



Local Authorities (Overview and Scrutiny) Bill

[Bill 16 of 2009-10]

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This briefing on the *Local Authorities (Overview and Scrutiny) Bill* has been prepared for the Second Reading debate on the Bill in the House of Commons.

The *Local Authorities (Overview and Scrutiny) Bill* is a Private Member's Bill introduced by David Chaytor MP. Currently, local government overview and scrutiny committees have limited formal scrutiny powers in relation to partner organisations. The Bill strengthens these powers and broadens them to potentially cover a greater range of external authorities. The activities which would be subject to such scrutiny are defined as matters of local concern in the area. The Bill provides for executive members to sit on committees involved in scrutiny of external bodies. The Bill also makes provision for the resourcing of overview and scrutiny.

The Bill is based on proposals in the 2009 Communities and Local Government Green Paper *Strengthening Local Democracy*. The Government has indicated that it will support the Bill.

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Summary

The *Local Authorities (Overview and Scrutiny) Bill 2009-10* is a Private Member's Bill introduced by David Chaytor MP. The Bill extends the power of local government overview and scrutiny committees when they are scrutinising certain activities of external authorities. The activities subject to these new scrutiny powers would be those defined as matters of local concern in connection with the provision of public services. Membership of committees dealing with external matters could include members of the council's executive. The Bill also provides for scrutiny officers to have access to such resources as they consider sufficient to effectively carry out their functions.

The Bill is based on proposals made in the Department for Communities and Local Government's July 2009 Green Paper, *Strengthening Local Democracy*. The Secretary of State for Communities and Local Government has indicated that the Government will be "endorsing and supporting the Bill".

Overview and scrutiny committees currently have powers to require information from members and officers of the council; local NHS bodies; organisations involved in the delivery of crime and disorder functions; and partner authorities in relation to those Local Area Agreements targets they have signed up to. Attendance before overview and scrutiny committees can only be required of members and officers of the council; officers of local NHS bodies; and officers or employees of certain bodies in relation to crime and disorder functions. Although reports and recommendations can be made to any organisation, the current arrangements for responding to these vary. For example, Local Area Agreement partners must 'have regard' to recommendations but are not required to respond formally, unlike the council, local NHS bodies or police forces.

The *Local Authorities (Overview and Scrutiny) Bill* provides for overview and scrutiny committees to be able to require information; the attendance of officers; and a response within two months to reports and recommendations, from certain external organisations when carrying out functions relating to matters of concern in the local authority area. These organisations would be designated by the Secretary of State by regulation. There is also provision for joint overview and scrutiny committees to have the same powers. The Bill amends the *Local Government Act 2000* so that executive members can sit on scrutiny committees when they are concerned with the scrutiny of such external bodies.

The *Local Democracy, Economic Development and Construction Act 2009* made provision for local authorities to employ a designated overview and scrutiny officer. This Bill requires that the designated officer is allocated such resources as they believe they would require in order to carry out their functions effectively.

1 Introduction

The *Local Authorities (Overview and Scrutiny) Bill 2009-10* is a Private Member's Bill, introduced by David Chaytor MP.¹ The Bill was introduced in the House of Commons on 16 December 2009 as Bill 16 of 2009-10. It was published, along with Explanatory Notes prepared by the Department for Communities and Local Government, on 1 February 2010. The Bill is scheduled to have its Second Reading on 5 February 2010. The provisions of the Bill extend to England and Wales, but have application in England only.² The Government has indicated that it will support this Bill.³

This Research Paper provides background information about the overview and scrutiny function carried out by local authority committees. It then considers in detail the areas where the *Local Authorities (Overview and Scrutiny) Bill 2009-10* would make changes: the powers of overview and scrutiny committees in relation to external bodies and the resourcing of the scrutiny function by local authorities. It sets out the Government's proposals on overview and scrutiny as contained in the 2009 Green Paper, *Strengthening Local Democracy*.⁴ Lastly, it sets out the provisions of the Bill.

2 Background

The *Local Government Act 2000* introduced new governance arrangements for local authorities. It required local authorities to adopt one of three political management systems which distinguished the executive of the authority from the 'scrutiny' part. Smaller district councils had a fourth option of a streamlined committee system. The Act was later amended to remove one of the three options, the elected mayor and council manager, which had been adopted by just one council.⁵ Section 21 of the 2000 Act specified that councils must establish one or more overview and scrutiny committee.

The Government guidance on new council constitutions stated that all but the smallest local authorities should have more than one overview and scrutiny committee, and that they should meet frequently.⁶ It also stated the expectation that they should have a cross-cutting rather than service-based view of the local authority's business, and therefore the aim should be for local authorities to have a relatively small number of such committees at any one time. The legislation requires committees not to include members of the council's executive.⁷ Their membership should in general reflect the political balance of the local authority.⁸ For committees which relate to local education authorities, there are provisions to allow religious representatives or parent governor representatives.⁹

At the outset, the committees were provided with powers allowing them to review and scrutinise individual decisions or council policy more widely, and to make recommendations on how matters might be improved. The powers of overview and scrutiny committees have gradually been increased through subsequent legislation to cover additional bodies. Provisions were made for health scrutiny, and scrutiny of authorities involved in crime and

¹ [Local Authorities \(Overview and Scrutiny\) Bill 2009-10](#)

² See [Local Authority \(Overview and Scrutiny\) Bill, Explanatory Notes](#), paras 6-8

³ Rt Hon John Denham MP, [Meeting the 'More for Less' Challenge](#), Speech to the NLGN Annual Conference, 27 January 2010

⁴ Department for Communities and Local Government, [Strengthening Local Democracy](#), July 2009

⁵ [Local Government and Public Involvement in Health Act 2007](#), s62

⁶ Department for Communities and Local Government, [New Council Constitutions: Guidance to English Local Authorities](#), 2001 ed., para 320

⁷ [Local Government Act 2000](#), s21(9)

⁸ Provision can be made for this to differ as long as no council member dissents from this decision.

