OVERVIEW AND SCRUTINY COMMITTEES – MARCH 2008

REPORT BY THE DIRECTOR OF STRATEGY AND SERVICE IMPROVEMENT

THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

This paper informs the OSCs on those provisions in the Local Government and Public Involvement in Health Act, enacted on 30 October 2007, which relate to London borough parishes, scrutiny powers, and the new Councillor Call for Action.

For information

1 Background

1.1 The Cabinet and Corporate Services OSC set up a small working group to follow the development of the Local Government White Paper “Strong and Prosperous Communities”. The subsequent Act (Local Government and Public Involvement in Health Act) has now been enacted.

1.2 The Act provides a legislative framework on which a number of proposals in the White Paper are based including:

- Improving community governance, including:
  - extending the power to promote well-being to parish councils which meet specified criteria;
  - devolving powers to principal local authorities to undertake community governance reviews, and the possibility, as elsewhere in England;
  - to set up parish councils in London.

- Empowering councillors to raise issues with overview and scrutiny committees as part of expanding Councillor Calls for Action to cover all local government services (requiring consultation, secondary legislation and guidance prior to implementation from April 2008)

- Providing new powers for overview and scrutiny committees to review and scrutinise the actions of key local public service providers (requiring consultation in January 2008 and secondary legislation and guidance prior to implementation from April 2008)
1.3 This paper contains a summary of the contents of the Act in relation to the three areas of interest above.

2 **Parishes / Community Councils – Part 4, Chapters 1-3**

2.1 Part 4 of and Schedule 5 to the Act devolve power from central government to local government and communities, enabling principal councils (including London boroughs) to put in place appropriate arrangements for the governance of their areas at community level. Local people are also able to initiate a review of community governance by petitioning their principal council.

*Parishes: alternative styles*

2.2 Parish councils and parish meetings will be able to change the style by which they are known, i.e. to “community”, “neighbourhood” or “village” (with the proviso that new groups of parishes created by order must use the same alternative style). Eligible parish councils will also be given a power to promote the economic, social or environmental well-being of their area, whilst exempting them from the statutory requirement under the Local Government Act 2000 to produce their own community strategies.

*Appointed councillors*

2.3 Amendments to the Local Government Act 1972 are designed to ensure that chairmen and vice-chairmen of parish councils are chosen from among the elected councillors rather than those who have been appointed. A further amendment to the same Act allows a parish council to appoint individuals to be councillors, with power vested in the Secretary of State to specify the kinds of individuals who may be appointed, e.g. representatives of key community groups or young people.

*Re-organisation: community governance reviews*

2.4 In terms of re-organisation, a community governance review of the whole or part of the council would be the requisite means to recommend -

- Whether to create a new parish council (or grouping of parishes) or not
- (If recommending the establishment of a parish council,) the electoral arrangements for that council (including whether the parish should be divided into wards)
- The different ways that such an area can be created
- The geographical name of that area
Whether the parish should be known by an alternative style
(To the Electoral Commission) proposed changes to the boundaries of any London borough ward

Community governance petitions

2.5 Section 80 of the Act provides for local government electors to petition the Council to conduct a community governance review. The Council has a duty (subject to defined categories of exemption) to respond to any petition for a review. Such a petition must meet stipulated criteria to be valid, including conditions about the number of electors who must sign the petition, the area the petitioners wish to see considered as part of a review and the specifying of recommendations which the petitioners wish the review to consider making.

Duty and power to respond to petitions

2.6 The Council has a duty to respond to a petition to conduct a community governance review (unless it has already conducted a relevant review in the previous two years), whether or not it is in the course of undertaking such a review at the time the petition is received. It also has the power in specified cases to respond to a valid petition that does not require a review, which may prompt it to decide to undertake a review or modify the terms of reference of an existing review or take no action.

Council’s power to undertake and implement a review

2.7 The Council has the power under the Act to undertake a review and to determine the terms of reference of the review, which must be publicised. Further power is provided for the Council to implement by order the outcome of a review, with the exception of related alterations to district ward boundaries implemented by the Electoral Commission.

