

Subject: Scrutiny Legislation Update
Date of Meeting: 10 March 2009
Report of: Acting Director of Strategy & Governance
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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

1.1 At its January meeting the Overview and Scrutiny Commission requested a general update on legislative changes and policy drivers that will impact upon the work of Overview and Scrutiny in Brighton and Hove. This report summarises four main areas that Members should be aware of:

- Local Government and Public Involvement in Health Act 2007
- Communities in Control: Real people, real power and the associated consultation, 'Improving Local Accountability'
- Police and Justice Act 2006
- Local Democracy, Economic Development and Construction Bill

2. RECOMMENDATIONS:

2.1 That the Overview and Scrutiny Commission:

- Comments on the issues raised in the report on the future development of overview and scrutiny function.
- Instructs officers to provide updates on future policy and legislative developments in this area.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 Partnership Working

There are a number of elements of the Local Government and Public Involvement in Health Act 2007 that relate to the powers and role of overview and scrutiny committees. A key focus of the Act relates to partnership working and there are a number of measures contained within it ensuring overview and scrutiny committees play an active part in looking at matters that affect the local area, rather than focusing purely on council services. The key areas are summarised below, some of which have recently been consulted on in the 'Improving Local Accountability' consultation.

3.2 The 2007 Act establishes the statutory arrangements for Local Area Agreements and associated performance targets. Part 5 of the Act relates to scrutiny's powers to request information from partners and a responsibility for partners to have regard to and respond to scrutiny recommendations.

3.3 This provision is reinforced by recently released guidance from the Audit Commission regarding the relationship between Comprehensive Area Assessment (CAA) and overview and scrutiny which states:

Council overview and scrutiny committees not only hold the council executive to account but also consider matters that affect the local area or its citizens and have specific powers in relation to local health services. There is a two-way relationship between scrutiny and CAA. Scrutiny reviews carried out locally will provide valuable evidence that can feed in to CAA and may help inspectorates understand issues without having to carry out additional work. The findings from CAA will also be helpful to overview and scrutiny committees in identifying where they may wish to focus their attention and in providing them with helpful insights when conducting reviews. CAA is therefore of direct interest to elected councillors whatever position they hold, as community leaders on the executive or in holding the executive to account and representing local people.¹

3.4 The development of future work plans for overview and scrutiny committees in the council should have elements relating to LAA priorities, and areas for improvement as identified through the monitoring of the 198 indicators in the National Indicator Set and the CAA assessment.

3.5 In developing work programmes committees need to ensure that they are complementing the work of partner agencies, looking at overarching objectives that impact on the quality of life in the city and not just the delivery of Council services.

3.6 Councillor Call for Action

Another provision of the Act, the 'Councillor Call for Action' (CCfA) is due to be implemented in April 2009. Under the CCfA councillors will be able to refer certain matters to the relevant overview and scrutiny committee for consideration where other methods of resolution have been exhausted. Section 119 of the Local Government and Public Involvement in Health Act 2007 will introduce CCfA powers in respect of local government matters from 1 April 2009².

¹ The full guidance is available at

<http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/63FF7DFA-D1DB-46D0-B72E-39DA12AEF9E1/caaframework10feb09REP.pdf>

² Para 4 of the Local Government and Public Involvement in Health Act 2007 (Commencement No. 8) Order 2008 [SI 2008/3110]

- 3.7 Best practice guidance from Improvement and Development Agency (IDeA) and the Centre for Public Scrutiny (CfPS) on the implementation and working of CCfA was published in mid-February. The full guidance is a background paper to this report.
- 3.8 CCfA is part of the wider changes to the powers and remit of overview and scrutiny; it is aimed at empowering Councillors to resolve issues and problems on behalf of their residents. Ultimately CCfA is a mechanism that allows Councillors to seek resolution of issues they have struggled to solve elsewhere. Whilst not guaranteeing a solution it provides an opportunity for debate and discussion.
- 3.9 The central element of CCfA is that any Councillor can have an issue of concern put on the agenda of the relevant O&S Committee. CCfA is however intended to be the option of last resort when all other avenues of resolution have been pursued.
- 3.10 The Council's constitution (Part 6.1, paragraph 13.2) already allows for any Member of an O&S Committee to place an item on the agenda of any O&S Committee. The Committee must then decide whether it wishes to pursue the item suggested.
- 3.11 The Council will be looking to provide more detailed guidance and protocols of how and when CCfA could be used and OSC members are invited to feed their comments into the developmental process.
- 3.12 There will need to be some form of criteria/prioritisation process to ensure that Overview and Scrutiny Committees receive appropriate Calls for Action. These could be based on such criteria as:
- 1) Is the Committee satisfied that reasonable attempts at resolution have been made by the ward Councillor?
 - 2) Has a similar issue been considered by the Committee recently?
 - 3) Are reviews of this/or a similar issue being undertaken by the Council or its partners?
 - 4) Have relevant departments/partners been informed and not responded?
- 3.13 Statutory regulations deal with matters that can be excluded from CCfA including matters considered vexatious, discriminatory or not suitable for the agenda. Specific complaints and appeals will also not be appropriate issues for CCfA to be used for. Further details are set out in the guidance attached.
- 3.14 Police and Justice Act 2006
A CCfA power also exists in the Police & Justice Act 2006, enabling councillors to raise crime and disorder issues, particularly those relating to anti-social behaviour or the misuse of drugs, alcohol and other substances. Once in force, section 19 of the 2006 Act will require the Council:

- (i) to establish a crime and disorder committee (CDC) with power –
 - (a) to review or scrutinise decisions and actions taken by “responsible authorities”³ in connection with their crime and disorder functions; and
 - (b) to make reports or recommendations to the Executive with respect to the discharge of those functions;
 - (ii) to make CCfA arrangements which enable any member who is not a member of the CDC to refer any local crime and disorder matter to the committee
- 3.15 When filing a report or recommendation to the Executive, the CDC must provide a copy to the appropriate responsible authorities, who in turn must respond to the CDC with an action plan for addressing the matter, and have regard to the report or recommendations in exercising their functions.
- 3.16 The Home Office consulted over this in July 2008 as part of the broader local accountability arrangements for crime and disorder in the Policing Green Paper. Following that consultation, the Home Office announced in November⁴ their intention to introduce CCfA for crime and disorder matters in April 2009.
- 3.17 The Police & Justice Act⁵ requires the CDC to be an overview and scrutiny committee. However, the Council has discretion over whether to establish the CDC as a stand alone O & S committee or to incorporate its functions within another O & S committee.
- 3.18 The types of issue that may come before the CDC are currently dealt with by the Community Safety Forum (CSF). However, the CSF is not an overview and scrutiny body and cannot, as currently constituted, assume the mantle of CDC with all its attendant powers.
- 3.19 A decision will need to be made on whether to introduce a Crime and Disorder Committee as a stand alone overview and scrutiny committee or to incorporate its functions into an existing O & S committee. There is likely to be a higher resource requirement for a stand alone committee, which may result in a small additional budget pressure in 2009/10 – the potential impact has not yet been quantified.
- 3.20 Local Democracy, Economic Development and Construction Bill

³ In this context “responsible authorities” has the meaning given by section 5 of the Crime & Disorder Act 1998, namely the local chief officer of police, police authority, fire and rescue authority, Primary Care Trust, and the Council itself

⁴ See ‘Summary of Green Paper Consultation Responses and Next Steps’, para 1.11 - <http://police.homeoffice.gov.uk/publications/police-reform/green-paper-responses?view=Binary>

⁵ Section 19(9)(a)

The Local Democracy, Economic Development and Construction Bill began its parliamentary passage in the House of Lords and has reached Committee stage. It contains two provisions relating to overview and scrutiny.

- 3.21 The first is to introduce a statutory requirement for local authorities to designate a scrutiny officer (other than the chief executive, monitoring officer or chief finance officer) to:
- promote the scrutiny function internally and externally
 - provide advice and support to the authority's overview and scrutiny committees
 - advise members and officers regarding any O & S function
- 3.22 The second provision relates to the role of overview and scrutiny and petitions received by the authority. Local authorities will be under a duty to respond to petitions which meet certain criteria, and to make the response publicly available.
- 3.23 In particular, a local authority will be required to:
- provide a facility to accept electronic petitions
 - make, publicise and comply with a 'Scheme' for handling petitions
 - acknowledge petitions within a specified period
 - specify in its Scheme the measures to be taken in response to a petition; these must include holding an enquiry or public meeting, commissioning research, or referring the matter to an overview & scrutiny committee
 - specify in its Scheme a threshold number of signatures which will give an automatic right for the subject matter of the petition to be debated by full council (except for petitions calling an officer to account)
 - notify the petition organiser of the steps the authority has taken or proposes to take; and publicise this information on the authority's website
- 3.24 A petition bearing the requisite number of signatures may require a senior officer to be called to account at a public meeting of an overview and scrutiny committee. Officers subject to this requirement must include the chief executive and the most senior officers responsible for the delivery of services.
- 3.25 Once an authority has notified the petition organiser of the steps it intends to take or has taken in response to the petition, the organiser can – if dissatisfied with that response – request one of the authority's overview and scrutiny committees to review the adequacy of those steps. The outcome of the review must be communicated to the petition organiser (and made public, unless inappropriate).
- 3.26 No local authority will be required to take substantive measures in response to a petition that is vexatious, abusive or unconnected with the authority's functions; or to a petition that duplicates one dealt with in the previous six months.

4. CONSULTATION

- 4.1 Relevant officers in the Strategy and Governance Directorate.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The impact of the Local Government and Public Involvement in Health Act 2007 and Police and Justice Act 2006 may result in small unfunded budget pressures in 2009/10. Enactment of the Local Democracy, Economic Development and Construction Bill is likely to result in additional costs in the form of staffing and publicity. These costs will be assessed once more definite details are known.

Finance Officer Consulted: Anne Silley

Date: 2 March 2009

Legal Implications:

- 5.2 All legal issues are addressed in the body of the report. There are no specific issues relevant to the Human Rights Act arising from the report.

Lawyer Consulted: Oliver Dixon

Date: 2 March 2009

Equalities Implications:

- 5.3 Any new activity instigated as a result of the legislation's implementation will be equality impact assessed in line with the Council's equalities policy

Sustainability Implications:

- 5.4 There are no sustainability implications arising from the report.

Crime & Disorder Implications:

- 5.5 The purpose of CDCs is to increase the accountability of those bodies responsible for tackling crime and disorder in the local authority area. The statutory requirement on these bodies to respond to reports and recommendations of the CDC and to have regard to their content in exercising their functions should ensure that their actions are more closely aligned to the crime and disorder issues raised by members on behalf of their constituents.

Risk and Opportunity Management Implications:

- 5.6 There are risks in terms of resource implications, and infrastructure to support changes to council procedures.

Corporate / Citywide Implications:

- 5.7 The drive towards increased community empowerment will support the Council's corporate priority of open and effective city leadership.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. Councillor Call for Action Guidance.
2. Papers to the Council's governance committee on
 - Local Government and Public Involvement in Health Act 2007
 - Communities in Control: Real people, real power and the associated consultation, 'Improving Local Accountability'
 - Police and Justice Act 2006
 - Local Democracy, Economic Development and Construction Bill

