Draft Order laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No.

LOCAL GOVERNMENT, ENGLAND

The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016

Made - - - -

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by section 114 of, and paragraphs 3 and 4(3) of Schedule 5A to, the Local Democracy, Economic Development and Construction Act 2009(**a**).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 117(2) of the Local Democracy, Economic Development and Construction Act 2009.

PART 1

General

Citation and commencement

1. This Order may be cited as the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016 and shall come into force on 8th May 2017.

Interpretation

2.—(1) In this Order—

"the 2009 Act" means the Local Democracy, Economic Development and Construction Act 2009;

"excluded matter" means any matter which is a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006(**b**) or a matter of any description

(**a**) 2009 c. 20. Section 114 was amended by section 23 of and paragraphs 17 and 26 of Schedule 5 to the Cities and Local Government Devolution Act 2016 (c. 1). Schedule 5A was inserted by section 8 of, and Schedule 3 to, the Cities and Local Government Devolution Act 2016. Section 117(2), (2A) and (3) was substituted by section 13 of the Localism Act 2011 (c. 20). Section 117 was amended by paragraph 24 of Schedule 5 to the Cities and Local Government Devolution Act 2016.

(**b**) 2006 c. 48. Section 19 was amended by section 126 of the Local Government and Public Involvement in Health Act 2007 (c. 28) and by paragraph 80 of Schedule 3 to and paragraph 1 of Part 4 of Schedule 25 to the Localism Act 2011 (c. 20).

specified in an order made by the Secretary of State for the purposes of section 9FC of the Local Government Act 2000(**a**);

"mayor" means the mayor for the area of a combined authority established in an order made under section 107A of the 2009 Act;

"member" in relation to membership of an overview and scrutiny committee includes the chair of that overview and scrutiny committee;

"non constituent council" means a council designated as a non constituent council in an order made under section 103(1) of the 2009 Act;

"principal authority" means in the case of a parish council for an area in a district that has a district council, that district council, and in the case of a parish council for any other area, the county council for the county that includes that area; and

"proper officer" has the same meaning as in section 270(3) of the Local Government Act 1972(**b**).

(2) For the purposes of this Order a person ("R") is a relative of another person if R is—

(a) the other person's spouse or civil partner,

(b) living with the other person as husband and wife or as if they were civil partners,

(c) a grandparent of the other person,

(d) a lineal descendant of a grandparent of the other person,

(e) a parent, sibling or child of a person within paragraph (a) or (b),

(f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or

(g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.

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PART 2

Overview and scrutiny: general provisions

Overview and scrutiny committees

3.—(1) The majority of members of a combined authority's overview and scrutiny committee must be members of that combined authority's constituent councils.

(2) At least two-thirds of the total number of members of the overview and scrutiny committee must be present at a meeting of the overview and scrutiny committee before business may be transacted.

(3) Each member of the overview and scrutiny committee appointed from the constituent councils is to have one vote and no member is to have a casting vote.

(4) Members of the overview and scrutiny committee who are appointed other than from the constituent councils shall be non-voting members of the committee but may be given voting rights by resolution of the combined authority(**c**).

(5) Any questions that are to be decided by the overview and scrutiny committee are to be decided by a simple majority of the members present and voting on that question at a meeting of the overview and scrutiny committee.

(6) If a vote is tied on any matter it is deemed not to have been carried.

(**a**) 2000 c. 22. Section 9FC was inserted by section 21 of and Schedule 2 to the Localism Act 2011.

(**c**) Paragraph 2(5) of Schedule 5A to the 2009 Act applies section 102 (2) to (5) of the Local Government Act 1972 to combined authorities.

(**c**) Paragraph 2(5) of Schedule 5A to the 2009 Act applies section 102 (2) to (5) of the Local Government Act 1972 to combined authorities.

(7) In this article, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

Appointment of members

4.—(1) The combined authority must—

(a) appoint such a number of members of each of the constituent councils to an overview and scrutiny committee, so that the members of the committee taken as a whole reflect so far as reasonably practicable the balance of political parties for the time being prevailing among members of the constituent councils when taken together; and

(b) within the period of 28 days beginning with the day on which an appointment is made to the overview and scrutiny committee, publish a notice that—

(i) states that it has made an appointment;

(ii) identifies each member of the committee who has been appointed; and

(iii) specifies the period for which the members of the committee have been appointed.

