

# WIRRAL COUNCIL

## SCRUTINY PROGRAMME BOARD

28 FEBRUARY 2012

<b>SUBJECT:</b>	<b><i>NEW LEGISLATIVE FRAMEWORK – SUMMARY</i></b>
<b>WARD/S AFFECTED:</b>	<b><i>ALL</i></b>
<b>REPORT OF:</b>	<b>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</b>
<b>KEY DECISION?</b>	<b>NO</b>

### **1.0 EXECUTIVE SUMMARY**

- 1.1 At the previous meeting of the Scrutiny Programme Board, held on 4<sup>th</sup> January 2012, a briefing paper regarding new legislation was provided to members. The paper, titled 'New Legislative Framework – Update', had been issued by the Centre for Public Scrutiny. During the meeting, members resolved "that a summary report from officers on the content of the Policy Briefing, and its implications for Wirral, be presented to the next meeting of the Board" (Minute 23).

### **2.0 RECOMMENDATION/S**

- 2.1 Members are requested to note the report and refer it to the other five Overview and Scrutiny Committees.
- 2.2 The Committee is also requested to distribute the report to all members of the Council in order to raise awareness of the forthcoming legislative changes.

### **3.0 REASON/S FOR RECOMMENDATION/S**

- 3.1 The new legislation will impact directly on the Council's scrutiny arrangements. It is important that members are aware of the implications of the legislation.

### **4.0 BACKGROUND AND KEY ISSUES**

Appendix 1 to this report provides a summary of the document produced by the Centre for Public Scrutiny, putting the proposed legislative changes into a Wirral context. The report examines the provisions of the Localism Act, the Police Reform and Social Responsibility Act and the Health and Social Care Bill (expected to receive Royal Assent in Spring 2012) and draws conclusions from the new legislation about the future of scrutiny. It is important to note that this report discusses only the implications of the new legislation on scrutiny; it does not cover some of the wider implications of the legislation.

The full briefing paper produced by the Centre for Public Scrutiny, 'New Legislative Framework – Update' can be found on the Scrutiny Programme Board meeting agenda of 4<sup>th</sup> January 2012.

In addition, further information regarding the provisions of the Police Reform and Social Responsibility Act are available in another report on this agenda, titled 'Police and Crime Panels and Commissioner Elections'.

## **5.0 RELEVANT RISKS**

5.1 There are none arising directly from this report.

## **6.0 OTHER OPTIONS CONSIDERED**

6.1 This report describes the impact of Government legislation on scrutiny.

## **7.0 CONSULTATION**

7.1 There has been no specific consultation in relation to this report.

## **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

8.1 There are no implications arising directly from this report.

## **9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

9.1 There are no resource implications arising directly from this report.

## **10.0 LEGAL IMPLICATIONS**

10.1 The Council's Constitution will need reviewing to take account of the new legislation.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 There are no implications arising directly from this report

11.2 Equality Impact Assessment (EIA)

(a) Is an EIA required? No

## **12.0 CARBON REDUCTION IMPLICATIONS**

12.1 There are no implications arising directly from this report.

## **13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

13.1 There are no implications arising directly from this report.

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## **APPENDICES**

**Appendix 1 -** Summary of 'New Legislative Framework – Update'

## **REFERENCE MATERIAL**

*Centre for Public Scrutiny (CfPS)* 'New Legislative Framework – Update' – December 2011

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Scrutiny Programme Board</b>	<b>4 January 2012</b>

### **SUMMARY OF ‘NEW LEGISLATIVE FRAMEWORK – UPDATE’**

#### **1. INTRODUCTION AND BACKGROUND**

The Government argues that the new legislation has community power as its core theme. This will have an impact on existing accountability mechanisms and particularly on overview and scrutiny. This briefing paper provides information on the implications for scrutiny of:

- The Localism Act 2011
- The Police Reform and Social Responsibility Act 2011
- The Health and Social Care Bill

In addition, a commentary is provided regarding the major impacts on Wirral Council. It should be noted that, in general, the Council’s Constitution will require amendment to cover a number of the issues outlined below.

