

**THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 –
IMPLICATIONS FOR OVERVIEW AND SCRUTINY
(Report by the Head of Democratic and Central Services)**

1. INTRODUCTION

- 1.1 The purpose of this report is to acquaint Members with details of recent legislative changes affecting overview and scrutiny.

2. BACKGROUND

- 2.1 The Secretary of State has finally made an Order bringing into force those aspects of the Local Government and Public involvement in Health Act 2007 that affect Overview and Scrutiny. The changes are summarised below.

3. CHANGES

The Councillor Call for Action

- 3.1 In future, any Member of a council will be able to refer to an overview and scrutiny committee any local government matter which is relevant to the functions of that committee. In addition, any Member may request that a local government matter relating to his Ward shall be included in the agenda for, and discussed at, a meeting of any of the relevant Overview and Scrutiny Panels. In considering whether or not to exercise any of its powers, the committee must have regard to whether it is an excluded matter under the legislation or as defined by the Secretary of State. The committee must provide the member with a copy of any resulting report or recommendations either to the Council or the Cabinet on the CCFA and if the committee decides not to exercise its powers in relation to the matter, it must notify the Member of its decision and the reasons for it.
- 3.2 The changes will require alterations to both the Council Procedure Rules and the Overview and Scrutiny Procedure Rules which currently enable any Member to raise an item on a committee agenda. As both Rules are contained in the Constitution, the Corporate Governance Panel and the Council will be required to approve the changes. Annex A contains the changes proposed.
- 3.3 Under the legislation, an Overview and Scrutiny Panel can decide not to include a CCFA on an agenda. It is recommended that authority to reject a CCFA be delegated to the Head of Democratic and Central Services after consultation with the appropriate Panel Chairman.
- 3.4 A guide to the use of the Councillor Call for Action has also been prepared which is reproduced at Annex B which the Panel are invited to approve.
- 3.5 The Councillor Call for Action for crime and disorder matters under the Police and Justice Act 2006 has yet to be implemented.

Delegated Decision-Making

- 3.6 Councils will be able to delegate decision making to individual councillors in relation to their ward. An overview and scrutiny committee may require a Member who has had functions delegated to him / her to attend before it to answer questions relating to the exercise of that function. This issue has been considered by a Working Party established by the Cabinet to undertake a review of the Council's democratic structure. The Working Party's report appears elsewhere on the Agenda in which it is being recommended that functions are not delegated to individual Ward Councillors.

Power to Require Information

- 3.7 The Secretary of State can make regulations as to which information can be requested from partner authorities and which cannot be disclosed but the regulations have yet to be made. Specific provision is made for district council overview and scrutiny committees to request information from the relevant county council and partner authorities of that county council, other than a police authority, or a chief officer of police. Overview and scrutiny committees can require partner authorities to have regard to their reports or recommendations.

Reports and Recommendations

- 3.8 Where an overview and scrutiny committee makes a report or recommendations to the authority or the executive, the committee may decide to publish the report or recommendations and, by notice in writing, require the authority or executive to consider the report or recommendations and to respond to the overview and scrutiny committee indicating what (if any) action the authority or the executive proposes to take. If the overview and scrutiny committee has published the report or recommendations, the authority or executive must publish the response within two months beginning with the date on which the authority or executive received the report or recommendations or (if later) the notice.
- 3.9 An overview and scrutiny committee may by notice in writing to a relevant partner authority, require the partner authority to have regard to a report or recommendation in exercising their functions. Where the report or recommendations relate to a local improvement target which is specified in a local area agreement, it is the duty of the relevant partner authority to comply with the requirement. This does not apply if the relevant partner authority is a health service body or the Police.
- 3.10 The overview and scrutiny committee or the local authority, in publishing a document or providing a copy of a document to a relevant partner authority must exclude any confidential information, and may exclude any relevant exempt information.
- 3.11 The Secretary of State may by regulations make provision under which a district council may confer on an overview and scrutiny committee the power to make reports and recommendations to the related county council or that council's executive on any local improvement target which relates to that county council and which is specified in a local area agreement. Again, this also applies to any other authority which is a partner of that county council, other than the police.

