratic Services Manager reported that the deadline for the submission of entries to the Centre for Public Scrutiny was 31 March 2011. However, she commented that the Alcohol Review did not easily fit any of the categories that had been announced for this year's awards and, in addition, entrants were required to demonstrate how the review had influenced decision-makers and how it had led to positive change and better outcomes. The Review was scheduled to be considered by the Cabinet on 17 March 2011 and would be considered in due course by Area Forums, the Crime and Disorder Reduction Partnership (CDRP) and other partners. However, at this early stage, it was not possible to demonstrate its impact or outcome for positive change and the views of Members were sought as to whether or not the Alcohol Scrutiny Review should be submitted for a Good Scrutiny Award at this time.

Resolved –

- (1) That an evaluation be undertaken later in the year, in order to assess the impact of the Alcohol Scrutiny Review and an update report be presented to a future meeting of the Board.**
- (2) That, subject to the outcome of the review, the Alcohol Scrutiny Report be considered for submission to next years Good Scrutiny Awards.**

58 FORWARD PLAN

The Director of Law, HR and Asset Management reported that the Forward Plan for the period March to June 2011 had now been published on the Council's intranet/website. Members had been invited to review the Plan prior to the meeting in order for the Scrutiny Programme Board to consider, having regard to its work programme, whether scrutiny should take place of any items contained within the Plan and, if so, how it could be done within relevant timescales and resources.

Members commented that the Plan contained too many items, many of which had been on it for some time, without having been reported to the Cabinet. In addition, there was no information in respect of items within the Plan and no indication of reporting timescales.

Resolved – That Chief Officers be requested to consider reducing the number of items within the Forward Plan and provide more information in future, in respect of Plan key decisions.

59 WORK PROGRAMMES OF OVERVIEW AND SCRUTINY COMMITTEES

Members received reports outlining the work programmes of the Council Excellence and Sustainable Communities Overview and Scrutiny Committees and noted that they had not been provided for Children and Young People, Economy and Regeneration, and Health and Well Being.

Resolved – That the reports be noted.

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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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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;

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- 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.

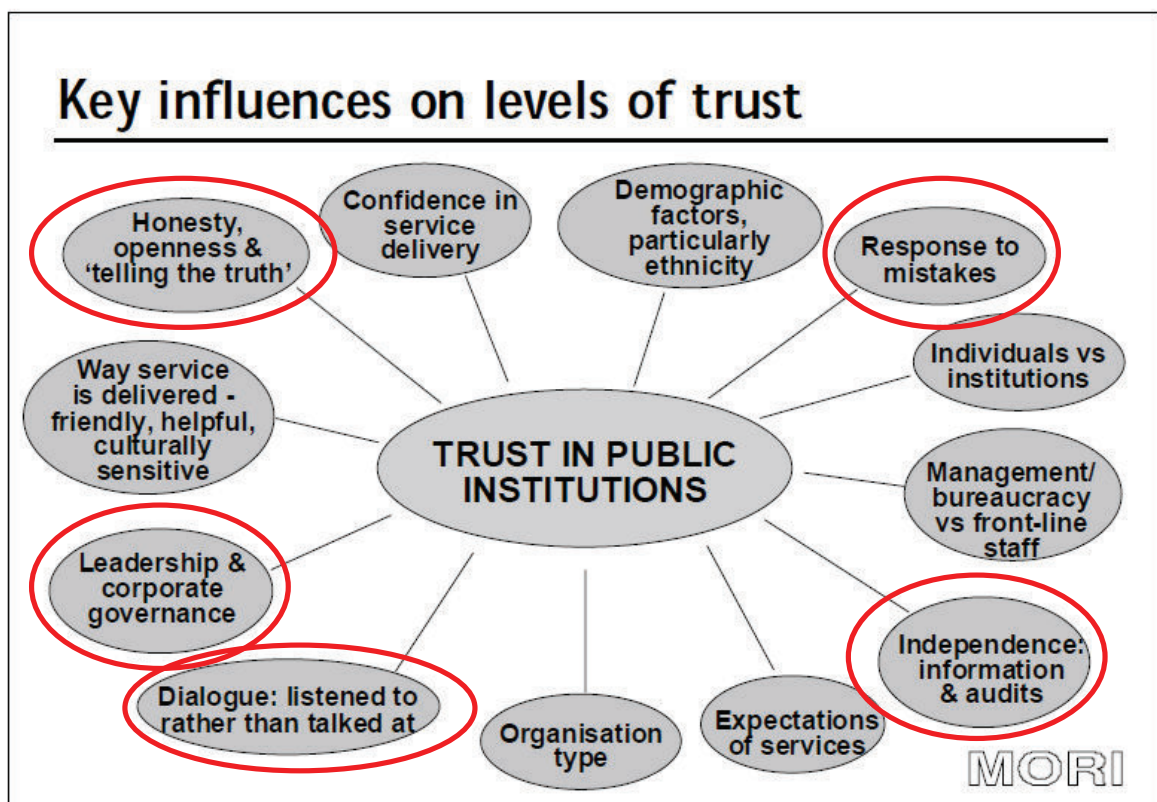
4. Wider implications: the importance of culture

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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. 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.

