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BRIEFING PAPER

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Overview and scrutiny in local government

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Summary

Overview and scrutiny committees were established in English and Welsh local authorities by the Local Government Act 2000. They were intended as a counterweight to the new executive structures created by that Act (elected mayors or leaders and cabinets). Their role was to develop and review policy and make recommendations to the council.

Today, the legislative provisions for overview and scrutiny committees for England can be found in the Localism Act 2011. Those for Wales are in the Local Government (Wales) Measure 2011, and those for Northern Ireland are in the Local Government Act (Northern Ireland) 2014. There are no legislative provisions for overview and scrutiny in Scotland, though many Scottish local authorities do operate scrutiny committees alongside executive structures.

Local authorities also manage processes of 'external scrutiny', where their committees look at issues which lie outside the council's responsibilities. In England, specific powers exist to scrutinise health bodies, crime and disorder partnerships, and Police and Crime Commissioners. Combined authorities are also required to establish overview and scrutiny committees.

1. Background

1.1 The purpose of overview and scrutiny

The concept of 'overview and scrutiny' was originally introduced to English and Welsh local authorities by the Local Government Act 2000. Prior to this Act, all local authorities in the UK made decisions through meetings of the full council or of committees; this was known as 'the committee system'. Typically, most committees managed one or more council services or departments.

The 2000 Act obliged local authorities to adopt political management systems with a separate executive. The 'executive' would take the form of a leader, or elected mayor, and a cabinet of no more than nine members.[1] Reflecting the relationship between Parliament and government, the remainder of the council was required to scrutinise the executive by establishing at least one overview and scrutiny committee.[2] The committee or committees would investigate the policies of the executive and their implementation, issuing reports and drawing attention to shortcomings.

Overview and scrutiny committees may not include members of the council's executive,[3] and their membership should in general reflect the political balance of the local authority.[4]

1.2 Overview and scrutiny in legislation

Since its introduction in 2000, the legislative provision for overview and scrutiny in England and Wales has diverged, and new legislation has been introduced in Northern Ireland. In England, the main provisions can now be found in schedule 2 of the Localism Act 2011, which mostly consolidated previously existing law. For Wales, the main provisions can be found in the Local Government (Wales) Measure 2011.[5] Both of these enactments built on the original legislation for overview and scrutiny in the Local Government Act 2000.

Initially, district councils in England and Wales with a population of less than 85,000 had a fourth option of a 'streamlined committee system'. Councils which adopted this system were still required to establish at least one overview and scrutiny committee, which would scrutinise the decision-making committees. The Localism Act 2011 extended this fourth option to all councils in England, and since then many have readopted the committee system.[6] The 2011 Act also removed the

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1 See the Library standard note Directly-elected mayors for more detail on elected mayors and local authority executives more generally.
2 *Local Government Act 2000*, s.21
3 *Local Government Act 2000*, s.21(9)
4 Provision can be made to alter this as long as no council member dissents from the decision.
5 The draft *Local Government (Wales) Bill* of 2015 contains a number of minor amendments relating to overview and scrutiny. This Bill has not yet been introduced into the National Assembly for Wales.
6 One authority, Fylde BC, has held a referendum on 22 May 2014 on returning to the committee system following receipt of a valid petition from local people. This was

obligation for councils using the committee system to have an overview and scrutiny committee, though if they do one, certain regulations apply.[7] In Wales, by contrast, the 2011 Measure obliged all councils to adopt either a mayoral or a leader and cabinet system.

Provisions for Northern Ireland were introduced in sections 27-33 of the Local Government Act (Northern Ireland) 2014, pertaining to Northern Ireland's eleven new local authorities, which took up their powers on 1 April 2015. The new authorities can choose between a committee system and a cabinet-based system: if they choose the latter, they must appoint at least one overview and scrutiny committee (there is no provision for directly-elected mayors in Northern Ireland).

In Scotland, there is no legislative provision for separate executives or for overview and scrutiny committees to scrutinise them. A number of Scottish councils have established 'scrutiny committees', which are required to examine policies and procedures: but these are founded in local working arrangements.[8] An outline of the current position, together with case studies of Scottish local authorities, can be found in the briefing note How do Local Authorities Make Decisions?, produced by the Scottish Parliament Information Service (SPICe).

