

WIRRAL COUNCIL

SCRUTINY PROGRAMME BOARD - 14 JANUARY 2010

REPORT OF THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT

UPDATE ON NEW LEGISLATION

EXECUTIVE SUMMARY

This report provides an overview of new legislation that affects Overview and Scrutiny Committees aimed at empowering communities and enabling local people, through their Councillors, to participate in decisions that affect their day to day lives. In particular, the report details the implications of the Local Democracy, Economic Development and Construction Act 2009.

1. Background

1.1 There are currently three pieces of legislation that affect the way that scrutiny must be approached now and in the future. These are:

- The Local Government and Public Involvement in Health Act 2007 which came into effect on 1 April 2009;
- The Police and Justice Act 2006 which came into effect on 30 April 2009; and
- The Local Democracy, Economic Development and Construction Act 2009 which received Royal Assent on 12 November 2009.

1.2 The Department of Health is also reviewing Health Scrutiny.

1.3 The Department of Communities and Local Government has recently consulted on a paper entitled 'Strengthening local democracy'. The consultation period ended on 2 October 2009.

2 The Police and Justice Act 2006

2.1 1 April 2009 saw the implementation of that Section of the Act which concerns Councillor Calls for Action in respect of crime and disorder matters. Since then regulations and guidance have been issued on scrutiny of local Crime and Disorder Reduction Partnerships. A copy of the guidance is attached as an Appendix to this report.

2.2 The procedures for dealing with such calls for action will need to be set out in the Overview and Scrutiny Procedure Rules Section of the Council's Constitution. A more detailed report on Councillor Calls for Action in relation to crime and disorder issues will be brought to the Board in the near future.

2.3 The new powers for overview and scrutiny to hold responsible authorities to account in respect of their crime and disorder role came into force on 30 April 2009. It has been agreed that The Sustainable Communities Overview and Scrutiny Committee will

exercise this function. The Committee will be expected, in every 12 month period, to review or scrutinise decisions made, or action taken, by “responsible authorities” in connection with the discharge of their crime and disorder functions. The responsible authorities for the purpose of the 2006 Act currently include local authorities, fire and rescue authorities, police authorities, the police, and Primary Care Trusts in England. Collectively, these constitute the statutory Crime and Disorder Reduction Partnership.

- 2.4 A number of Councils have already developed a protocol for how the Crime and Disorder Reduction Partnership and the Scrutiny function will work together. It is the intention that this best practice is adopted in Wirral and a Protocol will be drawn up to meet the Council’s needs. This Protocol along with a more detailed report on how scrutiny of the Partnership could potentially operate will be brought to a future meeting of this Board for comment/amendment.
- 2.5 Also introduced was a requirement for responsible authorities or cooperating bodies (such as Probation) to provide information to the designated crime and disorder Committee when requested within a reasonable timeframe and to respond to recommendations within 28 days of the report being submitted. This should take the form of both written information and/or an appearance by representatives of the authorities/bodies in question. The responsible authorities and/or co-operating bodies are also required to respond to scrutiny reports and recommendations (in writing and within one month, where practicable) and the crime and disorder committee can systematically review its recommendations and track progress.
- 2.6 The Regulations and guidance governing the accountability process provide a discretion for crime and disorder scrutiny committees to co-opt additional members from the responsible authorities or co-operating bodies where it considers it appropriate for the exercise of its functions. However, it should not co-opt any person in relation to a decision or action in which that person is wholly or partly responsible, or in which the person was otherwise directly involved. Co-optees have voting rights for the duration of their membership. Membership of a committee can be withdrawn at any time.

3. The Local Government and Public Involvement in Health Act 2007

- 3.1 Councillor Calls for Action in respect of local government matters came into force on 1 April 2009. The Board considered a draft Protocol at its last meeting and amended it slightly. It was then considered by the Cabinet at its meeting on 9 December 2009. The Cabinet was pleased that the Board had been able to take a detailed look at the Protocol and that it had endorsed it. The Protocol will be considered by the Council at its meeting on 15 February 2010. The new duty for partners to co-operate also came into effect on the same date, as did the responsibility for partners to “have regard to” scrutiny recommendations.
- 3.2 Best practice guidance in relation to local government councillor calls for action was published by the Centre for Public Scrutiny and the Local Government Improvement and Development Agency in February 2009 and may be accessed online at:
<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=92>
- 3.3 Guidance for partners on their duty to co-operate with overview and scrutiny is also currently being drafted by the Centre for Public Scrutiny.

4. The Local Democracy, Economic Development and Construction Act 2009

4.1 The main provisions within the Act which impact upon the Council's Overview and Scrutiny function are as follows:-

4.2 Duties relating to the Promotion of Democracy (Ss 1-9)

The Act creates two new duties to promote participation in local authorities and other institutions with local responsibilities. As part of the first duty to promote local understanding of the Council's functions and Democratic arrangements, Overview and Scrutiny will be required to promote local understanding of the function and how members of the Public can take part in it.

4.3 The Second duty is for Council's to promote a similar understanding of the Democratic arrangements for other bodies. As part of this duty, there may be a role for Overview and Scrutiny to promote how other Public Bodies participate in and contribute to the work of Overview and Scrutiny

Comment

The Council's Scrutiny function needs to take significant steps to publicise Overview and Scrutiny and the methods by which the public can be engaged in the process including Co-option, attendance to give evidence, Petitions and the new Councillor Call for Action Protocol. The Council also needs a comprehensive set of Scrutiny Web-pages.