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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>

SCRUTINY PROGRAMME BOARD – 9 JUNE 2011 DISCUSSION BRIEF

POWERS OF OVERVIEW AND SCRUTINY

The main legislative provisions of the Local Government Act 2000 in relation to scrutiny enable Committees and their Members on behalf of the public to provide a process which is more “transparent” and to “engage” local people as much as is possible.

- Review and/or scrutinise
 - Decisions made by Cabinet and Council Officers in relation to key decisions
 - Actions carried out within the remit of the Council
 - The performance of the Council in relation to targets and policy objectives
- Have the right to call in and examine (in accordance with the agreed timescale), decisions made by Cabinet, before the decision is implemented.
Powers for health overview and scrutiny also derive from the Health and Social Care Act 2001.

Public involvement

Scrutiny is an ideal mechanism for liaising and working with the public. Members of the public are welcome to attend scrutiny meetings to hear information being received and discussed, and should be given the opportunity to contribute wherever possible. Members of the public might themselves be invited to provide information on a topic where they have a particular interest.

Scrutiny – a collaborative process

The Council’s scrutiny arrangements have been designed to work collaboratively whilst allowing independence to help deliver continuous improvement – reviewing existing policies, practices and working with/on behalf of the Cabinet on policy development.

Once it has formed its recommendations on proposals for development, an Overview and Scrutiny Committee will prepare a formal report and submit it for consideration by the Cabinet. The Council may consider the report of the Overview and Scrutiny Committee at its next appropriate meeting.

External Scrutiny

The work of scrutiny does not lie solely within the Council, and under part 1 of the Local Government Act 2000, councils are given the power to do “anything they consider likely to promote or improve the economic, social or environmental wellbeing of the area”. Increasingly, governance arrangements mean that local authorities work in partnership with other organisations in the public, private and voluntary sectors to target resources on local priorities. Scrutiny provides an opportunity to investigate the work of outside bodies, and how they impact on the community the Council serves. It also provides Councillors with many opportunities to enhance their community leadership role.

Engaging the public and other partner organisations

An important role for the Councillor is to encourage community participation in

decision-making, and scrutiny is an ideal vehicle for the involvement of individuals and organisations.

The public and outside organisations (such as voluntary, public and commercial organisations) are able to influence the scrutiny process at a variety of points in any scrutiny review.

The views of members of the public, external organisations and other such stakeholders are also sought when a Committee is collecting evidence for a scrutiny review. A variety of methods can be used depending on the type of evidence needed and who is providing it. Options can include:

- | Surveys and questionnaires (postal, face-to-face, e-‘voting’)
- | Public meetings
- | focus groups
- | road shows
- | conferences and seminars
- | workshops

As stated above, the method of evidence collection is also determined by who it is being collected from. Some of the larger organisations with many professional staff might be happy to attend Committee meetings to provide oral evidence. Smaller groups or individuals might find this off-putting, and prefer to provide evidence in other ways. This gives Members the opportunity to identify other ways of collecting evidence, for example, taking meetings outside the Town Hall (schools, community centres), collecting evidence in smaller groups, holding public meetings.

It is also important that Overview and Scrutiny committees consider how to reach a wide range of communities, including elderly people, faith groups, disabled people, lesbians and gay men, ethnic minority groups and people whose first language is not English.

In addition, the Council Constitution makes provision for Overview and Scrutiny Committees to be entitled to recommend to Council the appointment of a number of people as non-voting co-optees to the Committee or any sub-committees. This enables non-Council members to be included as members of scrutiny panels.

Engaging the Media

The scrutiny process provides an ideal opportunity for Members to highlight the work they are doing through the local (and national) media. Local newspapers, radio and television, are all able to inform the public of ongoing work, invite opinion and involvement and assist Overview and Scrutiny committees undertake consultation.

Publicising the Scrutiny Review

Prior to commencing a scrutiny review the O&S Committee should consider how it might engage the appropriate level of public involvement. Public measures, using the press office where appropriate, could include:

- Issuing a press release to inform the public about the proposed scrutiny

review

- Informing any particular interest groups or user groups about the proposed scrutiny review
- Making information available in all Council Offices, Libraries, Leisure Centres, Housing Offices, etc
- Placing appropriate information on the internet and intranet
- Placing appropriate publicity in the local press

To engage a wide range of communities, the committee services team will also consider:

- Publicising scrutiny events on local radio
- Placing publicity in community centres
- Communicating with faith groups and the voluntary sector
- Making scrutiny materials available in various languages.

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