(2) The notice mentioned at paragraph (1)(b) must be published—

(a) if the combined authority has a website, on its website; or

(b) otherwise, in such manner as it thinks is likely to bring the notice to the attention of persons who live in its area.

Appointment of chair

5.—(1) — Paragraphs (2) to (4) apply where the chair of an overview and scrutiny committee is to be an independent person in accordance with provision made under paragraph 3 of Schedule 5A to the 2009 Act(**a**).

(2) A person is independent if the person—

(a) is not a member, co-opted member or officer of the combined authority;

(b) is not a member, co-opted member or officer of a constituent council or a parish council for which a constituent council is the principal authority; and

(c) is not a relative, or close friend, of a person within sub-paragraph (a) or (b);

(d) was not at any time during the 5 years ending with an appointment as chair of the overview and scrutiny committee under arrangements made by the combined authority in accordance with paragraph 3(4)(a) of Schedule 5A to the 2009 Act—

(i) a member, co-opted member or officer of the combined authority; or

(ii) a member, co-opted member or officer of a constituent council or a parish council for which a constituent council is the principal authority.

(3) A person may not be appointed as independent chair of the overview and scrutiny committee unless—

(a) the vacancy for a chair of the overview and scrutiny committee has been advertised in such manner as the combined authority considers is likely to bring it to the attention of the public;

(b) the person has submitted an application to fill the vacancy to the combined authority, and

(c) the person's appointment has been approved by a majority of the members of the combined authority.

(**a**) Paragraph 3(4) of Schedule 5A to the 2009 Act requires the Secretary of State to make provision that the chair of an overview and scrutiny committee is an independent person, as defined by the order (paragraph 3(4)(a) of Schedule 5A) or an appropriate person who is a member of one of the combined authority's constituent councils (paragraph 3(4)(b) of Schedule 5A).

(4) A person appointed as independent chair of the overview and scrutiny committee does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

(5) Paragraph (6) applies where the chair of an overview and scrutiny committee is to be an appropriate person in accordance with provision made under paragraph 3(4)(b) of Schedule 5A to the 2009 Act.

(6) Where the mayor is not a member of a registered political party, a person may not be appointed as chair of the overview and scrutiny committee if that person is –

(a) a member of the registered political party which has the most representatives among the members of the constituent councils on the combined authority, or

(b) where two or more parties have the same number of representatives, a member of any of those parties.

Reference of matters to overview and scrutiny committees

6.—(1) The combined authority must ensure that it enables—

(a) any member of an overview and scrutiny committee to refer to the committee any matter which is relevant to the functions of the committee;

(b) any member of a sub-committee of an overview and scrutiny committee to refer to the sub-committee any matter which is relevant to the functions of the sub-committee;

(c) any member of the combined authority to refer to an overview and scrutiny committee any matter which is relevant to the functions of the committee and is not an excluded matter; and

(d) any member of a constituent council or a non-constituent council(**a**) of a combined authority to refer to an overview and scrutiny committee any matter which is relevant to the functions of the committee and is not an excluded matter.

(2) For the purposes of paragraph (1), a combined authority enables a member mentioned in paragraph (1)(a) to (d) to refer a matter to a committee or sub-committee if it enables that member to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee or sub-committee.

(3) Paragraphs (4) to (7) apply where a matter is referred to an overview and scrutiny committee by a member of a combined authority or a member of a constituent council or a non-constituent council in accordance with arrangements made by the combined authority pursuant to paragraph (1)(c) or (d).

(4) In considering whether or not to exercise any of the powers under arrangements made in accordance with paragraph 1(2)(a) or (3)(a) of Schedule 5A to the 2009 Act in relation to a matter referred to the committee, the committee must have regard to any representations made by the member as to why it would be appropriate for the committee to exercise any of these powers in relation to the matter.

(5) If the committee decides not to exercise any of its powers under arrangements made in accordance with paragraph 1(2)(a) or (3)(a) of Schedule 5A to the 2009 Act in relation to the matter, it must notify the member of—

(a) its decision; and

(b) the reasons for it.

(6) The committee must provide the member with a copy of any report or recommendations which it makes under paragraph 1(2)(b) or (3)(b) of Schedule 5A to the 2009 Act in connection with the matter referred to it by the member.