#### **2. LOCALISM ACT**

The Localism Act received Royal Assent on 15<sup>th</sup> November 2011 and the scrutiny elements are expected to formally commence by April 2012. The Act contains provisions on a wide range of services delivered by local authorities, or in which councils might have an interest. Licensing, planning, housing and governance are all covered. The broad policy intention behind the Act is to devolve power over a range of services to local people and local communities.

##### **2.1 Governance changes**

Councils will have the option to change governance arrangements from a strong leader model (with Cabinet); moving to either a committee-based model of governance or to a directly-elected executive mayoral model. The 12 “core cities” in England are due to hold referendums on the establishment of a directly elected Mayor. In the case of Liverpool, the Council has decided to opt for an elected mayor, removing the requirement to hold a referendum. The elected mayor option also remains open to other Councils.

Authorities choosing to adopt a committee system must first agree a resolution to this effect at Full Council, with the change itself happening following the subsequent Full Council AGM. With the Committee system, local authorities will have flexibility as to how this will operate, though the Secretary of State is given power to specify by regulation any functions which must be exercised by Full Council. It should also be noted that once Council decides on an alternative form of governance, it will not be possible to change back until five years have elapsed, without a referendum being held on the issue.

Councils can operate overview and scrutiny under a committee system. The Centre for Public Scrutiny believes that, for most authorities who choose to change their arrangements, a “streamlined” or “hybrid” committee system,

incorporating both subject committees and O&S, is the most likely outcome (on the basis of anecdotal information which is being collected to support further research on this issue, to be published in February 2012). This will allow committee system councils to exercise the scrutiny powers around healthcare, flood risk management, crime and disorder and external partners, as well as providing some independent challenge to decisions made by these committees. The Government plans to announce regulations defining the operation of overview and scrutiny in committee system authorities shortly.

**Implications for Wirral** - On 17<sup>th</sup> October 2011, Council agreed “that an all party working party comprising two members of each party be set up to seek to achieve consensus on the most appropriate form of democracy within the Council, taking into account the strengths and weaknesses both of the old Committee system and the current Cabinet system, and of any legislation and subsequent regulations as these become known. Council asks that any new system meeting all party approval be prepared ready for adoption at the Council’s AGM, in May 2012 or as soon thereafter that the enactment of the Localism Bill and any subsequent regulations allow”. The Democracy Working Party has now met on several occasions as it carries out this remit. The views and opinions of members are currently being gathered and analysed to assist the Working Group in completing its work.

## 2.2 Powers for scrutiny

The Act will increase the powers for local government scrutiny functions in key areas, including:

2.2.1 Powers over partners – Prior to the Localism Act, Overview & Scrutiny committees could scrutinise the work of partners, as long as that work related to a local improvement target under the Local Area Agreement. Under the Localism Act, committees will be able to scrutinise the activities carried out by a Government-prescribed list of named partners. This could (and will) include services funded not by the local council, but from other funds. This important change makes it clearer than ever that scrutiny’s future lies in a view of public services as they are delivered across a given locality; not just those for which the council has a direct responsibility. The Department for Communities and Local Government (DCLG) has advised that they may consider an extension to the list of named partners in the future.

**Implications for Wirral** – Once the work of the Democracy Working Party is completed, the requirements for partner scrutiny in Wirral will become clearer. As a minimum, scrutiny of the Community Safety Partnership and of Council’s health partners, under the umbrella of health scrutiny, will continue.

2.2.2 Changes to the Councillor Call for Action – The Localism Act has widened the provisions of the Councillor Call for Action to enable councillors to bring Councillor Calls for Action on issues that relate to partners, not just Local Authority issues.

**Implications for Wirral** - Wirral Council approved procedures for the operation of the Councillor Call for Action scheme on 15<sup>th</sup> February 2010. To date, there

have been no Councillor Calls for Action introduced by members in Wirral. The current procedures will need to be updated to take the provisions of the Localism Act into account.

