

WIRRAL METROPOLITAN BOROUGH COUNCIL

SCRUTINY PROGRAMME BOARD

10 FEBRUARY 2011

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

1.0 EXECUTIVE SUMMARY

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

2.0 RECOMMENDATION(S): That

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

toward Royal Assent.

3.0 REASON(S) FOR DECISION

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

4.0 BACKGROUND

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

5.0 SUMMARY OF THE BILL

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

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

6.0 OVERVIEW AND SCRUTINY

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

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

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

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

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

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

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

6.1 Governance arrangements - overview

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

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

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

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

6.2 Changing governance arrangements

This is a two stage process. First, a resolution of Full Council is required. Following such a resolution, changes to governance arrangements can be made immediately following the next relevant election. Different provisions will apply for the 12 core cities, which must hold confirmatory referenda on adopting an executive mayor after the Bill becomes law, with the leader of the council being a “shadow mayor” in the meantime.

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

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

6.4 Powers relating to executive mayors:

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

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

6.5 The committee system

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

6.6 Scrutiny powers under the committee system

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

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

7.0 LOCALISM BILL – MORE GENERAL IMPLICATIONS FOR ACCOUNTABILITY

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

7.2 Community empowerment

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

7.3 Referendums

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

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

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

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

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

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

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

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

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

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

7.4 Planning

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

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

7.5 Housing

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

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

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

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

8.0 CONCLUSIONS

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

9.0 OTHER OPTIONS CONSIDERED

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

10.0 CONTRIBUTIONS TO THE COUNCIL'S STRATEGIC OBJECTIVES

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

11.0 FINANCIAL IMPLICATIONS

Costs Associated With Managing Petitions and Referenda.

12.0 LEGAL IMPLICATIONS

Significant from a Constitutional perspective.

13.0 HUMAN RESOURCE IMPLICATIONS

Implications for Electoral staff with support for referenda.

14.0 RISK MANAGEMENT IMPLICATIONS

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

15.0 CRIME PREVENTION AND COMMUNITY SAFETY IMPLICATIONS

None

16.0 HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

16.1 **Human Rights Implications** - None

16.2 **Equalities Implications** - None

16.3 **Equality Impact Assessment (EIA)**

(a) Is an EIA required? No

(b) If yes has one been completed?

17.0 ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

None

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APPENDICES

Appendix 1 Progress on the Bill.

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

REFERENCE MATERIAL

Decentralism and Localism Bill: an essential guide.

SUBJECT HISTORY

| Council Meeting | Date |
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