Council’s duties when undertaking a review

2.8 The Council must comply with specified duties when conducting a community governance review. These relate to consultation, community engagement and representation, information access, publication of review decisions, and (a 12 month maximum) review duration.

Recommendations to create parish councils - criteria

2.9 The Council would also be obliged to comply with criteria based on the size of the body of electors in any parish, thereby determining the creation of a parish council or meeting. The aim is to extend the more direct participatory
form of governance provided by parish meetings to a larger number of electors.

2.10 The Act also raises considerations, which the Council would be required to consider prior to deciding recommendations concerned with electoral arrangements.

3 Overview and Scrutiny Committees, including Councillors Call for Action – Part 5, Chapter 2

Reference of matter by member to OSC

3.1 Sections 119, 236 and 237 of the Act together provide for the process called a “Councillors Call for Action” (CCfA) in the Local Government White Paper.

3.2 Section 119 inserts a section into the Local Government Act 2000, requiring the Council to ensure its overview and scrutiny arrangements enable any member to refer a local government matter to the relevant OSC. The latter is entitled to consider representations from the member concerned, and to take into account the extent to which (s)he has exercised the powers given to him or her under section 236 of the Act to resolve it. The OSC is obliged to inform the member of its decision and copy its report to him or her.

3.3 Section 119 defines the matters which can be referred to OSCs, covering any matter that relates to the work of the Council other than a local crime and disorder matter (such matters being dealt with by the Police and Justice Act 2006, which is amended by section 126 of this Act), or a matter in a category which the Secretary of State has excluded by order.

Power of OSC to question members

3.4 By virtue of section 236 of the Act (which applies to London boroughs), the (Leader of the) Council can make arrangements for individual members to exercise Council functions in relation to the electoral ward for which the member is elected (subject to any order by the Secretary of State to exclude functions from such arrangements).

3.5 Section 237 empowers the Secretary of State to make regulations to ensure that records are kept of decisions or actions taken by members under section 236, and that such records are deposited with the Council. The Council must make the records available for inspection by the public.

3.6 Section 120 inserts a provision into the Local Government Act 2000 allowing OSCs to require such members to appear
before the relevant committee to answer questions in relation to any functions that they exercise.

Powers to require information from partner authorities

3.7 Section 121 provides for the Secretary of State to make regulations which determine what information a “relevant partner authority” (a broadly defined list is attached at Appendix ‘A’) must provide to a relevant OSC or may not disclose to such a committee. Relevant partner authority and relevant committee are defined in the context of local area agreements. The type of information about which regulations can be made does not include information that can be the subject of regulations under the Police and Justice Act 2006 and the National Health Service Act 2006.

Duty of Council or Executive and certain partner authorities to respond to OSCs

3.8 Section 122 empowers the OSC to publish its report or recommendations. In such case, the OSC must give the Council or Executive notice in writing specifying the steps which must be taken within 2 months of receiving the report or recommendations or (if later) the notice. These steps included responding to the report or recommendations and, if these documents have been published by the OSC, publishing the response.

3.9 Where a report or recommendations relate to a local improvement target, which in turn relates to a relevant partner authority and is specified in the Council’s LAA, the relevant OSC may give the partner authority notice in writing requiring them to have regard to the report or recommendations in exercising their functions. The partner authority has a duty to comply with the requirement specified in the notice.

Publication of reports, recommendations and responses

3.10 OSCs are required to exclude confidential information when publishing a document or providing a copy of it to a relevant partner authority. Committees are also given a power to exclude any “relevant exempt information”. They may exclude both categories of information from a copy of a document provided to a member of the Council.

Guidance

3.11 Section 125 enables the Secretary of State to require OSCs to have regard to any guidance issued by the Secretary of State.
It is intended that guidance under this power will clarify how OSCs and sub-committees should avoid duplication of work.

**Reference of local crime and disorder matters to crime and disorder committees**

3.12 Section 126 amends the Police and Justice Act 2006 and brings the provision for references of local crime and disorder matters by members to the crime and disorder committee into line with the treatment of Council matters in the new section 119 (see paragraphs 3.1-3.3 above).