The legislation in England, Wales and Northern Ireland has much in common as regards the powers and functions of overview and scrutiny committees, including:

- Any member of an overview and scrutiny committee has the right to refer a relevant matter to the committee.[9] In England, this provision does not apply to matters concerned with planning and licensing, or to "any matter which is vexatious, discriminatory or not reasonable to be included in the agenda";[10]
- Overview and scrutiny committees may hold inquiries and produce reports;
- Committees may require executive members and officers of the authority to appear before them. Individuals from outside the council can be invited, but not compelled to attend;
- Overview and scrutiny reports must receive a response from the council executive within two months;
- Overview and scrutiny committees cannot oblige either the executive, the council or external bodies to act upon their findings;

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supported by 11,934 votes to 8,706, on a 34.2% turnout. A further referendum is expected during 2016 in West Dorset District Council.

7 See the *Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2012* (SI 2012/1021)

8 Similarly, there is no legal power to create separate executive arrangements in Scottish local government. A number of Scottish local authorities have established 'executive committees', but unlike their counterparts in England and Wales, these must reflect the political balance of the council and will, therefore, often be multi-party committees.

9 *Local Government and Public Involvement in Health Act 2007* s.119. This provision was intended to prevent committee chairs from isolating members of the committee by refusing to consider matters that they raised.

10 See the *Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012* (SI 2012/1022), regulation 3.

- Each authority must appoint at least one 'scrutiny officer'.[11] The *Local Government Act 2000* made no provision for dedicated staff or financial resources for the overview and scrutiny role. However, the 'scrutiny officer' does not have to be a dedicated post, and may be combined with other responsibilities.

Combined authorities

Combined authorities in England are required to establish overview and scrutiny committees by the Cities and Local Government Devolution Act 2016. Further provisions are made by the *Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017* (SI 2017/68):

- A majority of the members of such a committee must be councillors from member councils of the combined authority. Members may be co-opted from outside member councils, but they will have no vote. The quorum is two-thirds of the total membership;
- The committee will have power to compel members and officers of the combined authority to attend meetings and answer questions, including the elected mayor if there is one;
- The committee's chair cannot come from the same political party as the mayor – or as the largest party on the combined authority, if the mayor is independent;
- The committee must reflect the political balance of the combined authority's member authorities, as far as possible;
- The combined authority must appoint at least one scrutiny officer;
- The overview and scrutiny committee will be able to call in a decision of the mayor or executive for 14 days. The mayor or executive must respond to any recommendation following a call-in within 10 days of the call-in taking effect;
- Members of the combined authority cannot sit on the overview and scrutiny committee.

The Centre for Public Scrutiny published a document entitled *Overview and scrutiny in combined authorities: a plain English guide* in March 2017.

1.3 Structures and resources

The 2014 Centre for Public Scrutiny annual survey found that:

> This year, the average number of FTE officer posts for the municipal year of 2014/15 was 1.87, well above the predicted average. This is positive news…
>
> However, the dedicated average scrutiny budget does not follow this trend. For the 8th year in a row, the budget has declined and the average budget for 2014/15 is £3,277, down from £3,447 in 2013/14.
>
> …
>
> Evidence also suggests that councils with a more positive outlook on the future of scrutiny are more likely to report a positive ability to not only monitor recommendations but have higher rates of

[11] *Localism Act 2011* schedule 2, section 9FB; *Local Government Act (Northern Ireland) 2014* s.29.

> recommendations with measurable outcomes and undertaking ambitious recommendations.[12]

Early guidance from the UK government indicated that all but the smallest local authorities should have more than one overview and scrutiny committee, and that they should meet frequently.[13] It also stated the expectation that they should have a cross-cutting rather than service-based view of the local authority's business.

For committees which relate to local education authorities, there are provisions to allow religious representatives or parent governor representatives to take part in overview and scrutiny.[14]

In Wales, the political balance of the local authority must be taken into account when allocating the chairs of overview and scrutiny committees.[15] This does not apply in England or Northern Ireland. The Centre for Public Scrutiny conducted a survey in 2014 which found that, in 65% of respondent councils, all of the scrutiny chair positions were held by the majority party.[16]

Government guidance in 2006 stated that political party whipping was "incompatible" with overview and scrutiny. It also stated that:

> Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent governor representatives. Overview and scrutiny should be constructive and not merely there either always to oppose the executive or to rubber-stamp the executive's decisions.[17]

In Wales, section 78 of the 2011 Measure prohibits whipping from taking place in overview and scrutiny committees.