⁹ [Parent Governor Representatives \(England\) Regulations 2001](#), SI 2001, No. 478. Further provisions for co-optees have since been made.

disorder prevention functions in the area.¹⁰ More recently, the *Local Government and Public Involvement in Health Act 2007* extended certain scrutiny powers to local partners in relation to Local Area Agreement (LAA) targets.¹¹ Overview and scrutiny committees are able to require information from bodies in relation to these targets, but cannot require attendance of representatives of these bodies at hearings. Reports and recommendations can be addressed to these bodies, which must have regard to the recommendations, but no response to the committee is required. The Act also allowed for regulations to create joint overview and scrutiny committees in a local authority area, in relation to scrutiny of LAA targets, but such regulations have not been made.

In 2008 the Government published the White Paper, *Communities in Control*. The then Secretary of State, Hazel Blears, announced the Government's ambition to raise the profile of overview and scrutiny committees, making them "analogous to the Select Committees system at national level".¹² The White Paper stated that:

...we will make changes to the scrutiny function by:

- further enhancing the powers of overview and scrutiny committees in local authorities to require information from partners on a broader range of issues
- if necessary providing councils in areas with district and county councils with a power to combine resources in 'area' scrutiny committees
- requiring some dedicated scrutiny resource in county and unitary councils.¹³

The *Local Democracy, Economic Development and Construction Act 2009* included a provision to require councils to provide dedicated officer support to overview and scrutiny committees although the relevant provision is not yet in force.¹⁴ During the passage of the Bill, two main concerns had been raised about the requirement for a dedicated scrutiny officer: that it was a matter for local authorities to decide how to resource overview and scrutiny; that a requirement to designate one officer might limit the number of overview and scrutiny committee officials at this number.¹⁵ The 2009 Act also made provision for joint overview and scrutiny committees to be created across local authority areas, although again, relevant regulations have not been made.

In July 2009 the Secretary of State, John Denham, gave a speech to the New Local Government Network in which he stated that, "In many ways, scrutiny is a lion that has failed to roar".¹⁶ The speech launched the Green Paper, *Strengthening Local Democracy* in July 2009.¹⁷ This asked for views on whether overview and scrutiny committees should have powers over a wider variety of local partners on issues not directly included in LAA targets and asked respondents to consider what further resources and support should be available to committees. The proposals in the consultation paper on overview and scrutiny form the basis of the *Local Authorities (Overview and Scrutiny) Bill 2009-10*. Responses to the Green Paper from both the Local Government Association and the Centre for Public Scrutiny are quoted in Section 4 below.

¹⁰ [Health and Social Care Act 2001](#), ss7-8; [Police and Justice Act 2006](#), ss19-22

¹¹ [Local Government and Public Involvement in Health Act 2007](#), s121

¹² HC Deb 9 July 2008 c1412

¹³ Department for Communities and Local Government, [Communities in Control: Real People, Real Power](#), Cm 7427, July 2008, p91

¹⁴ [Local Democracy, Economic Development and Construction Act 2009](#), s31

¹⁵ For more information see the House of Commons Library Research Paper 09/45, [Local Democracy, Economic Development and Construction Bill 2008-09, Democracy and Involvement Aspects](#)

¹⁶ Speech made by Rt Hon John Denham MP to the New Local Government Network, [Strengthening Local Democracy](#), 21 July 2009

¹⁷ Department for Communities and Local Government, [Strengthening Local Democracy](#), July 2009

There have been calls from local government groups for the introduction of stronger scrutiny powers and more resources to be made available to scrutiny committees. The All Party Local Government Group report, *The Role of Councillors: Report of an Inquiry*, was published in June 2007. This argued that during the initial period following the *Local Government Act 2000*, the Government had concentrated on the executive decision making function of councils. The Group stated that:

Now there is a need for some rebalancing, as it is vital for the democratic representation of communities that there should be an effective role for all councillors. In developing the role of councillors who are not part of the executive, overview and scrutiny has had varying levels of success. The powers of scrutiny, and scrutiny support, should be strengthened to increase its effectiveness.¹⁸

The report quoted Professor Steve Leach of De Montfort University who had told the inquiry that:

I think the first thing to say... is that overview and scrutiny which was the main element of the Act which involves ward councillors, has struggled to establish a high profile among local councillors. Yes, in some authorities it has been successful but there are many authorities where it has struggled to motivate local councillors, the main problem being, if you have got a majority-controlled authority, the resistance in many cases of the party in power to being held to account. There are various authorities I have worked in where attempts to call in an executive decision flounder because they do not get past the scrutiny committee because of the majority. That is not to say there have not been a lot of positive developments, there have, but it has been very patchy and I think it is a struggle.¹⁹

In their 2006 book, *Local Government in the United Kingdom*, Wilson and Game stated that three conditions were required for overview and scrutiny to realise its full potential: "Councillors themselves must approach the process positively, acknowledging that not being part of the executive can be *empowering* at least as much as *disempowering*". New skills are required which require training in order for them to be:

assessing and probing, working collaboratively to draw out evidence and views from witnesses, and understanding performance indicators, comparative data and financial processes in a way that few will have done previously.

Secondly, councillors have to learn how to work together across party divide:

...it is vital therefore that party 'whipping' and tight disciplinary regimes be relaxed – something that does not come easily to members who may have spent their entire lives opposing just about everything their political opponents stand for.

And lastly, they stated that the existence of a "*dedicated* officer and resource support – in both senses of the adjective" was crucial.²⁰

3 Development of overview and scrutiny

This Section sets out in more detail changes made to the powers and resources available to overview and scrutiny committees. The most recent Government proposals, contained in the 2009 *Strengthening Local Democracy* Green Paper are set out in Section 4 below.²¹

¹⁸ All Party Parliamentary Local Government Group, *The Role of Councillors: Report of an inquiry*, June 2007

¹⁹ *Ibid*, p9

²⁰ D. Wilson and C. Game, *Local Government in the United Kingdom*, 2006, p327

3.1 Powers and remit

Introduction

Overview and scrutiny committees have a wide remit to develop and review policy, and to hold the executive to account. In general terms, they can review or scrutinise decisions made or other action taken by the executive or council. They can also make reports or recommendations to the council or the executive and partner organisations on their work, or on matters which affect the authority's area or its inhabitants. Where a decision has been made but not implemented by the executive, the scrutiny committee has the power to recommend that the decision be reconsidered by the person who made it. An overview and scrutiny committee may also arrange for the full council to review or scrutinise a decision and decide whether or not to recommend that the decision be reconsidered (this is known as 'call-in').