3.13 The Council must ensure that
- its crime and disorder committee has the power to make a report or recommendations to the Council with respect to any local crime and disorder matter referred to it; and
- it must make arrangements which enable any member of the Council to refer any local crime and disorder matter to the Council

3.14 A new definition of “local crime and disorder matter” includes crime and disorder (including, in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) and substance misuse that affects all or part of the electoral area.

3.15 A summary of CCfA and OSC related provisions has been produced by the Centre for Public Scrutiny and is attached as Appendix ‘B’ to this paper. It contains some useful guidance and definitions, which can be read in conjunction with this paper.

3.16 The report of the Cabinet OSC sub-group is attached as Appendix C.

4. **Conclusion**

4.1 The OSCs are asked to note this report.

**FOR INFORMATION**

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Appendix A

Local Government and Public Involvement in Health Act 2007
(Section 121 – Information from partner authorities)

Relevant partner authorities
(Part 5, Chapter 1, Section 104 contains specific definitions)

- any district council which is not a responsible local authority;
- a fire and rescue authority;
- a National Park authority;
- the Broads Authority;
- a police authority;
- a chief officer of police;
- a joint waste authority established under section 207(1);
- a waste disposal authority;
- a metropolitan county passenger transport authority;
- Transport for London;
- a Primary Care Trust;
- a Regional Development Agency;
- a local probation board;
- a youth offending team;
- a National Health Service trust;
- an NHS foundation trust;
- the Arts Council of England;
- the English Sports Council;
- the Environment Agency;
- the Health and Safety Executive;
- the Historic Buildings and Monuments Commission;
- the Learning and Skills Council for England;
- the Museums, Libraries and Archives Council;
- Natural England;
- the Secretary of State, but only in relation to functions as a highways authority, traffic authority and with regard to employment and training (we assume that this means the Highways Agency and Jobcentre Plus)
Section 119 – Councillor Call for Action

This section brings the “councillor call for action” into use.

Essentially, it enables any Member of the Council to refer to an overview and scrutiny committee a “local government matter” which falls within the committee’s remit. This can be done regardless of whether that Member is on the committee or not.

A referral made in this way will ensure that the matter is included in the agenda and discussed at the committee. However, in making such a referral the Member must have regard to any Guidance issued by the Secretary of State.

If the overview and scrutiny committee receives a referral from a Member who is not on the committee, it can chose to do any of the things that it might normally do with a new item. These include: reviewing and scrutinising decisions and actions; and making reports and recommendations. In deciding whether to conduct any of these roles, the committee may “have regard to” two particular points:

(i) anything which the Member may have done already in relation to the matter, particularly if they have been empowered to do so in their ward by the Council, and

(ii) representations made by the Member as to why the committee should take the matter up.

If the committee decides not to take the matter up, it must explain the reasons why to the Member. However, if the committee chooses to conduct some work on the issue, it must make sure that the Member has a copy of any reports or recommendations that it makes in relation to it.

Questions arising from Section 119:

Does this mean that a Member who issues a “Call for Action” has the right to address the Committee?

As mentioned above, when deciding what to do in response to a referral, an overview and scrutiny committee might have regard to “representations made by the Member” bringing it. No further definition is given at this stage to “representations”. Many councils already allow a certain period at each overview and scrutiny
meeting for Councillors or Members of the public to raise relevant issues. Those that don't may be affected by this new section. Clarification as to the nature of “representations” should be sought in Government Guidance.

What is meant by a “local government matter”?
A “local government matter” is described something which:

(i) relates to the discharge of any function of the authority,
(ii) affects all or part of the Member’s ward or any person who lives or works in it, and
(iii) is not an excluded matter (i.e. not a “crime and disorder matter” issue and not anything specified in an order by the Secretary of State in relation to this)

The “matter” being referred should meet all, rather than any, of these three criteria.
Here are a couple of examples:

Example 1
Councillor Green is a Member of a District Council. At her ward surgeries, and when out and about, she receives regular comments about fly tipping in the area. A number of individual complaints have been put to the authority but there has been no discernable improvement.

