



Westminster Scrutiny Commission

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Executive Summary

The Localism Bill is receiving its third reading in the House of Lords on the 31st October 2011, before final consideration of amendments by the House of Commons within the next few weeks. In relation to overview and scrutiny, the Localism Bill largely consolidates previous legislation in one place and extends the scope and reach of powers available to local authority O&S functions.

1. INTRODUCTION

- 1.1 The Localism Bill seeks to consolidate a substantial amount of legislation relating to the statutory overview and scrutiny function in one place, with the exception of crime and disorder which remains in the Police and Justice Act 2006 and health provisions which remain in the NHS Act 2006.¹ Previous legislation such as the Local Government Act 2000, the Health and Social Care Act 2001, Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009 built and developed the function with further powers and reach over the last eleven year period.

¹ Restated within the Localism Bill.

- 1.2 One of the major changes in the Localism Bill is the provision of an option to revert back to political management arrangements in place prior to the Local Government Act 2000 or continue with an executive / scrutiny split with stronger powers for O&S or even adopting an entirely new governance arrangement (where an authority would submit a proposal to the Secretary of State for a different form of governance, which must then be approved centrally).
- 1.3 The 'committee system' was the political management arrangement of all English councils prior to the 2000 Act, either involving local authorities taking all decisions in full council or delegating decision making to committees, sub committees, other local authorities or officers. In practice, most decisions were taken by committees or sub-committees which then reported them periodically to the full council, but some matters were always reserved to the full council to decide. From a 1991 DETR consultation paper about the internal management of local authorities through to the subsequent government's 1998 Green Paper '*In Modern Local Government*,' concern was raised about the lack of speed, efficiency and transparency that the 'committee system' offered. It was the Local Government Act 2000 which saw the introduction of executive arrangements to counter these concerns, where there was a 'blended' separation of the executive from those who scrutinised and advised upon decisions made. Day-to-day running of the council has been the responsibility of the executive with matters such as the approval of budget setting and amendments to the constitution reserved to full council, and quasi-judicial matters (planning and licensing) dealt with by specific autonomous committees.
- 1.4 Whilst enabling councils to change their political management arrangements, the overarching intention of Localism Bill was to provide *total local determination and choice* of governance arrangements and a CLG Risk Assessment assessed that only 5-10% of councils in England would revert back to the 'traditional' model committee system with no more than 10% of these councils holding a referendum to ratify the change.² However, a range of options have been presented to local government (see Table below).
- 1.5 **Overview of Changes to Governance Arrangements with O&S**
Following Royal Assent, local authorities will be able to operate one of the following forms of governance arrangements involving overview and scrutiny³:

² CLG (2011) Localism Bill: giving councils greater freedom over their governance arrangements Impact Assessment <http://www.communities.gov.uk/publications/localgovernment/localismgovernance>

³ Previously, introduction of new governance arrangements could only have taken place in May 2014, whereas current amendments indicate that arrangements could change at an AGM after Royal Assent.

Type of governance	Alterations and incorporation of O&S
Authorities operating executive arrangements (either Leader and Cabinet or Executive Mayor and Cabinet) must continue to have at least one scrutiny committee.	No change to current legislative requirements
Authorities operating a committee system may have one or more scrutiny committees.	There would be no requirement ⁴ for an overview and scrutiny committee under the ‘committee system’ – though for practical purposes, surrounding crime and health, overview and scrutiny could still provide the most appropriate outlet to express these functions. ⁵
Any other prescribed system (councils may propose their own system, subject to SoS approval and must be capable of being implemented by all authorities)	Amongst many possibilities, CfPS posited a hybrid committee system, where decisions are delegated to chairs of committee between meetings, with or without overview and scrutiny. The CfPS thinks that integrating the values of scrutiny within a hybrid committee system could see effective scrutiny continuing, in a new, more flexible way. ⁶

Table 1.1 Forms of Political Management Arrangements offered in Localism Bill

2. PRACTICAL IMPLICATIONS ON OVERVIEW & SCRUTINY

- 2.1 Current Lords amendments **134** through **139** of the Localism Bill remove prescription about matters which may be referred to a scrutiny committee by councillors who are not members of the scrutiny committee. In future, these councillors will not be restricted to the referral of local government matters only. Instead, they may refer a wider range of matters to scrutiny committees for consideration, thus enhancing their role as advocates of their local communities. In terms of referral of matters to the scrutiny committee, the amendments broaden the range of issues that can be brought before that committee by non-committee members. It will, of course, remain for the scrutiny committee to decide what course of action is appropriate following any referral, as is the case now, but under **9FD(3)** the committee will have to notify the member of its decision and the reasons for it.

⁴ Recent Lords amendments removed the requirement for the ‘committee system’ to have at least one overview and scrutiny committee.