The range of bodies over which overview and scrutiny committees have formal powers of scrutiny has gradually increased in part to reflect the greater concentration on partnership working in local government. The *Health and Social Care Act 2001* introduced overview and scrutiny committees in county or unitary councils which can require primary care trusts and other local health bodies to provide information and/or attend meetings.²² New powers were contained in the *Police and Justice Act 2006* to allow overview and scrutiny committees to scrutinise the work of local Crime and Disorder Reduction Partnerships and consider community safety issues.²³ There are also scrutiny powers in relation to flooding included in the *Flood and Water Management Bill 2009-10* currently before Parliament.²⁴

The Local Government and Public Involvement in Health Act 2007

The *Local Government and Public Involvement in Health Act 2007* linked overview and scrutiny to those partner organisations with a duty to co-operate to produce Local Area Agreements (LAAs).²⁵ LAAs had been launched on a voluntary basis in 2004 with the aim of 'joining-up' public service delivery.²⁶ They allowed local authorities to bring together separate 'pots' of funding from Whitehall departments which were being channelled through different public bodies to the same local population. They offered councils and their local delivery partners greater spending freedom in delivering services within certain key areas of public policy. The 2006 White Paper, *Strong and Prosperous Communities* proposed that LAAs should become statutory with a duty placed on upper-tier authorities and named partners to co-operate with each other to agree targets in the LAA.²⁷ The White Paper proposed that overview and scrutiny committees should be strengthened in relationship to those under a duty to co-operate.

The 2007 Act largely implemented the White Paper proposals. LAAs were made a statutory requirement with greater powers given to overview and scrutiny committees. In particular, the Act provided that:

²¹ Department for Communities and Local Government, *Strengthening Local Democracy*, July 2009

²² *Health and Social Care Act 2001*, ss7-8

²³ *Police and Justice Act 2006*, ss19-22

²⁴ *Flood and Water Management Bill 2009-10*, Schedule 2, s54 amends the *Local Government Act 2000* to provide for powers of scrutiny to be applied to risk management authorities.

²⁵ *Local Government and Public Involvement in Health Act 2007*, s119-128

²⁶ For more information on Local Area Agreements see the Library Standard Note, SN/PC/3168, *Local Area Agreements (LAAs) and Multi-Area Agreements (MAAs)*

²⁷ Department for Communities and Local Government, *Strong and Prosperous Communities: The Local Government White Paper*, October 2006, Cm 6939-I

- the rules which govern the information which must be provided by partner authorities to a council's overview and scrutiny committee would be set out in regulations;²⁸
- where a report or recommendation of an overview and scrutiny committee concern a local improvement target which relates to a partner authority, that partner must have regard to the report or recommendation;²⁹
- regulations could be made to allow for joint overview and scrutiny committees between county councils and one or more district councils in their area to be established. These would have equivalent powers to upper tier committees;³⁰
- regulations may provide for district councils in two-tier areas to be able to require information from partner authorities with whom they have a direct relationship; and to make reports or recommendations to the county council or executive on matters relating to an LAA target.

Those partners under the 'duty to co-operate' which must take part in council scrutiny in relation to relevant improvement targets (that is, targets which the agency has signed up to deliver) are set out in the legislation³¹ as:

- | | |
|--|--|
| • District councils | • The Broads Authority |
| • The Environment Agency | • National Parks Authorities |
| • Natural England | • Youth Offending Teams |
| • Fire and rescue authorities | • Police authorities |
| • Jobcentre Plus | • Transport for London |
| • NHS Foundation Trusts | • Joint Waste Authorities |
| • The Learning and Skills Council | • Sport England |
| • Arts Council | • Museums, Libraries and Archives Council |
| • Chief Officer of Police | • Local Probation Boards |
| • Probation Trusts and other providers of probation services | • Primary Care Trusts |
| • National Health Service Trusts | • Regional Development Agencies |
| • English Heritage | • Highways Agency |
| • Metropolitan Passenger Transport Authorities | • Others added by Order or primary legislation |

²⁸ [Local Government and Public Involvement in Health Act 2007](#), s121

²⁹ *Ibid*, s122

³⁰ *Ibid*, s123

³¹ *Ibid*, s104

In addition, the 2007 Act included provision for a Community Call for Action (CCFA) whereby people were given a new right to an answer from their local authority when they demanded action on an issue they had raised:

- Local authorities in England which operate executive arrangements must ensure that any councillor may refer a local government matter to the relevant overview and scrutiny committee. This does not include crime and disorder matters (covered by the *Police and Justice Act 2006*) nor those matters where there is already a statutory appeals process e.g. planning and licensing.
- The Act amended the *Police and Justice Act 2006* and aligned CCFA procedures under both Acts.
- Section 236 provided that an authority can make arrangements for an individual councillor to exercise functions of the authority in relation to his or her ward. In such cases overview and scrutiny committees can require such members to appear before the committee to answer questions in relation to any functions that they exercise.

The *Local Government and Public Involvement in Health Act 2007* also required council executives to respond to overview and scrutiny recommendations within two months – making this comparable to the convention in central government that departments respond to select committee reports within this time.³²

The strengthened overview and scrutiny powers and the provisions relating to the Community Call for Action were commenced on 1 April 2009. Underpinning regulations came into force on 12 August 2009.³³ Non-statutory good practice guidance is expected to be published shortly. No regulations have been made to allow for the creation of joint overview and scrutiny committees.