The Centre for Public Scrutiny has published a number of scrutiny guides for practitioners, which can be accessed on their website.[18]

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12 Centre for Public Scrutiny, *Annual Survey of Overview and Scrutiny in Local Government 2014-15*, 2015, p. 5

13 Department for Communities and Local Government, *New Council Constitutions: Guidance to English Local Authorities*, 2001 ed., para 320

14 *Parent Governor Representatives (England) Regulations 2001* (SI 2001/ 478).

15 *Local Government (Wales) Measure 2011*, s. 66-75.

16 Centre for Public Scrutiny, *Hiding in Plain Sight: barriers to effective council scrutiny*, 2015, p. 4

17 Department for Communities and Local Government, *New council constitutions: Guidance to English Local Authorities*, 2006, paragraph 3

18 See http://www.cfps.org.uk/policy-skills-briefings

2. External scrutiny

The 2000 Act provided for a system of overview and scrutiny which was directed solely at the internal functions of the council. However, many committees set up under the new arrangements covered policy areas spanning both the council and other public bodies, and thus began to take an interest in matters outside their council's direct control. This form of overview and scrutiny – examining the influence of other public (and sometimes private) bodies in a policy area of interest to the council – has become known as 'external scrutiny'.

External scrutiny demands a different dynamic from scrutiny of council functions. Councillors who have conducted an enquiry and drafted a report on council functions will be able to influence the outcome of the report through the council's procedures, and potentially through their party group. Councillors have no such direct influence over external bodies. It follows that external scrutiny relies on good relationships and joint working with external bodies to allow the councillors to influence other organisations' behaviour.

2.1 External scrutiny: powers

Overview and scrutiny committees have accumulated a number of powers to undertake 'external scrutiny' of specific additional bodies. These include:

- Provision for 'health scrutiny' – of health bodies and authorities.[19] Local authorities have the power to scrutinise health bodies and providers in their area or to set up joint committees to do so. They can require members or officers of local health bodies to provide information and to attend health scrutiny meetings to answer questions.[20] Guidance is available from the Centre for Public Scrutiny's 2016 publication *Solving the Puzzle*.

  These provisions are distinct from the mandatory requirement for local authorities to set up 'health and wellbeing boards';[21]

- Provision for a 'crime and disorder committee'.[22] These are mandatory committees for all local authorities, which must scrutinise the delivery of crime and disorder strategies. Authorities which are delivering these strategies and which are subject to a report from such a committee must respond to the report and have regard to it when exercising its functions. They are also subject to a requirement to provide information and attend meetings of the committee to answer questions.[23]

  These committees are distinct from the 'police and crime panels' that scrutinise directly-elected Police and Crime Commissioners.[24]

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19 See the *Health and Social Care Act 2012*, s.190; and previously the *Health and Social Care Act 2001* s.7-9, and the National Health Service Act 2006, s.244-6).
20 See regulation 27 of the *Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013* (SI 2013/218).
21 See the Library standard note Health and Wellbeing Boards (England) (SN 06845).
22 See sections 19-22 of the Police and Justice Act 2006.
23 See the *Crime and Disorder (Overview and Scrutiny) Regulations 2009* (SI 2009/942)
24 See the Library standard note Police and Crime Commissioners (SN 06104).

Police and crime panels operate across the whole area of a police authority (which in most cases covers more than one local authority area). The Centre for Public Scrutiny produced a report in January 2014 called Police and Crime Panels: the first year.

Both these types of committee are mandatory in England and Wales.

- In England, the Secretary of State can make regulations obliging the provision of information to an overview and scrutiny committee by a relevant 'partner authority'.[25] Overview and scrutiny committees may require relevant partner authorities to have regard to a report by the committee. These provisions apply in the context of the powers to draw up community strategies under the *Local Government and Public Involvement in Health Act 2007*.