Councillor Green wonders whether she can refer this matter to the relevant overview and scrutiny committee, so asks herself three questions:

Question 1: does it relate to the discharge of any function of the authority?
Answer: yes, dealing with fly tipping is a local government function and Councillor Green’s District Council is the local waste collection authority.

Question 2: does it affect all or part of the Member’s ward, or anyone living or working in it?
Answer: yes.

Question 3: is it an excluded matter?
Answer: fly tipping could be considered a “crime and disorder” issue but is formally the responsibility of local authorities and the Environment Agency. In this instance the answer would be “no” but there may be others where it is less clear, particularly where the matter related to anti-social behaviour or drugs and alcohol misuse. If that were the case, Cllr Green would still be able to raise it as a call for action using powers provided by the Police and Justice Act 2006 (Section 19).
Example 2

Councillor Brown is a Member of a Unitary Authority. He has been approached by a group of local residents regarding the poor response of the local water company in dealing with local street flooding due to burst mains pipes. This issue has also received wide coverage in the local press.

Councillor Brown is considering referring this matter to the Council’s overview and scrutiny committee to see if it can help get some useful answers and a promise of action from the water company. He asks himself the three questions relating to the matter:

Question 1: does it relate to the discharge of any function of the authority?

Answer: the provision and management of utility services such as water is not a function of local authorities. So initially the answer is no. However, there may be other areas of local authority responsibility that are affected by this issue, such as the power to promote or improve the economic, social or environmental well-being of their area, introduced by the Local Government Act 2000. Well-being may be affected by poor management of water services but it is not clear whether well-being is a ‘power’ or a ‘function’ of the local authority. This sort of distinction may be addressed in Government Guidance but it will more likely be for individual authorities and their overview and scrutiny committees to interpret and answer these questions locally.

Question 2: does it affect all or part of the Member’s ward, or anyone living or working in it?

Answer: yes.

Question 3: is it an excluded matter?

Answer: no – this is not a “crime and disorder” matter and no orders have been issued relating to this by the Secretary of State.

Section 120 – Requiring the attendance of decision-makers

The Local Government Act 2000 empowered overview and scrutiny committees to require the attendance of the council’s executive and officers of the authority to answer questions at their meetings. This section extends that remit to include any Member of the Council who has been empowered to conduct an executive role in relation to his or her ward.

In other words, the executive/scrutiny split is maintained with regard to decision-making in the Council. Because a later part of the this new Act (Section 236) enables local authorities to devolve some powers for Councillors to exercise decision-making within in
their wards, this section simply brings that new “executive” function within the remit of overview and scrutiny.

**Section 121 – Information from partner authorities**

This section concerns the information which “relevant partner authorities” must provide to overview and scrutiny committees and that which may not be disclosed. It does not contain the actual powers but enables the Secretary of State to implement them through regulations.

The ability to require information from some of the “relevant partner authorities” is already covered in other legislation and so is specifically excluded here. These include:

- the responsible and co-operating authorities for Crime and disorder, as defined in the Crime and Disorder Act 1998 (Police, Local Authority, Police Authority, Fire and Rescue Authorities, Local Health Boards in Wales, Primary Care Trusts (PCTs), Probation Board, Parish Councils, NHS Trusts, NHS Foundation Trusts, Governing bodies of schools, Proprietors of independent schools, Governing bodies of an institution within the further education sector¹); and

- local NHS Bodies, as defined in the NHS Act 2006 at Section 244 (an NHS Body other than a Special Health Authority – the latter are national service providers such as the National Patient Safety Agency²).

**Section 122 – Reports, recommendations and responses**

This section makes three additions to the Local Government Act 2000:

- places a duty on the authority and executive to respond to overview and scrutiny’s reports and recommendations

- outlines the duties of “certain partner authorities” in relation to reports and recommendations from overview and scrutiny,

- defines “confidential and exempt information” in relation to the publication of reports, recommendations and responses.