Communities in Control and Improving Local Accountability consultations 2008

The 2008 White Paper, *Communities in Control: Real People, Real Power*, stated that the Government would further enhance the powers of overview and scrutiny committees by allowing committees to require information from partner authorities on a broader range of issues. In August 2008 the Department for Communities and Local Government published a consultation on *Improving Local Accountability*. Amongst its proposals it stated that:

Building on the 2007 Act provisions, we intend to further strengthen the scrutiny function by extending the powers to require information from partner authorities to matters outside LAA targets.³⁴

This proposal has not yet been implemented, although the intention is repeated in the 2009 Green Paper *Strengthening Local Democracy* (see Chapter 4 below).

The Local Democracy, Economic Development and Construction Act 2009

The *Local Democracy, Economic Development and Construction Act 2009* was a wide-ranging piece of legislation whose provisions included a duty on local authorities to promote democracy and a requirement for local government e-petitions systems. The Act also broadened the scope of joint overview and scrutiny arrangements so that:

³² For more information on the *Local Government and Public Involvement in Health Act 2007* see the Library Research Paper 07/01, [Local Government and Public Involvement in Health Bill \[Bill 16 of 2006-07\]](#) and Research Paper 07/30, [Local Government and Public Involvement in Health Bill: Committee Stage Report](#)

³³ [Local Authorities \(Overview and Scrutiny Committees\) \(England\) Regulations 2009](#), SI 2009/1919

³⁴ Department for Communities and Local Government, [Communities in Control: Real People, Real Power: Improving Local Accountability Consultation](#), August 2008, para 2.32

- regulations could provide for joint overview and scrutiny committees to be set up by any two or more local authorities;
- such committees may make reports and recommendations on any matter (other than an excluded matter);
- associated authorities may be required to provide any information to joint overview and scrutiny committees (other than that relating to crime and disorder matters which were already covered by the *Police and Justice Act 2006*) and not just that relevant to local improvement targets.³⁵

Although these clauses came into force in January 2010, the Secretary of State has yet to issue regulations under the Act to enable joint scrutiny committees to be appointed, and to allow for the associated powers.

3.2 Resources

Introduction

The resources which overview and scrutiny committees have been able to engage has been a critical element in assessments over the effectiveness of the *Local Government Act 2000* arrangements. At the outset in 2000, there were no statutory conditions placed on the resources of overview and scrutiny committees. Government guidance issued in 2001 suggested that overview and scrutiny committees would require their own discrete budget. The guidance stated that:

To be effective, overview and scrutiny committees must have effective and properly resourced support from officers. Members, including church and parent governor representatives, will need help in researching the policy area or decisions they are examining and in deciding which avenues of enquiry to pursue and which witnesses to call. Experience from local authorities operating interim overview and scrutiny arrangements before the passing of the Act shows that focussed overview and scrutiny enquiries with a well-defined set of aims, albeit often looking at cross-cutting issues, are generally more successful than wide ranging enquiries.

Local authorities should provide overview and scrutiny committees with a discrete budget to allow them, for example, to engage independent consultants to assist in their enquiries or to cover the expenses of witnesses they may wish to call.³⁶

The need to resource scrutiny adequately was raised in Sir Michael Lyons's *Inquiry into Local Government*. He had recommended that:

Scrutiny needs to be seen as a core strand of local government's place-shaping role. Councils and other participants must resource it appropriately and link it to local partnership work.³⁷

Dedicated scrutiny officers

In August 2008 the Department for Communities and Local Government published a consultation paper *Improving Local Accountability*:

...we intend to require some dedicated scrutiny resource in county, unitary and London borough councils across England. This will ensure that every area in England is

³⁵ [Local Democracy, Economic Development and Construction Act 2009](#)

³⁶ Department for Communities and Local Government, [New Council Constitutions: Guidance to English Local Authorities](#), para 3.45-3.46

³⁷ *Lyons Inquiry into Local Government*, March 2007, Recommendation 5.13

covered by dedicated scrutiny resource to support the overview and scrutiny function in local government. One way this may be achieved is through making similar provision to that for monitoring officers and their resources as set out in the Local Government and Housing Act 1989.³⁸

CfPS responded to this consultation as follows:

We agree that requiring resources to be dedicated to scrutiny is essential if scrutiny is to benefit from the new powers and responsibilities outlined in the White Paper. However, there is a danger that by creating a minimum requirement of one dedicated scrutiny officer (as implied in paragraph 2.33) some authorities will merely maintain or even reduce scrutiny support to meet the baseline statutory requirement. Regulations need to be drafted to require **all** local authorities to have a dedicated scrutiny resource and to ensure that the appointment, job description and grading is at a sufficiently senior level. It may be more useful to define 'dedicated scrutiny resources' in financial terms, insisting that sufficient budgets should be in place to facilitate the increasingly important role that scrutiny plays. In addition, the CPA and its successor inspection regime covering use of resources and governance should include whether a council has a dedicated scrutiny resource and how effective it is. This approach would allow flexibility whilst guaranteeing the delivery of improved accountability.³⁹

The *Local Democracy, Economic Development and Construction Act 2009* inserted a new clause into the *Local Government Act 2000* to require local authorities, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer. The requirement for councils to have a dedicated scrutiny officer will come into force on 1 April 2010.⁴⁰

4 Strengthening Local Democracy Green Paper 2009

In July 2009 the Government published its *Strengthening Local Democracy* consultation which proposed a broadening and strengthening of scrutiny powers. An *Impact Assessment* of the consultation paper was published in September 2009.⁴¹ The proposals on overview and scrutiny contained in the Green Paper form the basis of the *Local Authorities (Overview and Scrutiny) Bill 2009-10*.

4.1 Powers and remit

Government proposals

The Government proposed that the powers of overview and scrutiny committees should be extended to cover external organisations, not just those which have signed up to specific LAA targets. In addition, the Government proposed that the powers of overview and scrutiny committees in relation to external organisations should be strengthened so that they could require the same degree of co-operation they already have in relation to the council executive itself.