- 3.12 Discussions are taking place between officers of the County and District Councils in the County on the preparation of a scrutiny protocol and this will be brought to the attention of the Panels when it has been drafted.

Joint Overview and Scrutiny

- 3.13 County and District Council can now make arrangements for joint overview and scrutiny committees, again subject to regulations to be made by the Secretary of State. Again, discussions are taking place on how the changes will affect the Joint Accountability Committee which currently scrutinises achievement of the local area agreement in Cambridgeshire.

4. CONCLUSION

- 4.1 The new powers have been promised for some eighteen months since the 2007 Act was passed. Although they come into effect in April 2009, the specific powers in relation to crime and disorder scrutiny have yet to be enacted. The regulations in relation to requiring information from others and on joint scrutiny have still to be issued, as has the guidance on the Councillor Call for Action.

5. RECOMMENDATION

- 5.1 The Panels are

RECOMMENDED

- (a) to note the changes outlined in this report that take effect from 1st April 2009;
- (b) to authorise the Head of Democratic and Central Services, after consultation with the appropriate Overview and Scrutiny Panel Chairman to determine whether a Councillor Call for Action shall be included on a Panel Agenda and which Panel is the most appropriate;
- (c) to recommend the Corporate Governance Panel and Council to approve the changes to the Council Procedure Rules and Overview and Scrutiny Procedure Rules as set out in Annex A; and
- (d) to approve the guide for the Councillor Call for Action in Annex B attached.

BACKGROUND INFORMATION

Statutory Instrument 2008 No. 3110 (C.134).

Councillor Call for Action Best Practice Guidance issued by the Centre for Public Scrutiny and the Improvement and Development Agency.

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IMPLICATIONS OF THE COUNCILLOR CALL FOR ACTION PROCEDURE

Council Procedure Rules

Item 24 deals with items on committee agenda. It enables any member to place an item on the agenda for any meeting by giving notice to the Chief Executive or Director of Central Services. The officers' decision is also final as to whether an item should be included on an agenda.

The Councillor Call for Action contains statutory exclusions as to what items can be raised. Of necessity it must be dealt with differently.

It is therefore **recommended that -**

in the second and penultimate lines of paragraph 24 of the Council Procedure Rules, the words 'Overview and Scrutiny Panel' be deleted; and

a second paragraph be added to Item 24 to read 'Any member wishing to have an item placed on an agenda for a meeting of an Overview and Scrutiny Panel will comply with the Councillor Call for Action procedure, a guide to which is attached at Annex (iv).'

Overview and Scrutiny Procedure Rules

A number of changes are required to the Rules to reflect the changes introduced by the Local Government and Public Involvement in Health Act 2007.

Item 7 deals with agenda items. The references to the ability of a member to raise an item are no longer relevant.

It is recommended that the first and second paragraphs of Item 7 be deleted and replaced by the following –

'A member may raise an item on an Overview and Scrutiny Panel agenda in accordance with the Councillor Call for Action (CCfA) procedure. A member of a Panel may raise an item on an agenda for a meeting of that Panel which relates to the functions of that Panel. Any Member may raise an item on an agenda of a meeting of a relevant Panel if it relates to the discharge of any of the Council's functions or it affects that member's ward or any person who lives or works there. In certain circumstances a CCfA may be omitted from an agenda if it is an excluded matter. A guide to CCfA is attached to the Council Procedure Rules as annex (iv).'

Item 9 deals with reports from Overview and Scrutiny Panels. The 2007 Act has introduced a requirement for the Council and the Cabinet to respond to a report and recommendations by a Panel.

It is recommended that the third paragraph of Item 9 be deleted and replaced by the following –

'An Overview and Scrutiny Panel may choose to publish a report and recommendations.

‘An Overview and Scrutiny Panel must, by notice in writing, require the Council or Cabinet to consider the report and recommendations and respond indicating what action (if any) they propose to take. If the Overview and Scrutiny Panel has published its report and recommendations, the Council or Cabinet must publish their response within two months of receiving the Panel’s report or the notice (if later).’

Item 10 deals with the consideration of Overview and Scrutiny Panel reports. As a statutory timescale of two months for a response has been introduced, amendments are required to the text.