2.2 Executive members on scrutiny committees

Proposals have been made for executive members to sit on overview and scrutiny committees during external scrutiny. The case for this in principle is that, where a body outside the council is being scrutinised, the external body, not the council cabinet, is the 'executive' that is being scrutinised. This provision was included in the Local Authorities (Overview and Scrutiny) Bill 2009-10, but this Bill did not pass through the House of Commons. The idea met with a negative response from the Centre for Public Scrutiny:

> 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'.[26]

2.3 Local Public Accounts Committees

The Centre for Public Scrutiny published a paper in December 2013 titled A Local Public Accounts Committee for Every Place. The paper aims to contribute to the debate over devolution of power to local authorities and place-based joint working between local service providers. It proposes the creation of Local Public Accounts Committees (LPACs), responsible for scrutinising public expenditure in a given area. The aim is to allay concerns over effective monitoring of public spending in the event of devolution of funds to local areas. It says:

> The local PAC should have the **power to scrutinise all public expenditure in a local area** (with reservations for national policymaking - eg around defence and security, some aspects of work and pensions and any other areas where policy-making is wholly centralised). This power could be framed in three ways:

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25 See the *Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2012* (SI 2012/1021). 'Relevant partner authorities' are set out in section 104 of the *Local Government and Public Involvement in Health Act 2007*.

26 Centre for Public Scrutiny, *Response to 'Strengthening Local Democracy'*, 2009

> 1. The right to have access to any papers or information held by anybody involved in delivering public services and to require representatives to attend meetings to give evidence, using the FOI Act definition around 'delivering functions of a public nature' to determine who might be covered by this right;
>
> 2. An 'enter and view' power over any organisation delivering publicly funded services, using the same definition - a right to access real-time management information, and to directly access and talk to managers and service users …;
>
> 3. A power to use this evidence to make recommendations to any local public service commissioner or provider to which the commissioner / provider would be obliged to respond saying which recommendations they accept and what they plan to do in response, and if they do not accept the recommendations giving reasons why not. The local PAC would have the right to refer any refusal to implement a recommendation they regard as crucial for good governance and value for money to the national PAC for determination or further investigation ….[27]

The LPACs would cover the areas of combined authorities, or upper-tier authorities where there was no combined authority. They would have a separate legal personality, instead of being constituted as local government committees or joint committees. The paper also suggested that Members of Parliament could take on a role within the LPACs. They would be funded by a precept sufficient to pay for some 3-4 staff. A councillor would chair the LPAC, and a majority of the members would be councillors: other members could be drawn from non-executives from relevant partner bodies, and possibly members of the public.

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27 CfPS, *A Local Public Accounts Committee for Every Place*, 2013, p. 4-6; see also CfPS, *Local Public Accounts Committees*, 2015

3. Analysis of overview and scrutiny

Overview and scrutiny was subject to some criticism in the initial period after its introduction. Critics of the new system included many long-serving councillors, used to participating in decision-making through the committee system, feeling that they were being excluded. There were also perceptions that the Government was more exercised about the role of the executive and related issues such as leadership, visibility and quality of decision-making, than about the checking and reviewing function of overview and scrutiny committees.[28]

The House of Commons Communities and Local Government Committee established an inquiry into overview and scrutiny in January 2017. A report was published in December 2017, which called on the Government to revise its guidance to local authorities on the use of overview and scrutiny committees.[29] It recommended that authorities should operate an assumption of transparency towards overview and scrutiny committees, and suggested the piloting of elected overview and scrutiny chairs (in the manner of Select Committee chairs).

The Centre for Public Scrutiny produced a report in 2015 which suggested that the main blockages to effective scrutiny might equally arise with senior officers or members, and that obstacles tended to be a question of culture rather than overtly political behaviour.

David Wilson and Chris Game stated that three conditions were required for overview and scrutiny to realise its full potential. 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 divides:

> ...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.[30]

In 2008 the Labour Government published a White Paper entitled *Communities in Control.* The then Secretary of State, Hazel Blears, announced the Government's ambition to raise the profile of overview

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28 For instance, see the All Party Parliamentary Local Government Group, *The Role of Councillors: Report of an inquiry*, June 2007

29 Communities and Local Government Committee, *Effectiveness of local authority overview and scrutiny committees*, HC-369 2017-19, 15 December 2017

30 David Wilson and Chris Game, *Local Government in the United Kingdom,* 5th ed., 2011, p343-4

and scrutiny committees, making them "analogous to the Select Committees system at national level".[31] 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.[32]

A proposal to allow committees to require information from 'partner authorities', over and above those set out in section 2.1, was included in the Local Authorities (Overview and Scrutiny) Bill 2009-10.[33] This Bill reached Report stage in the Commons, but did not make any further progress.

[31] HC Deb 9 July 2008, c1412
[32] Department for Communities and Local Government, *Communities in Control: Real People, Real Power*, Cm 7427, July 2008, p91
[33] See the Library research paper on this Bill. This was a Private Members' Bill.

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