The Green Paper included the following table which outlines the current powers of overview and scrutiny committees, and the Government's proposals for further powers:

³⁸ Department for Communities and Local Government, *Communities in Control: Real People, Real Power; Improving Local Democracy Consultation Paper*, August 2008, para 2.33

³⁹ Centre for Public Scrutiny, Centre for Public Scrutiny, *Response to 'Communities in Control: Real people, real power' Improving local accountability consultation*, para 8.1,

⁴⁰ *The Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 2) Order 2009*, SI 2009/3318

⁴¹ Department for Communities and Local Government, *Strengthening Local Democracy: Impact Assessment*, 21 September 2009

Current powers	Potential Future Powers
<p>Information can be required from:</p> <ul style="list-style-type: none"> • Officers of the council • Members of the council executive • Local NHS bodies in relation to planning, provision and operation of health services in the area • Police forces, police authorities, fire and rescue authorities, probation authorities and parish councils in relation to crime and disorder functions • LAA partner authorities where the information relates to an LAA target that the partner authority has signed up to (pending regulations)* 	<p>Enabling scrutiny committees to use their powers to require LAA partner authorities to provide information on issues not directly related to LAA targets** and Extend the power to require information from a wider range of authorities and bodies that carry out public services locally, for example to utility companies and to sub-regional partnerships</p>
<p>Attendance before the scrutiny committee can be required from:</p> <ul style="list-style-type: none"> • members of the council executive • officers of the council • officers of local NHS bodies • officers of employees of police forces, police authorities, fire and rescue authorities, probation authorities and parish councils in relation to crime and disorder functions 	<p>Extend the power to require attendance to a wider range of authorities and bodies carrying out public services locally and to sub-regional partnerships.</p>
<p>Reports and recommendations can be made to:</p> <ul style="list-style-type: none"> • the council • local NHS bodies and their relevant council • police forces, police authorities, fire and rescue authorities, probation authorities and parish councils • reports and recommendations can be copied to LAA partner organisations <p>The current arrangements on receipt of scrutiny reports and recommendations vary. For example, LAA partners are required to 'have regard' to recommendations, but not required to respond formally, unlike the council, local NHS bodies or police forces etc.</p>	<p>Extend the power for scrutiny committees to make reports and recommendations to a wider range of authorities and bodies carrying out public services locally and to sub-regional partnerships. Extend the current arrangements to require a wider range of authorities and bodies carrying out public service locally to consider and formally respond to scrutiny reports and recommendations and to sub-regional partnerships.</p>

* The duty to co-operate in regard to LAAs applies to: unitary and county authorities, district authorities, Environment Agency, Natural England, fire and rescue authorities, JobCentre Plus, Health and Safety Executive, Broads Authority, national park authorities, youth offending teams, police authorities, probation trusts and other providers of probation services, Transport for London, chief officers of police, joint waste authorities, primary care trusts, NHS trusts, NHS foundation trusts, regional development agencies, Learning and Skills Council, Sport England, English Heritage, Arts Council, Museum Library Archives Council, Highways Agency, any other organisations added by an order under section 104(7) of the *Local Government and Public Involvement in Health Act 2007*.

**Appropriate measures will be put in place, to ensure the protection of sensitive information, if these proposals on information provision are to be taken forward.

The Paper argued that:

... alongside the right to directly shape and influence services must go the right to elect a local authority with real power to champion the needs of their local area – one that is clear about its responsibilities to local citizens. Citizens also need to be confident that when decisions are made about things that affect them, it is informed by their concerns and not just by the interests of those running the service. That is why we believe that elected councillors, selected by voters to represent their interests, should have greater influence over unelected service providers.

Our aspiration is for councils to become a local point of accountability for services across their area. The clearest and most effective way to do that is to give councillors greater oversight and responsibility for public spending in their area. Councillors, on behalf of their citizens, should be able to scrutinise public spending provision, influence decision making and hold other service providers to account.⁴²

The paper continued:

The best way to support councils take on this stronger role is to increase their powers of scrutiny. Councils do currently have some well-established powers of scrutiny over health and police services. But these have not yet had the impact which we believe is necessary. We therefore set out proposals to:

- Broaden the scope of powers which councils can use to carry out their scrutiny function;
- Widen the range of organisations over which these powers can be used;
- Ensure that local people and their needs are the driving force behind these enhanced powers.⁴³

The Government proposed to offer councils greater scrutiny powers over the following authorities:

- **police strategies in local authority areas**, plans for which will be developed for consultation by the Home Office in the autumn;
- **fire and rescue authorities**, to make sure their plans fully reflect the right balance of protection, prevention and response for different communities; and to examine performance of individual fire and rescue authorities against their published equality and diversity plans;
- **local authorities' delivery of high-quality educational provisions** to meet local demands and aspirations as well as for supporting and challenging schools to improve. These issues as set out in the Department for Children, Schools and Families White Paper on 21st Century Schools would ensure further support to these issues that are of great importance to parents and more widely to local communities;
- **probation authorities** over issues such as release of ex-offenders into an area, or making sure that they have timely access to local services that may be critical to prevent further offending. Councillors could also have a role in scrutinising the other partners involved in supporting and reducing offending;

⁴² Department for Communities and Local Government, *Strengthening Local Democracy*, July 2009, paras 41-42

⁴³ *Ibid*, para 45-57

- **utility companies:** for example, where repairs which are badly organised and co-ordinated, causing unreasonable inconvenience, the overview and scrutiny committee would be able to look into the matter and to make recommendations which the utility company would be required to have regard to, on future improvement programmes;
- **young people's education and skills issues,** while recognising the independence of colleges and other learning providers. These services have a high degree of relevance for local communities, as shown by 84% of areas having at least one of the skills indicators in their Local Area Agreement and this has been recognised in the Government's decision to transfer funding to local authorities for education and training for 16-18-year-olds, supported by the creation of the Young Person's Learning Agency. Ensuring that these broader scrutiny powers apply to this issue and the range of partners involved will enable the ambition to put the young learner at the heart of a system to be fully realised. The Learning and Skills Council and its adult skills successor body, the Skills Funding Agency, will continue to be subject to the duty to co-operate through the LAA process.⁴⁴

Consultation responses

The Local Government Association (LGA) published a response to the *Strengthening Local Democracy* Green Paper in which they agreed that scrutiny powers should be extended in relation to Local Area Agreement partners to cover the range of their activities, not just those limited to specific LAA targets. They stated that:

We advocate extension of powers of council scrutiny to be able to require participation in scrutiny by: all agencies which are named partners in the Local Government and Public Involvement in Health Act 2007 (in relation to LAA targets, and wider issues); waste authorities and waste disposal authorities, universities and colleges of further and higher education; all publicly funded schools, utilities to include electricity, gas, water and communications, public transport providers, port authorities, and airports.⁴⁵

The Centre for Public Scrutiny (CfPS) response to the consultation also agreed that scrutiny powers should be extended to areas outside LAA agreements:

The current powers relating to scrutiny of partners' contributions to local improvement targets are too limited, as is the requirement for partners to 'have regard to' scrutiny recommendations. It is important that partners are accountable for all their activities in an area.