### 2.3 Tenant Scrutiny

The Government is bringing in, through the Act, a more central role for the existing tenant scrutiny arrangements in social housing. The previous model of “co-regulation” is being extended as central government regulation is scaled back and more challenge to landlords at local level by tenants replaces it. The Act will move two principal consumer protection responsibilities from regulators to tenant scrutiny, namely:

- Proactively monitoring landlords’ compliance with service standards;
- Scrutinising landlord performance and driving service improvement generally.

There is a clear steer from the Department of Communities and Local Government and other national bodies that landlords will be expected to support tenant scrutiny panels or other arrangements, as a part of the co-regulatory environment. Earlier research on tenant scrutiny does provide numerous examples of good working relationships having been built up, but Overview and Scrutiny Committees may wish to explore how well arrangements are developing in their local area, both in relation to the council’s own housing stock (either directly managed or by an Arms Length Management Organisation) and in relation to any social housing landlords with housing locally.

**Implications for Wirral** – Housing currently falls within the remit of the Economy and Regeneration Overview and Scrutiny Committee. Therefore, that Committee could take up the suggestion from the Centre for Public Scrutiny and investigate the progress of tenant scrutiny as part of the Committee’s work programme.

### 2.4 Neighbourhood planning and “community right to challenge”

The Act will allow local people to directly influence policy, and the delivery of services, in neighbourhoods in two principal ways – through neighbourhood planning (the production by local people of planning documents which, as long as they complement the Core Strategy of the Local Development Framework, will be adopted by the Council as a Development Plan Document) and the “community right to challenge”, the system by which local people can challenge the delivery of a service by a certain provider, with a view to a procurement exercise for the delivery of that service being opened up.

**Implications for Wirral** – The Council will need to ensure that appropriate processes are in place.

## 2.5 Referendums

The expansive referendum provisions in the Bill, as originally introduced, have been removed following lobbying by the Local Government Association. Referendums will still need to be held on certain council tax increases.

**Implications for Wirral** - The Council will need to ensure that appropriate processes are in place.

## 3. POLICE REFORM AND SOCIAL RESPONSIBILITY ACT

The Police Reform and Social Responsibility Act received Royal Assent in October 2011. A central part of the Act is the introduction of directly-elected Police and Crime Commissioners. However, the plans for Police and Crime Commissioner elections, previously scheduled for May 2012, have been delayed by six months.

### 3.1 Police Commissioner

The Act abolishes police authorities and replaces them with an elected Police and Crime Commissioner (PCC). The Commissioner will be responsible for holding the Chief Constable in the Force area to account. The Police and Crime Commissioner is perceived as having a more high profile and responsive role in relation to the public. Innovations such as crime mapping, and mandated neighbourhood meetings, along with direct elections, are designed to make the Commissioner more accountable. The Commissioner will have wide-ranging powers and responsibilities. On consultation and engagement, he or she will have a duty to consult local people, including victims of crime.

**Implications for Wirral** - Merseyside Police Authority have set up a Transition Committee to make sure the necessary communications, negotiations and agreements take place to allow the change to happen as smoothly as possible. The Wirral members sitting on the Transition Committee are Councillors Kate Wood and Tony Smith. A small number of meetings have already been held.

The election of the Police and Crime Commissioner for Merseyside, as is the case nationwide, is due to take place on 15<sup>th</sup> November 2012. Once elected, the Commissioner will take office on 22<sup>nd</sup> November 2012. The elections will use the Supplementary Vote electoral system. Under the supplementary vote system, a voter is asked to indicate first and second preferences. If no candidate has 50 per cent of the first preference votes, the two candidates with the highest number of first preference votes go forward to a second round. In the second round of counting, ballots indicating a first preference for a candidate that lost in the first round are reallocated according to the second preference indicated in the ballot paper.

### 3.2 Community Safety Partnership (CSP)

The Police and Crime Commissioner will have sole responsibility for disbursing community safety funding from the Home Office (currently provided through a range of funding streams to local authorities, police and community safety partnerships), and will also have responsibility for a range of other budgets. The Commissioner will be able to direct this funding where he or she wishes, in the form of grants, either to Community Safety Partnerships or other bodies.

**Implications for Wirral** - The funding relationship for Wirral's Community Safety Partnership will change. Further work will be required by the Partnership to determine the implications of the changes. The implications for the scrutiny of the Community Safety Partnership will also require clarification.