⁵ Should an authority choose to operate a committee system current health scrutiny powers and duties will continue, but can be exercised through the committee system rather than a specific scrutiny committee. For crime and disorder, a committee only has to be designated as the crime and disorder committee if the authority has chosen to continue with scrutiny alongside a committee system.

⁶ CfPS (2010) Changing governance arrangements [Policy Briefing 4]

- 2.2 The bill, as it stood, was prescriptive about what could / could not be referred to O&S by various councillors and on what topic (which had never really been as prescriptive before the draft Bill, especially in relation CCfA⁷ usage which was relatively ‘freeing’ for all councillors). The amendments broadly delete all references to “local government,” to indicate that all general matters are allowed to be referred, apart from a local crime and disorder matter.
- 2.3 The Centre for Public Scrutiny’s representation to Baroness Hanham on behalf of their stakeholders was broadly about ensuring that any organisation delivering a public service would be accountable to local authority scrutiny committees. The references in the Bill to Local Area Agreements and local improvement targets have been removed. Instead, the powers have been expanded slightly, to the extent that scrutiny can now look **at any local services delivered by the named partners** (i.e. the ones originally named in the Local Government and Public Involvement in Health Act 2007),⁸ not just at those services which relate to a local improvement target. This is as a modest expansion of powers. The stumbling block to the more general powers hoped for derived from concerns expressed by CLG, that giving scrutiny such broad powers would risk it conflicting with other forms of accountability, principally existing accountability arrangements in partner organisations.
- 2.4 The CfPS believes that these and the other Localism Bill amendments, are ones in support of the position that CfPS has held for a long time which is to maximise the freedom and flexibility given to O&S councillors to enable them more effectively to hold organisations that spend public money locally, and whose activities have an impact locally, to account on behalf of their constituents. The CfPS felt that the removal of a range of random limitations and regulations on what scrutiny could and could not look at and the restrictions and different powers it had in relation to different agencies (which had come about because of the piecemeal approach to developing scrutiny that the previous government took) was wholly in the spirit of the rest of the Localism Bill around freeing up local authorities to have more local discretion.

3. LOCALISM BILL: COMMUNITY EMPOWERMENT

- 3.1 **Community Right to Challenge** - The Localism Bill also contains a number of new measures which Overview and Scrutiny could factor into their work programmes in future. For example, under the new Community Right to Challenge provisions, a “relevant body” (a charity, voluntary group, employee mutual) may express an interest in running local public services. The authority will be required to set out

⁷ Councillor Call for Action

⁸ District councils, Environment Agency, Natural England, Fire and rescue authorities , Jobcentre Plus, The Health and Safety Executive, The Broads Authority, National Park Authorities Youth Offending Teams, Police authorities, Transport for London, Chief Officer of Police, Local Probation Boards, Probation Trusts and other providers of probation services , Primary Care Trusts, National Health Service Trusts, NHS Foundation Trusts, Joint Waste Authorities, Joint Waste Disposal Authorities, Regional Development Agencies, The Learning and Skills Council, Sport England, English Heritage, Arts Council, Museums, Libraries and Archives Council, Highways Agency, Metropolitan Passenger Transport Authorities

periods in which expressions will be considered, and should an application be made in this time, 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.

- 3.2 Overview and Scrutiny involvement in this area could be significant. While O&S cannot become involved in detailed contract management, an investigation of issues could be a part of a wider review of council procurement. O&S 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 / mutuals / voluntary groups, O&S can, as with other contracts, exercise a watching brief over the issue. This should be written into contracts with such bodies.
- 3.3 **Assets of community value** – 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) will have the right to bid to buy it. O&S involvement in this area could be most useful at the beginning of the process, as the list is being formulated. O&S could help to identify community assets based on discussion with local people, ensuring that the process for putting the list together accurately reflects public views. O&S could also be consulted on the local definition for “community interest group” and included within the list of consultees itself.

4. LOCALISM BILL: HOUSING

- 4.1 The Localism Bill asserts that 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 which can, should the authority choose, apply to the award of new tenancies on social housing properties. Responsibility for regulating social housing passes to the Homes and Communities Agency from the Tenant Services Authority. 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.

4.2 O&S involvement in this area is likely to link closely with any work on choice based lettings. Tenancy strategies will be important documents, and scrutiny committees 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 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.

**If you have any queries about this note or would like background papers, please contact Dr Mark Ewbank, Scrutiny Officer, mewbank@westminster.gov.uk
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Background Papers

CfPS (2010) Changing governance arrangements [Policy Briefing 4]

CfPS (2010) Localism Bill and grant allocation [Policy Briefing 7]

CLG (2011) Localism Bill: giving councils greater freedom over their governance arrangements Impact Assessment

<http://www.communities.gov.uk/publications/localgovernment/localismgovernance>

Department of the Environment (1991) The Internal Management of Local Authorities in England: A Consultation Paper [London: DoE]

Department of the Environment, Transport and the Regions (1998) Modern Local Government: In Touch with the People Cm 4014 [London: The Stationery Office]