Any extension of scrutiny powers should not stop at LAA partners but should also cover all organisations that provide public services, for example, water, power, education, housing, transport. Any extended powers should require a consistency of approach around providing information, attending meetings and responding to recommendations. This will help assure non-executive councillors, service planners and providers and the public that scrutiny has flexibility and freedom to scrutinise local issues as they arise, rather than be constrained to narrowly defined 'performance indicators'.⁴⁶

CfPS went on to state that the limited requirements in respect of partner organisations could potentially hamper accountability:

⁴⁴ *Ibid*, para 64

⁴⁵ Local Government Association, *Strengthening Local Democracy: Response of the Local Government Association*

⁴⁶ Centre for Public Scrutiny, *Response to 'Strengthening Local Democracy'*, p3

There are lots of examples of partner bodies or other organisations engaging with scrutiny committees voluntarily. However, voluntary arrangements cannot be relied on to give assurance to local communities that those organisations will continue to participate around particularly difficult issues in the future or when senior management of organisations changes. CfPS agrees that legislative powers are a strong 'backstop' that help to provide the assurance that local people need that a robust framework for accountability exists.⁴⁷

Both the LGA and the CfPS called for consistent powers across all external services to require participation in scrutiny. The LGA called on these powers to include:

- a legal requirement on public bodies to attend and participate in scrutiny hearings and activities
- clear access to information regulations which are focussed on creating greater openness not restriction
- an enforceable time limit for access to information (we suggest 20 working days, to be compatible with the Freedom of Information Act)
- a legal requirement to respond to recommendations within a set timescale
- powers to make recommendations which lead to real change
- a clear mechanism for redress if this is not followed, for example councils to be able to report to parent departments, regulators and/or select committees
- explicit direction (through management agreements or whatever form is appropriate) from Whitehall parent departments to agencies to act in support of the council scrutiny role, and genuine flexibility to enable response to local recommendations.⁴⁸

For the CfPS, this 'common approach' would cover:

- timescales for providing information – the Freedom of Information Act requirement of 20 working days seems sensible – if information is not provided, scrutiny committees should be able to refer to those commission services, regulators or Ministers.
- attendance at meetings – notice to attend meetings should be reasonable and specify the nature of the information that scrutiny committees require to be presented.
- responding to scrutiny recommendations – the current health scrutiny requirement of 28 days seems reasonable (although this is challenging in complex cases). This should include a requirement to provide an action plan for implementing accepted recommendations or reasons why recommendations cannot be accepted.⁴⁹

Later in their response, CfPS also suggested that:

⁴⁷ *Ibid*

⁴⁸ Local Government Association, *Strengthening Local Democracy: Response of the Local Government Association*, p2

⁴⁹ Centre for Public Scrutiny, *Response to 'Strengthening Local Democracy'*, p3

...an unambiguous and immediate requirement be placed in appropriate contracts or funding regimes for all providers of services to be public to support scrutiny.⁵⁰

Scrutiny practitioners themselves appear to be concerned about the effectiveness of scrutiny of partnerships and the executive. The 2008 CfPS annual survey of overview and scrutiny reported that:

...Respondents felt that they were least effective at the scrutiny of partnerships and holding the executive to account, which indicates the areas where local authority scrutiny functions need most support in the future, as both of these are significant responsibilities for overview and scrutiny.⁵¹

Writing for CfPS, Andy Sawford, Director of the Local Government Information Unit, stated that:

...broadening the scope of scrutiny to cover all issues relevant to the local area would be a wise move, particularly as it would allow consideration of issues which could then inform the future development of LAAs.

The implications of extending scrutiny to additional organisations will vary over time and local circumstances. For example, there is likely to be real value for councils with significant flood risk management responsibilities in being able to examine the policies and preparedness of utilities, including water companies.

It is suggested by the government that councils can join forces to scrutinise services provided across boundaries, to avoid over-pressurising the resources of external organisations. Elected members and officers will want to consider whether councils themselves are likely to have the resources and capacity to manage this significant extension of scrutiny in a way which will prove to be effective and influential.

Despite the risk of increased pressure on scrutiny capacity, councils may wish to consider whether other significant organisations responsible for local services are missing from the list.⁵²

The Government also suggested that where scrutiny committees were dealing with external bodies, executive members might sit on overview and scrutiny committees. At present, under s21(9) of the *Local Government Act 2000*, executive members are prohibited from sitting on scrutiny committees in order to maintain a clear division between the executive and scrutiny functions. In the 2009 *Strengthening Local Democracy* Green Paper the Government stated:

There is also the question of whether, and how, in extending scrutiny, executive members could be further involved in these activities in relation to the full range of local public services. This would have to be consistent with the need to avoid conflicts of interest between the executive's decision making role and the ability of the non-executive councillors to scrutinise those decisions.⁵³

CfPS responded, stating that:

CfPS does not support the direct involvement of executive councillors in the scrutiny process, other than through providing information and evidence as part of scrutiny reviews and responding to recommendations. The Local Government Act 2000 established a clear separation of roles for councillors and this should not be 'blurred'.