It is recommended that the last sentence of the first paragraph of Item 10 be deleted and replaced by the following –

‘The Council or the Cabinet shall respond to a report and recommendations of an Overview and Scrutiny Panel within 2 months of receiving the report or a written notice from the Panel requiring them to consider the report (if later).’

In the penultimate sentence of the third paragraph, the following words should be added ‘or the written notice (if later)’.

HUNTINGDONSHIRE DISTRICT COUNCIL

A GUIDE TO THE COUNCILLOR CALL FOR ACTION

1. What is the Councillor Call for Action?

- 1.1 The Councillor's Call for Action (CCfA) provides an opportunity for a councillor to raise an issue at a meeting of one of the Council's Overview and Scrutiny Panels when it has not proved possible to resolve the matter in any other forum. It provides an opportunity for a matter to be discussed in a public forum and will augment the Council's overview and scrutiny role.
- 1.2 The guide has been prepared to offer assistance to a councillor who is thinking of pursuing a CCfA and has had regard to a best practice guidance booklet published by the Centre for Public Scrutiny and the Improvement and Development Agency. Statutory guidance may be issued by the Secretary of State which may necessitate change to this guide.

2. What is CCfA designed to achieve?

- 2.1 CCfA should be seen in the context of wider changes introduced to provide overview and scrutiny with greater powers to work more closely with partners and across organisational boundaries. It will enable councillors as the democratic representatives of their communities to raise issues that it has not been possible to resolve by other means.
- 2.2 CCfA should not be seen in isolation. It is part of a range of measures available to a ward councillor in support of his or her representative role, including the internal feedback process, petitions, call-in etc.

3. Who can raise a CCfA?

- 3.1 It is open to any councillor to raise a CCfA at a meeting of one of the Council's Overview and Scrutiny Panels. The councillor does not have to be a member of the relevant panel.
- 3.2 A councillor whose CCfA is listed on an agenda for a panel meeting will be invited and expected to attend that meeting to speak to the item.

4. What can be raised through a CCfA?

- 4.1 A councillor who is a member of an Overview and Scrutiny Panel can raise any matter that is within the terms of reference of that Panel. Any councillor can raise a local government matter with any of the Council's Overview and Scrutiny Panels. A local government matter can relate to the discharge of any function of the Council and, more locally, all or part of the councillor's ward or any person who lives or works in it. The latter is not restricted to the functions and responsibilities of the District Council. In line with the area focus of Comprehensive Area Assessment and the fact that the Council's duties increasingly impact on other organisations and involve partners within and outside the Local Strategic Partnership, a councillor can raise any issue

that relates to the economic, social and environmental well-being of his or her ward.

5. Is any matter excluded from a CCfA?

5.1 Yes. There are certain statutory exclusions from CCfA –

- any licensing or enforcement decision in relation to the sale or supply of alcohol, regulated entertainment or late night entertainment or any review of a decision;
- any planning or enforcement decision under the planning legislation;
- any matter relating to an individual or entity who has a right of recourse to a review or appeal under any enactment (excluding a right to make a complaint to the Local Government Ombudsman);
- a local crime and disorder matter (which is dealt with under different provisions); and
- any matter which is vexatious, discriminatory or not reasonable* for inclusion on an agenda or for discussion at a meeting of an Overview and Scrutiny Panel.

5.2 However a CCfA can be raised about licensing and planning decisions and where there is a right to review or appeal if the CCfA consists of an allegation that the authority responsible has failed to discharge the function or is failing on a systematic basis.

6. What other avenues are available to resolve an issue?

6.1 There is a wide range of both formal and informal avenues available that a councillor can use to influence change and resolve problems. These include –

- Motions on the agenda at full Council
- Written and oral questions at full Council
- Exercising the right to ask for items to be included on an agenda
- Organising a petition
- Organising a public meeting
- Informal discussions with officers or other councillors
- Liaison and discussions with councillors of other authorities, such as the County Council or relevant town or parish council
- Raising the issue at a neighbourhood forum
- Writing or e-mailing an officer or an officer of another authority on behalf of a constituent.