We’ll deal with them below one at a time:


² [http://www.nhs.uk/servicedirectories/Pages/SpecialHealthAuthorityListing.aspx](http://www.nhs.uk/servicedirectories/Pages/SpecialHealthAuthorityListing.aspx)
**Duty of the authority and executive to respond to overview and scrutiny**
Outlines the duty of an authority or executive to respond to reports or recommendations from an overview and scrutiny committee. In many councils this happens already as good practice.

Reports relating to “crime and disorder” issues are excluded from this section as they are already covered by the Police and Justice Act 2006 (Section 19(8)(b)).

Under this section, overview and scrutiny committees must, “by notice in writing”, require the authority or executive
- to consider its report or recommendations
- to respond saying what (if any) action it proposes to take
- publish the response (if the overview and scrutiny committee has published its reports and recommendations)
- if the matter originated from a “Councillor Call for Action”, provide a copy of the response to the Member

**The authority or executive has a duty to respond within two months.**
The issue of publishing reports, recommendations and responses is subject to other provisions regarding confidential and exempt information.

**Duties of certain partner authorities in relation to overview and scrutiny**
When a “relevant committee”\(^3\) makes a report or recommendations about a local improvement target that relates to a “relevant partner authority” and is specified in the Local Area Agreement (LAA), **the committee may require the partner authority to “have regard to”** them in exercising their functions.
This duty excludes health service bodies, which are already covered under the National Health Service Act 2006 (Section 244), and the police authority and chief officer of police.

**Confidential and exempt information” in relation to the publication of reports, recommendations and responses**
This section simply states that overview and scrutiny committees and their respondents must **exclude any confidential, or relevant exempt information** when publishing their reports, recommendations or responses.

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\(^3\) An overview and scrutiny committee from any authority other than a district council in two-tier areas.
If publishing any of this with exclusions renders the content misleading or incomprehensible, the overview and scrutiny committee and respondent must publish a summary which does not disclose the exempt information.

Material published in this way still counts in terms of requiring a response from the executive or requiring partner authorities to “have regard to” them.

“Confidential” and “relevant exempt” information are given the same definitions as in the Local Government Act 1972.

Questions arising from Section 122:

What does “have regard to” mean?
This is a phrase commonly used in legislation. In this instance it implies that the recipient cannot ignore the report or recommendations but does not have to provide a formal response indicating what, if any, action is to be taken (as the authority or executive does in this case).

For example, imagine that “ensuring environmental improvements are made...” is a target in the Local Area Agreement for your area. Imagine also that an overview and scrutiny committee has made a recommendation to the Environment Agency as part of its inquiry into recent flooding. The Agency doesn’t have to respond to the Committee (although in practice it usually does). However, if at some point in the future the Agency is deciding how to improve flood defences in your area, it ought to take into account that recommendation from the overview and scrutiny committee, perhaps by acknowledging it in its decision-making process.

What are the sanctions for not “having regard to”?
If it could be demonstrated that a relevant partner authority had made a decision or acted without having regard to the reports and recommendations made by overview and scrutiny, they would be open to challenge.

Section 125 - Guidance
This section requires that overview and scrutiny committees in England must have regard to any guidance issued by the Secretary of State and that overview and scrutiny committees in Wales must have regard to guidance issued by the Welsh Ministers.

Section 126 – Amending the Police and Justice Act 2006
This section amends the Police and Justice Act 2006 to align what was previously known as the “Community Call for Action” with the
“Councillor Call for Action”, enabled in Section 119 as described above.
The amendment to Section 19(3) of the Police and Justice Act 2006 has removed the omission of County Councillors from this procedure. Therefore, once these parts of the Police and Justice Act 2006 are enacted, all Councillors in single and two tier authorities will be able to raise a “Call for Action” in relation to both “crime and disorder” and “local government” matters.

**Sections 127 and 128**
Section 127 covers “consequential amendments” which update wording of the Local Government Act 2000 to reflect these new changes. Most of these refer to the potential to introduce joint overview and scrutiny committees in two-tier areas.
Section 128 concerns “transitional provision” and relates to authorities that may change their constitutional arrangements.