⁵⁰ *Ibid*, p6

⁵¹ CfPS, *The 2008 annual survey of overview and scrutiny in local government*, p10

⁵² Andrew Sawford, *Strengthening Local Democracy*, 7 December 2009

⁵³ Department for Communities and Local Government, *Strengthening Local Democracy*, July 2009, para 69

Executives have a range of ways in which they can influence service planning and delivery locally, largely through the participation of the council in partnership arrangements. Devolving powers to local government will increase the influence of executive councillors – the scrutiny function is not an appropriate vehicle.⁵⁴

On 28 October 2009 John Denham told the House of Commons that:

...we have received overwhelming support for our proposals to enable local authorities to scrutinise not just their own spending, but all local public service spending. Subject to detailed agreement across Whitehall, those plans will enable local authorities to scrutinise as much as £100 billion of public spending...⁵⁵

4.2 Resources

Government proposals

The 2009 *Strengthening Local Democracy* Green Paper makes further proposals for further dedicated resources to be allocated:

...As the democratically accountable leaders of their areas, it will be a priority for every council leader to ensure that their council's scrutiny activities are effective. This will involve leaders and council executives considering carefully the resources that are devoted to scrutiny and the status accorded to those leading the scrutiny work.

One option is to have a duty on council chief executives to ensure that committees have adequate resources to carry out their work. While recognising the importance of scrutiny, this would also mean that final decisions on how best to organise resources are left with those who are best placed to make them.⁵⁶

The Government also raised the possibility of an increased allowance for overview and scrutiny committee chairmen to raise their status within the authority:

We also believe that scrutiny should take greater visibility and recognition as befits its vital role. A visible commitment by a local authority to the importance of overview and scrutiny would be ranking the position of chair of certain overview and scrutiny committees in the authority on a par with a cabinet post. This might include the special responsibility allowance for this post being equal to that of a cabinet member in the authority.⁵⁷

It is worth noting that the chairmen of departmental and other subject select committees in the House of Commons are paid an additional salary, although this is less than that which is available to junior ministers.

Lastly, the Government suggested that:

There are also more open questions about the support that councils and those individuals charged with carrying out this function may need. As well as fully understanding how their council operates, councillors will need to fully appreciate the complexities of partnership working, and the context and legal framework in which those partners operate. They may well benefit from:

- expert advice from citizens and interest groups

⁵⁴ Centre for Public Scrutiny, [Response to 'Strengthening Local Democracy'](#)

⁵⁵ HC Deb 28 October 2009 c319

⁵⁶ Department for Communities and Local Government, [Strengthening Local Democracy](#), July 2009, para 67

⁵⁷ *Ibid*, para 68

- more training and support
- wider opportunities for sharing best practice.⁵⁸

Consultation responses

In their response to the Green Paper, the LGA stated that:

We agree that... effective scrutiny needs to be resourced, and that if councils are to gain maximum influence in relation to external service providers, this needs to be taken seriously by the leadership of the organisation. We do not support the principle that how this is done should be dictated by central government or through increased regulation or national requirements.

The practical experience of local government is that there are a variety of ways in which this can be resourced: through direct staffing, member support and development opportunities; through a scrutiny champion at a very senior level of management, through secondments, external expert advisors, policy and research support from staff within the organisation.⁵⁹

In their 2008 annual survey of overview and scrutiny in local government, CfPS stated that since the previous year:

...The overall average number of scrutiny officer posts per authority has remained the same, but discretionary budgets for scrutiny have fallen. While not surprising in the financial climate, this is of concern given scrutiny's ever-increasing powers and responsibilities.⁶⁰

The 2008 CfPS survey found that 74% of authorities had a dedicated scrutiny officer or team. The average number of full time equivalent scrutiny officers for all authorities was just over 2, whereas for district or borough councils it was 0.94. Where authorities had dedicated scrutiny officers, they had higher staffing levels of an average of 2.9. Most scrutiny officers are located within the Democratic Services departments of local authorities, with others located in the Chief Executive's office or in the Policy and Performance or Corporate Services departments.

The survey reported on scrutiny budgets that:

In 2004, the average amount of money available to conduct scrutiny across all authorities was £8,280. In 2005 that figure had risen 20% to £18,141, decreasing to £11,853 in 2007. The 2008 survey shows a continuation of this downward trend with a reduction of £1,936 from 2007 to £9,917. It is worth pointing out that a discretionary budget may be inflated for a variety of reasons that do not necessarily relate to the relative health of support for scrutiny. As such the large range (0 - £280,000) illustrates the differing circumstances of each authority and explains why such large annual fluctuations are possible. Nevertheless there is a clear negative trend in the size of allocated discretionary budgets for scrutiny.⁶¹

⁵⁸ *Ibid*, para 70

⁵⁹ Local Government Association, *Strengthening Local Democracy: Response of the Local Government Association*, p3

⁶⁰ CfPS, *The 2008 annual survey of overview and scrutiny in local government*, p1

⁶¹ *Ibid*, p8

5 The Bill

5.1 Introduction

The *Local Authorities (Overview and Scrutiny) Bill 2009-2010* is a Private Member's Bill introduced by David Chaytor MP.⁶² The Bill is supported by the Government.⁶³ The long title of the Bill explains that its purpose is:

...to make further provision about the functions, powers and constitution of local authority overview and scrutiny committees; and for connected purposes.

The Bill is intended to broaden local authority scrutiny powers and extend them to cover a wider range of organisations external to the local authority than is the case at present. External bodies may be required by an overview and scrutiny committee to: provide information; attend hearings; have regard to committee reports and recommendations; and formally respond to such reports and recommendations. The bodies subject to these new powers would be specified by order. The relevant activities of these organisations would be those defined as matters of local concern in connection with the provision of public services. The Bill allows for regulations to give joint scrutiny committees similar scrutiny powers.

The Bill also provides the Secretary of State with powers to make regulations to ensure procedures do not place an excessive burden on those external bodies undergoing scrutiny. The Secretary of State would have power to allow certain categories of committees to include executive members when scrutinising particular activities of specified external bodies. The Bill also requires scrutiny officers to be given certain resources by the local authority.