(7) Paragraph (6) is subject to article 8 (confidential and exempt information).

(**a**) Orders establishing a combined authority may provide for there to be non constituent councils of a combined authority (see article 2 of S.I. 2014/864).

Duty of combined authority and mayor to respond to overview and scrutiny committee

7.—(1) Where an overview and scrutiny committee or a sub-committee of such a committee makes a report or recommendations the committee may—

(a) publish the report or recommendations;

(b) by notice in writing require the combined authority or the mayor to—

(i) consider the report or recommendations;

(ii) respond to the overview and scrutiny committee indicating what (if any) action the combined authority proposes to take;

(iii) if the overview and scrutiny committee has published the report or recommendations under paragraph (a), publish the response.

(2) A notice given under paragraph (1)(b) must require the combined authority or the mayor to comply with it within two months beginning with the date on which the combined authority or the mayor received the reports or recommendations or (if later) the notice.

(3) The combined authority or the mayor must respond to a report or recommendations made by an overview and scrutiny committee, or a sub-committee of such a committee, as result of a referral made in accordance with article 6 within two months beginning with the date on which the combined authority or the mayor received the notice.

(4) Where an overview and scrutiny committee exercises any of its powers under arrangements made in accordance with paragraph 1(2) or 1(3) of Schedule 5A to the 2009 Act in relation to a decision made but not implemented—

(a) where recommendations have been made under paragraph 1(4)(b) of Schedule 5A to the 2009 Act, the combined authority or the mayor must hold a meeting to reconsider the decision no later than 10 days after the date on which the recommendations of the overview and scrutiny committee were received by the combined authority; and

(b) any direction under arrangements made in accordance with paragraph 1(4)(a) of Schedule 5A to the 2009 Act may have effect for a period not exceeding 14 days from the date on which the direction is issued.

Confidential and exempt information

8.—(1) This article applies in relation to—

(a) the publication of any document as a result of a reference made in accordance with article 7 (duty of combined authority and the mayor to respond to overview and scrutiny committee) comprising—

(i) a report or recommendations of an overview and scrutiny committee; or

(ii) a response of a combined authority or the mayor to any such report or recommendations; and

(b) the provision of a copy of such a document to a member of a combined authority or to a member of a constituent council or a non-constituent council, by an overview and scrutiny committee or a combined authority or the mayor.

(2) The overview and scrutiny committee or the combined authority, or the mayor in publishing the document—

(a) must exclude any confidential information; and

(b) may exclude any relevant exempt information.

(3) The overview and scrutiny committee, or the combined authority, or the mayor , in providing a copy of a document to a member of the combined authority or to a member of a constituent council or a non-constituent council, may exclude any confidential information or relevant exempt information.

(4) Where information is excluded under paragraph (2) or (3), the overview and scrutiny committee or the combined authority, or the mayor , in publishing, or providing a copy of, the document—

(a) may replace so much of the document as discloses the information with a summary which does not disclose that information; and

(b) must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible.

(5) If by virtue of paragraph (2), (3) or (4) an overview and scrutiny committee or the combined authority, or the mayor , in publishing or providing a copy of a report or recommendations—

(a) excludes information; or

(b) replaces part of the report or the recommendations with a summary,

it is nevertheless to be taken to have published the report or recommendations.

(6) In this article—

"confidential information" has the meaning given by section 100A(3) of the Local Government Act 1972(**a**) (admission to meetings of principal councils);

"exempt information" has the meaning given by section 100I of that Act(**b**); and

"relevant exempt information" means—

(a) in relation to a report or recommendations of an overview and scrutiny committee, exempt information of a description specified in a resolution of the overview and scrutiny committee under section 100A(4) of the Local Government Act 1972 which applied to the proceedings, or part of the proceedings, at any meeting of the overview and scrutiny committee at which the report was, or recommendations were, considered; and

(b) in relation to a response of the authority or of the mayor, exempt information of a description specified in such a resolution of the authority which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered.

(7) In this article, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

Scrutiny officer

9.—(1) A combined authority must designate one of its officers as the scrutiny officer of the overview and scrutiny committee to discharge the functions in paragraph (2).

(2) Those functions are—

(a) to promote the role of the overview and scrutiny committee;

(b) to provide support and guidance to the overview and scrutiny committee and its members;

(c) to provide support and guidance to members of the combined authority and to the mayor in relation to the functions of the overview and scrutiny committee.