6.2 It is important to recognise CCfA as a last resort rather than the primary route to getting constituency issues resolved. It would be an unnecessary waste of resources if a councillor tried to deal with all constituency issues or matters of concern by raising them on an Overview and Scrutiny Panel agenda. A councillor should try to resolve matters informally or at a local level before considering whether to pursue a CCfA. Advice can be sought from the Scrutiny Manager on appropriate courses of action.

6.3 Care should be taken by a councillor not to offer definitive advice to a constituent about a particular issue which may lead to action or expenditure on the part of that constituent. Councillors are not insured to do so and any subsequent claim by a constituent that the advice was flawed could lead to embarrassment and costs.

7. How will the process work?

7.1 A councillor wishing to raise a CCfA should contact the Scrutiny Manager with the appropriate details not less than ten working days prior to the despatch of an agenda for the Overview and Scrutiny Panel on which the item is to be included. He or she should explain –

- The background to the CCfA
- What action the councillor has already taken to try to resolve the issue informally
- If the issue is being raised on behalf of a constituent, what action the constituent has taken to try to resolve the matter
- What resolution the councillor (or constituent) is seeking to achieve.

7.2 It is important to recognise that CCfA is not appropriate for an individual complaint, e.g. a complaint by an individual resident about a failure to collect refuse or about an incident in a leisure centre. Avenues for complaint already exist to deal with such matters through the Council's feedback procedure if a matter is not resolved to the satisfaction of the complainant. However scrutiny can become involved where it is felt that a series of complaints demonstrates a systematic failure in a particular service.

7.3 On receipt of the request, the Scrutiny Manager will obtain any further information thought to be necessary from the councillor, including any documentation that may be available, and his or her availability to attend the Panel meeting when the CCfA is to be raised. The Scrutiny Manager will consult with the Chairman of the relevant Overview and Scrutiny Panel as to whether the CCfA can be accepted or whether it should be excluded under the statutory criteria.

7.4 In considering whether to include the CCfA on an agenda, regard will be had to any representations made by the councillor in support of his or her request. The Head of Democratic and Central Services, after consultation with the appropriate Chairman has been authorised to determine whether a CCfA can be accepted and which Panel it should be considered by. If the CCfA is rejected, the councillor will be notified of the decision and the reasons for it.

7.5 The relevant executive councillor will be invited to attend the Panel meeting at which the CCfA is to be raised, together with a senior officer from the appropriate directorate or division.

7.6 When an item is raised at a Panel meeting, the councillor bringing the CCfA will be invited to speak to the Panel about the issue and what outcome is being sought. The Panel may –

- Challenge the expected outcome if it feels that this is unreasonable or inappropriate

- Seek further information from the councillor bringing the CCfA
- Invite the executive councillor or senior officer to respond to the issues raised by the councillor
- Decide to ask the executive councillor or senior officer to report back to a future meeting with further information, after investigating the issue raised
- Decide whether to invite a representative of a partner or other organisation to attend a future meeting if the CCfA relates to an issue that is the responsibility of that organisation and not the District Council
- Appoint a sub group to investigate the issue further and report back with recommendations
- Recommend the executive councillor or Cabinet to pursue a particular resolution to the CCfA
- Decide that it would be inappropriate to pursue the matter any further.

7.7 If the Panel decides to submit a report and/or recommendations either to the authority or the Cabinet, it will provide the councillor with a copy.

7.8 The decision of the Panel on the CCfA shall be final.

8. ***Definitions**

8.1 Any matter which is vexatious, discriminatory or not reasonable is excluded from CCfA.

8.2 **'Vexatious'** is defined in guidance to the Freedom of Information Act as 'Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easy to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause'.

8.3 Issues around persistency are also implied in this definition. However a persistent request may be entirely valid where it relates to a systematic problem. A request which some councillors may regard as vexatious for political reasons may be entirely reasonable.

8.4 **'Discriminatory'** is defined in the Equality Act as 'A person ("A") discriminates against another person ("B") for the purposes of this Part if on the grounds of the religion or belief of B or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material, difference in the relevant circumstances'. The definition can applied to other forms of discrimination for reasons of sex and/or race.

8.5 **'Not reasonable'** does not mean the same as unreasonable. It is best considered as a qualifier to the word 'vexatious' i.e. a vexatious request is likely to be not reasonable and vice versa.