A Department for Communities and Local Government press notice published on 1 February 2010 stated that:

The proposed new powers mean councils could legally compel organisations to attend public scrutiny hearings to justify their actions and respond in full to recommendations made by the councils to resolve the problem. This sweeps away the need to rely solely on the voluntary co-operation of organisations when addressing local concerns.

The Bill will complete the scrutiny arrangements so that all significant local public service spending can now be covered by scrutiny; and could mean service providers being held to account on a range of issues like:

- energy companies digging up road, pavements and gardens for repairs and then leaving them in a worse condition once finished;
- many things commuters care about – station safety, proper lighting, decent facilities and access;
- young families with children using regular bus services to get to school who feel the discounted bus tickets are still too expensive;
- gas and electricity companies digging up and blocking roads and pavements and restricting access to shops and facilities for a prolonged period;

⁶² [Local Authorities \(Overview and Scrutiny\) Bill 2009-10](#)

⁶³ Rt Hon John Denham MP, [Meeting the 'More for Less' Challenge](#), Speech to the NLGN Annual Conference, 27 January 2010 and Department for Communities and Local Government Press Notice, [John Denham – New Powers to help residents fix local problems](#), 1 February 2010

- bus services in largely rural areas – a lifeline for many rural communities – can be scrutinised if there are concerns about the routes used, the pick up points or even the area included in the catchment;
- concerns about other local services including local sports facilities, museums, libraries, health and safety, and the fire and rescue service.

...John Denham said:

“Local people should be able to elect councillors who can get back to them on the performance of all local public services, not just the ones run by the council itself. This Bill gives councillors the power to hold all these services to account whether they are provided by other public bodies or private companies delivering public services.

It will give councils the ability to shine a spotlight on services not delivering for local people and demand action on behalf of their communities to resolve local problems. There should be no hiding place from awkward questions for company bosses about why they are not providing the high quality local public services people are entitled to”.

David Chaytor MP, who is taking forward the Overview and Scrutiny Bill, said:

“I am delighted that the Government is backing my Private Members Bill to put the power to act quickly and effectively into the hands of local councils. This will allow them to step in and fix problems and raise standards where local public services are seen to be falling short of what is expected of them.

It is a testament to the Parliamentary system that MPs and the Government can work together to ensure that residents... can have a powerful voice and can flag up the many local problems we hear them raise each week on the doorstep or in our surgeries, and ensure that local councils have the power to act decisively on such problems.

Tim Gilling, Executive Director of the Centre for Public Scrutiny, said:

“Local authority scrutineers need the freedom to be able to gather evidence, and make recommendations, to any organisation spending money in the locality. Local residents, too, need to be able to know that their elected politicians are able to effectively hold to account those who make decisions affecting people’s lives.

“These proposals will serve to consolidate both existing law and existing practice in the field, where many practitioners are having great success in using scrutiny to deliver tangible results for local people, by influencing those within and outside local government.”⁶⁴

5.2 Commentary on clauses

The following is a selective summary only. Readers are referred to the Bill’s Explanatory Notes for a clause-by-clause commentary.⁶⁵ In addition, the Government will publish an Impact Assessment on the proposals for enhanced scrutiny as set out in the *Strengthening Local Democracy* Green Paper. This will be published before the Second Reading debate.

⁶⁴ Department for Communities and Local Government Press Notice, [John Denham – New Powers to help residents fix local problems](#), 1 February 2010

⁶⁵ [Local Authority \(Overview and Scrutiny\) Bill, Explanatory Notes](#)

Clause 1 provides that new provisions apply when overview and scrutiny committees are scrutinising matters of local concern in connection with the provision of public services by authorities or persons designated in regulations by the Secretary of State. A matter is defined as being of “local concern” if it “affects the authority’s area or the inhabitants of that area to a greater degree than it affects the areas of other local authorities or the inhabitants of other such areas”. Regulations under the section would be subject to the affirmative resolution procedure.

Clause 2 excludes certain services from the provisions of Part 1 of the Bill. The excluded services are those whose scrutiny arrangements are provided for in separate legislation, namely matters relating to crime and disorder, to the health service, and to flood risks and coastal erosion.

Clause 3 gives overview and scrutiny committees the power to require a designated person or authority to provide certain information in relation to their functions. Overview and scrutiny committees would also be able to require the attendance of an appropriate person to appear before the committee to answer questions. The Secretary of State would be able to make regulations which may impose restrictions or conditions on the exercise of this power in order to ensure the burdens on external bodies subject to these powers are proportionate. These regulations would be subject to the negative procedure. The Explanatory Notes suggest that the increase in annual compliance costs “could be up to £480,000 each year, with up to £427,000 falling on private sector bodies and up to £53,000 on public sector bodies (excluding local authorities).⁶⁶

Clause 4 provides that overview and scrutiny committees may send a copy of a report or recommendation to designated authorities and require them to respond to the recommendations within 2 months. As in clause three above, the Secretary of State would be able to make regulations to ensure that the designated authorities are not placed under an excessive burden. **Clause 5** allows overview and scrutiny committees to publish the responses given by designated external authorities. Copies of these responses should be sent to those bodies which had been sent the original recommendations or report.

Clause 7 makes various consequential amendments, including allowing joint overview and scrutiny committees to carry out the functions as described in this Bill. As noted above, regulations to allow for joint overview and scrutiny committees, as provided for under the *Local Democracy, Economic Development and Construction Act 2009* have not yet been made.

Clause 8 amends section 21(9) of the *Local Government Act 2000* so that the Secretary of State is able to make regulations to allow overview and scrutiny committees to have executive councillors as members when the committee is not scrutinising matters relating to the executive. The regulations could also make provision to ensure that no conflicts of interest arise. These regulations would be subject to the negative procedure.

Clause 9 requires that designated overview and scrutiny officers are provided with such staff, accommodation and other resources as determined by that officer to be sufficient to discharge their functions. The Explanatory Notes estimate that the cost of this requirement would be no more than £4.5m each year. This cost would be fully funded by Government.⁶⁷

⁶⁶ *Ibid*, para 33

⁶⁷ *Ibid*, paras 34-35.