(3) A combined authority may not designate as the scrutiny officer any officer of a constituent council of the combined authority.

(4) In this article, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

(**a**) Section 100A was inserted by section 1 of the Local Government (Access to Information) Act 1985 (c. 43) and amended by S.I. 2002/715 and by S.I. 2014/2095.

(**b**) Section 100I was inserted by section 1 of the Local Government (Access to Information) Act 1985 and amended by S.I. 2006/88.

Additional rights of access to documents for members of overview and scrutiny committees

10.—(1) Subject to paragraph (3), a member of an overview and scrutiny committee or a sub-committee of such a committee is entitled to a copy of any document which—

(a) is in the possession or under the control of the combined authority or the mayor ; and

(b) contains material relating to—

(i) any business that has been transacted at a meeting of a decision-making body of that authority; or

(ii) any decision that has been made by an individual member of that combined authority.

(2) Subject to paragraph (3), where a member of an overview and scrutiny committee or a sub-committee of such a committee requests a document which falls within paragraph (1), the combined authority or the mayor must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the combined authority receives the request.

(3) No member of an overview and scrutiny committee is entitled to a copy—

(a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to—

(i) an action or decision that that member is reviewing or scrutinising; or

(ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or

(b) of a document or part of a document containing advice provided by a political adviser (**a**).

(4) Where the combined authority or the mayor determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

(5) In this article, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

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PART 3

Key decisions

Key decisions

11.—(1) In this Order—

(a) a "key decision" means a decision of a decision maker, which in the view of the overview and scrutiny committee for a combined authority is likely—

(i) to result in the combined authority or the mayor incurring significant expenditure, or the making of significant savings, having regard to the combined authority's budget for the service or function to which the decision relates; or

(ii) to be significant in terms of its effects on persons living or working in an area comprising two or more wards or electoral divisions in the area of the combined authority;

(b) "decision maker" includes a mayor or a person exercising functions pursuant to arrangements under section 107D(3)(a) or (b) of the 2009 Act.

(**a**) Section 107D(7)(d) of the 2009 Act allows for provision to be made by order for the mayor for the area of a combined authority to appoint a political adviser.

(2) Where a decision maker intends to make a key decision, that decision must not be made until a notice has been published which states—

(a) that a key decision is to be made in relation to the discharge of functions which are the responsibility of the combined authority;

(b) the matter in respect of which the decision is to be made;

(c) the decision maker's name, and title if any;

(d) the date on which, or the period within which, the decision is to be made;

(e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;

(f) the address from which, subject to any prohibition or restriction on their disclosure under article 8(2), copies of, or extracts from, any document listed is available;

(g) that other documents relevant to those matters may be submitted to the decision maker; and

(h) the procedure for requesting details of those documents (if any) as they become available.

(3) At least 28 clear days before a key decision is made, the notice referred to in paragraph (2) must be—

(a) published—

(i) if the combined authority has a website, on its website; or

(ii) otherwise, in such manner as it thinks is likely to bring the notice to the attention of persons who live in its area; and

(b) made available for inspection by the public at the offices of the combined authority.

(4) Where, in relation to any matter—

(a) the public may be excluded under section 100A of the Local Government Act 1972 from the meeting at which the matter is to be discussed; or

(b) documents relating to the decision need not, because of article 8 (confidential information), be disclosed to the public,

the notice referred to in paragraph (2) must contain particulars of the matter but may not contain any confidential information or exempt information or particulars of the advice of a political adviser.

(5) In paragraph (4), "confidential information" and "exempt information" have the meanings given by article 8(6).

General exception

12.—(1) Subject to article 13, where the publication of the intention to make a key decision under article 11 is impracticable, that decision may only be made—

(a) where the proper officer has informed the chair of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made;

(b) where the proper officer has made available to the public at the offices of the combined authority for inspection by the public and published on the combined authority's website, if it has one, a copy of the notice given pursuant to sub-paragraph (a); and

(c) after 5 clear days have elapsed following the day on which the proper officer made available the copy of the notice referred to in sub-paragraph (b).

(2) Where paragraph (1)(a) or (b) applies to any matter, article 11 need not be complied with in relation to that matter.