### 3.3 Police and Crime Panel

The Commissioner will him/herself be held to account by a Police and Crime Panel, a body made up of local councillors from all authorities in the Force area. The Panel will be a joint committee of all the authorities in the Force area and must be politically and geographically balanced, as far as possible. The Centre for Public Scrutiny strongly recommends that the Panel should be made up of non-executive (that is non-Cabinet) members.

A lead authority will need to be assigned to co-ordinate arrangements between the authorities involved. Guidance produced jointly by the Centre for Public Scrutiny and the Local Government Association suggests the establishment of a "shadow PCP" to consider the role, responsibilities and composition of the final Panel.

The Police and Crime Panel will be a scrutiny body. Under the Act, the Panel has certain "special functions", including considering the Commissioner's Police and Crime Plan, reviewing the planned police precept and reviewing certain senior appointments. The Police and Crime Panel will also have formal duties around dealing with certain complaints against the Commissioner (to be exercised as a last resort). Beyond these statutory powers there is other work in which the Panel could engage. The view of the Centre for Public Scrutiny is that the Police and Crime Panel will find it difficult to transact its statutory functions, particularly scrutiny of the Police and Crime Plan, without carrying out scrutiny-style investigations into issues of local concern. The "set piece" scrutiny outlined in the "special functions" will, for its success, need to rely on a wider body of evidence from more detailed scrutiny investigations, in order to be meaningful.

Further Guidance will contain more detail on the expected timescale of the lead up to the new structural arrangements coming into force later in the year. At the moment it seems most likely that the Home Office will require councils to agree on "who leads" on PCP arrangements by April 2012, with arrangements having been established in shadow form by July 2012 at least. This timescale is of course subject to change and has not been confirmed by the Home Office.



**Implications for Wirral** - The Merseyside Police and Crime Panel must have a minimum of ten members, made up of members from the composite Local Authorities, that is, Liverpool, Knowsley, Sefton, St Helens and Wirral plus some Independent persons. Official Home Office guidance on setting up the panels is still awaited. However, it is clear that the Merseyside Local Authorities will need to agree on which authority will lead the process and commence arrangements for the implementation of the Panel.

#### 4. **HEALTH AND SOCIAL CARE BILL**

The Health and Social Care Bill is still undergoing parliamentary scrutiny and has not yet received Royal Assent. It is expected that the Bill will receive Royal Assent during Spring 2012. It is, therefore, possible that the contents of the Bill will change before the new legislation is implemented. Among the proposed reforms are:

- Replacement of Strategic Health Authorities and Primary Care Trusts
- Introduction of GP Commissioning Consortia and an NHS Commissioning Board
- Provision of economic regulation of the Health Service by the regulatory body, 'Monitor'
- Transfer of responsibilities for Public Health to Local Authorities
- Development of Health & Wellbeing Boards
- Replacement of LINKS (Local Involvement Networks) by Local HealthWatch

The three Clinical Commissioning Groups being established as Pathfinders in Wirral are:

- Wirral Health Commissioning Consortium
- Wirral GP Commissioning Consortium
- Wirral NHS Alliance

Their work in 2011/12 will provide the foundations for when consortia are established in 2012/13 and will take on the leading responsibility for commissioning healthcare services, ahead of them becoming fully statutorily accountable from April 2013 onwards. This report does not attempt to describe the wider health reforms but instead concentrates on those issues closer to scrutiny.

**Implications for Wirral** - For scrutineers, the element of most initial interest will be "proper constitutional and governance arrangements". The new arrangements will naturally need to include overview and scrutiny and collaboration between scrutiny, local HealthWatch and lay people involved in Clinical Commissioning Group governance.

The Council's health scrutiny will need to adapt to the new relationships in order to best influence developments such as the preparation of the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS). The Centre for Public Scrutiny has recently produced a report

'Health Overview and Scrutiny: Exploiting opportunities at a time of change'. The report draws on the experiences of pilot projects that have been running in seven different Local Authorities. Perhaps Wirral could learn from some of the experiences highlighted in the report.