4.4 Petitions to Local Authorities (Ss 10-22)

The Act requires all Principal Councils to make, publicise and comply with a scheme for handling petitions, including electronically through their websites. This scheme should set out the basic requirements for petitions including the number of signatories required, what would constitute a valid signatory to a petition, how councils will respond to petitions and the steps that will be taken to consider the petition.

4.5 The Act requires petitions of a certain size to be debated by the full Council and also identifies an appellate mechanism for Overview and Scrutiny if a petition organiser is not happy with the process adopted. The Act also has a provision within the petitions process which requires an officer to be "called to account" at a Council meeting.

Comment

The Council needs to put a Petitions Protocol in place in accordance with the provisions in the Act. The proposed model is within the Act and an e petitions facility will need to be available within its website.

4.6 Extension of Duty to Involve (Ss 23-24)

The Act extends the duty to involve to a number of organisations including the Environment Agency, Homes and Communities Agency, Regional Development agencies, local Probation Boards and Youth Offending Teams.

4.7 Extension of Scrutiny (Ss 31-33)

The Act requires the Council to designate one of its officers as the Statutory Scrutiny Officer. The Act prescribes a number of functions that the Statutory Scrutiny Officer must carry out regarding the promotion of the Role of Overview and Scrutiny Committees and the provision of support to Overview and Scrutiny Committees and Members. The new Statutory Scrutiny Officers will assist in ensuring that authorities

make proper provision for independent scrutiny support for Members and ensure that scrutiny is taken seriously. The officer will need the support of all parties for the role to be successful and effective.

- 4.8 The Act also enables two or more Local Authorities to appoint Joint Overview and Scrutiny Committees. This will allow Councils to undertake joint Regional and Sub-Regional Scrutiny of non-health related matters. These powers may be particularly useful in scrutinising issues which cut across local authority boundaries such as Multi Area Agreements, transport, Economic Regeneration etc.

Comment

In respect of Joint Scrutiny Committees, the Council's Scrutiny function could work closely with the North West Employers' Organisation Scrutiny Networks to foster Regional and Sub-Regional Scrutiny activity.

- 4.9 **Timetable for Implementation**
The Department for Communities and Local Government has not yet provided a timetable for the introduction of regulations and guidance where these may be relevant.

5. Review of Health Scrutiny by the Department of Health

- 5.1 The Department of Health (DoH) is undertaking a review of Health Scrutiny, which it began by running a number of listening events in the autumn of 2008. The two drivers for the review are:
- Lord Darzi's review of the NHS and the reconfiguration of health services prompted the DoH to look at whether timescales should be introduced for the determination of substantial variations by Health Scrutiny and the process for referral to the Secretary of State by Scrutiny of NHS consultations; and
 - the legislation on Health Scrutiny was introduced six years ago and the structure of the NHS has changed significantly with the introduction of Foundation Trusts; and the developing role of Primary Care Trusts through commissioning.
- 5.2 The DoH's current position is that there is no case for the introduction of timescales in relation to determining substantial variation and that these should continue to be worked out locally by Health Scrutiny Members and local NHS partners. There are no plans to reduce the remit of Health Scrutiny to determine substantial variation of services. The DoH has also highlighted concerns around the interaction of Health Scrutiny and Foundation Trusts from the listening exercises which it wants to address.
- 5.3 The DoH was expected to share draft guidance in the autumn 2009.

6. Strengthening Local Democracy

- 6.1 In July 2009 the Department for Communities and Local Government published a consultation paper entitled "Strengthening Local Democracy". The consultation explored whether local government has the powers it needs to meet today's challenges, as part of the Government's drive to renew Britain's democracy and build trust in the political system at all levels. It set out a range of proposals to promote democratic renewal and strengthen the power and responsibility of local government by:
- giving councils more scope to scrutinise the spending and decisions of local service providers;

- exploring whether there are barriers to using existing powers and whether there are other powers which councils should have;
- ensuring councils have the powers and responsibilities they need to tackle climate change;
- exploring how the powers and responsibilities of sub-regional structures should be matched by clear and accountable leadership; and
- exploring how to articulate, develop and support the relationship between central and local government so that respective functions are clear and transparent to citizens.

6.2 There are wide ranging proposals set out in the consultation document which if implemented could have far reaching implications for the future of local government. The paper states that some of the changes proposed could be achieved rapidly but it also sets the parameters for the debate over the next five to ten years. It also recognises that proposals in the paper will impose costs on local authorities and states that any net additional cost (taking into account any savings made as a result of implementing proposals) to local authorities will be fully and properly funded by the Department of Communities and Local Government.

RECOMMENDED: That the Scrutiny Programme Board

- (1) notes the progress of the legislation, that has or will affect the remit of Scrutiny set out in the report;
- (2) notes the progress of the Department of Health's review of Health Scrutiny; and
- (3) awaits the detail of the Department of Communities and Local Government's response to the consultation carried out following the publication of its consultation paper "Strengthening Local Democracy", setting out proposed next steps.