(3) As soon as reasonably practicable after the proper officer has complied with paragraph (1), he or she must—

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(a) make available to the public at the offices of the combined authority a notice setting out the reasons why compliance with article 11 is impracticable; and

(b) publish that notice on the combined authority's website, if it has one.

Cases of special urgency

13.—(1) Where the date by which a key decision must be made makes compliance with article 12 impracticable, the decision may only be made where the decision maker has obtained agreement from—

(a) the chair of the relevant overview and scrutiny committee; or

(b) if there is no such person, or if the chair of the relevant overview and scrutiny committee is unable to act, the chair of the combined authority; or

(c) where there is no chair of either the relevant overview and scrutiny committee or of the combined authority, the vice-chair of the combined authority,

that the making of the decision is urgent and cannot reasonably be deferred.

(2) As soon as reasonably practicable after the decision maker has obtained agreement under paragraph (1) that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must—

(a) make available to the public at the offices of the combined authority a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and

(b) publish that notice on the combined authority's website, if it has one.

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PART 4

Audit committees

Audit committees

14.—(1) In appointing members to an audit committee a combined authority must ensure that the members of the committee taken as a whole reflect so far as reasonably practicable the balance of political parties for the time being prevailing among members of the constituent councils when taken together.

(2) An audit committee appointed by the combined authority may not include any officer of the combined authority or of a constituent council.

(3) A combined authority must appoint to an audit committee at least one independent person.

(4) For the purposes of appointments under paragraph (3), a person is independent if the person—

(a) is not a member, co-opted member or officer of the authority;

(b) is not a member, co-opted member or officer of a parish council for which the authority is the principal authority;

(c) is not a relative, or close friend, of a person within sub-paragraph (a) or (b); and

(d) was not at any time during the 5 years ending with an appointment under paragraph (3)—

(i) a member, co-opted member or officer of the authority; or

(ii) a member, co-opted member or officer of a parish council for which the authority is the principal authority.

(5) A person may not be appointed under paragraph (3) unless—

(a) the vacancy for the audit committee has been advertised in such manner as the combined authority considers is likely to bring it to the attention of the public;

(b) the person has submitted to the combined authority an application to fill the vacancy, and

(c) the person's appointment has been approved by a majority of the members of the combined authority.

(6) A person appointed under paragraph (3) does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

(7) The combined authority must determine a minimum number of members required to be present at a meeting of the audit committee before business may be transacted, to be no fewer than two-thirds of the total number of members of the audit committee.

Signed by authority of the Secretary of State for Communities and Local Government

Name
Parliamentary Under Secretary of State
Date Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

Part 6 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to exercise specified functions.

Paragraph 3(1) of Schedule 5A to the 2009 Act provides that the Secretary of State may make provision for overview and scrutiny committees of a combined authority. Paragraph 4(3) of Schedule 5A to the 2009 Act provides that the Secretary of State may make provision for the membership of a combined authority's audit committee and the appointment of the members.

Part 1 makes general provision for overview and scrutiny provisions of a combined authority. *Article 3* makes provision for the membership of the overview and scrutiny committee. *Article 4* makes provision for the appointment of members to an overview and scrutiny committee and to a sub-committee of such a committee. *Article 5* makes provision for the persons who may be chair of an overview and scrutiny committee.

Article 6 makes provision for dealing with references of matters to overview and scrutiny committees by members of the combined authority, including those who are not members of that overview and scrutiny committee and members of constituent and non-constituent councils, including those who are not members of the combined authority.

Article 7 imposes a duty on a combined authority to respond to reports and recommendations of overview and scrutiny committees and *article 8* prevents the publication or supply of any information which contains confidential or exempt information by overview and scrutiny committees or the combined authority.

Article 9 imposes a duty on combined authorities to designate a scrutiny officer, where that authority has appointed one or more overview and scrutiny committees.

Article 10 sets out additional rights of members of overview and scrutiny committees in relation to decisions that the committee is scrutinising and provides that in certain circumstances the committee can access exempt or confidential information.

Part 3 provides for specific requirements relating to decisions which are key decisions. *Article 11* sets out the meaning of key decisions to be subject to specific overview and scrutiny requirements and the publicity requirements in relation to key decisions. *Articles 12* and *13* allow exceptions to these requirements.

Part 4 concerns the audit committees to be appointed by combined authorities. *Article 14* provides for the membership requirements of an audit committee.

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A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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