#### 4.1 The Health and Wellbeing Board

The Health and Wellbeing Board will be a committee of the local authority, but its membership will be broad. The Board will include a number of local partners, including the local authority, local HealthWatch, Clinical Commissioning Group representatives and other professionals. Under the provisions of the Bill, the Board must encourage integrated working. This duty will be especially relevant in the development of the Joint Strategic Needs Assessment (JSNA) and the joint health and wellbeing strategy (JHWS), for which the local authority and the clinical consortia will be jointly responsible. The Health & Wellbeing Board cannot compel Clinical Commissioning Groups in its areas to do, or not do, something. However, the Board will be able to challenge the Clinical Commissioning Groups (through reference to the Secretary of State) if it feels that the Clinical Commissioning Group's commissioning plans do not conform to the JSNA or the JHWS.

**Implications for Wirral** - A report, titled 'Proposal for the Establishment of a Shadow Health & Wellbeing Board for Wirral' was presented to Cabinet on 23<sup>rd</sup> June 2011. The Shadow Health and Wellbeing Board has subsequently been established in Wirral, with terms of reference having been agreed. The lead officer is the Director of Public Health and the Shadow Board is chaired by the Leader of the Council. It will be part of the role of health scrutiny in the future to scrutinise the work of the Health and Wellbeing Board.

#### 4.2 The Role of HealthWatch

At the moment it is still too early to make detailed predictions for how Local HealthWatch will work with overview and scrutiny, although it will certainly need to do so. The Centre for Public Scrutiny has carried out detailed studies of the development of LINKS (Local Involvement Networks), since their establishment, which may provide some further guidance on this subject, and recently published a major evaluation of the lessons that Local HealthWatch can learn from the experience of LINKS.

**Implications for Wirral** - Plans for the transition of LINK into HealthWatch are progressing in Wirral. A report, titled 'LINK Transition to a Local HealthWatch Organisation', was presented by the Director of Adult Social Services to the recent meeting of the Health and Wellbeing Overview and Scrutiny Committee, held on 19<sup>th</sup> January 2012.

#### 4.3 Health scrutiny's position and powers

The Bill amends the scrutiny provisions in the National Health Service Act 2006. Powers are now to be exercised by the authority, rather than by a health overview and scrutiny committee. This provides more flexibility to local

authorities in how they manage the delivery of their scrutiny responsibilities. This could enable creativity but risks dilution of independent scrutiny.

**Implications for Wirral** - Once the work of the Democracy Working Party is completed, the options for the most appropriate arrangements for health scrutiny will become clearer.

## 5. **BROAD IMPLICATIONS FOR SCRUTINY**

The Centre for Public Scrutiny draws several conclusions arising from the new legislative framework. Powers in all three pieces of legislation emphasise the importance of partnership working in the delivery of public services. It is likely that it will become more difficult to distinguish between “internal” council-only services and “external” ones delivered by partners. The merging of the two will mean that the way in which scrutiny deals with all issues across a local area will need to be harmonised.

This may involve a number of changes:

- More proactive consultation and discussion with partners about the scrutiny work programme
- A better understanding of scrutiny by partners
- More scrutiny on specific issues, that may involve partners, rather than “scrutiny of partners”
- More joint scrutiny across local authorities

In practice, this may mean that overview and scrutiny will be carrying out more joint work with other bodies and agencies to pursue areas of mutual interest. For example, local authority scrutiny functions might collaborate with tenant scrutiny panels to jointly challenge housing providers in the local area, draw evidence from Local HealthWatch to challenge health and social care providers and share information with Police and Crime Panels, amongst other opportunities.

Scrutiny will also need to sit alongside emerging approaches for “sector self-regulation”. The “Taking The Lead” document, produced by the Local Government Association, sees a key role for scrutiny in allowing councillors to drive the local improvement process, to maintain momentum and to provide constructive scrutiny based on challenging traditional approaches to service delivery.

The Centre for Public Scrutiny’s briefing paper concludes by highlighting two possible barriers to progress, namely:

- potential partner and executive resistance to scrutiny
- new scrutiny powers being in existence at a time when no new resources are available.