



Communities in control: Real people, real power  
**Government response to the improving local accountability  
consultation**



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# Section 1

## Introduction

1. The consultation paper *Improving Local Accountability*, issued by the Government on 7 August 2008, covered a range of policy commitments from the Communities in Control: Real people, real power white paper<sup>1</sup> (the 2008 white paper) and work still in the pipeline from the Local Government and Public Involvement in Health Act 2007 (2007 Act).
2. The consultation sought views on three key areas of local accountability:
  - **developing and strengthening overview and scrutiny** through secondary legislation to implement the scrutiny powers introduced in the 2007 Act and seeking views on how best to take forward the 2008 white paper commitments to raise the visibility of current scrutiny arrangements
  - **increasing the visibility and accountability of local public officers** so that they are open to public scrutiny and questioning from local communities through senior officers attending regular public meetings and seeking views on a new right for local people to petition to hold officers to account
  - **facilitating the work of councillors** by modernising the way they do business to enable them to use information and communications technology to participate in meetings and vote remotely
3. Responses to the consultation were requested by 30 October 2008 and 199 responses were received from a wide range of organisations and individuals. A table showing the breakdown of responses received by organisation type can be found at annex A. In addition, department officials attended seven practitioner events on the overview and scrutiny elements of the consultation held by stakeholders during the consultation period. This document provides, for each of the proposals, a summary of the responses received in writing, as well as the views of practitioners at events, and sets out the Government's response.

<sup>1</sup> *Communities in Control: Real people, real power*; Communities and Local Government; 2008

## Section 2

# Developing and strengthening overview and scrutiny

### Implementing the 2007 Act provisions

4. The consultation sought views on the approach to the secondary legislation needed to implement provisions set out in the 2007 Act. These provisions enhance councils' scrutiny powers in the context of Local Area Agreements (LAAs), particularly in respect of:
  - overview and scrutiny committees requiring information from partner authorities
  - the publication of scrutiny reports, recommendations and responses
  - the establishment of joint county and district overview and scrutiny committees
  - enhanced powers for district overview and scrutiny committees and
  - scrutiny in small district councils operating a streamlined committee system
5. The Government's overall approach to the regulations seeks to achieve an appropriate balance between the provision of a sufficiently robust legal framework to ensure councils have the powers they need, whilst retaining the flexibility that is necessary to allow for innovation and the use of scrutiny locally to best effect. This approach also envisages any guidance to support the regulatory framework taking the form of sector led best practice guidance wherever possible. The Department will in particular be working with the Centre for Public Scrutiny and the Local Government Association on this guidance. Feedback from events and responses welcomed and agreed with this proposed overall approach to the regulatory and guidance framework.

**Consultation question 1: Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partners?**

6. The proposed regulations would define the circumstances in which partners must provide information as well as the types of information and circumstances in which information may be withheld by partners, for example personal data and information subject to commercial confidentiality, and information already in the public domain.

7. The majority of responses to this question agreed with the proposed approach in principle, with a number also suggesting additional provisions. In particular, a specified timeframe for responses to requests by overview and scrutiny committees, with various timeframes ranging from 20 days to 6 months suggested by respondents. Other respondents however suggested that timescales for responses should be agreed locally, considering that the imposition of set timeframes could hinder good partnership working and local arrangements already in place.
8. A smaller number commented on the format of the response, noting the added value that attendance in person at an overview and scrutiny meeting can bring over written responses and suggesting that the regulations should specify attendance in person where necessary. A significant number of responses however opposed overregulation on this point, again considering that these are matters best left to local discussion and agreement on the basis that it would not always be necessary or cost effective to require attendance in person by partner authorities.
9. In addition, various helpful technical points were raised, principally relating to the wording of the criteria for responding to a request and the information that may be requested by a committee. These responses highlighted the need to guard against the potential for unintended practical implications as a result of over prescription in the regulations.
10. On the basis of the responses received, the Government considers that its proposed approach to the regulations strikes the right balance between clarity and flexibility, and intends to make limited regulations for this provision in line with that approach. In doing so, the Government will reflect the helpful technical comments received in relation to the definitions of information which may or may not be disclosed, and which have the potential to otherwise restrict the circumstances in which requests may be made.
11. The Government recognises that many respondents were in favour of the regulations including a specified timetable and format for responses to requests, but the scope of the regulation making power in the primary legislation on this provision does not extend to the prescribing of timeframes or response format. Whilst recognising such provisions may be helpful in some circumstances, the Government believes that in the interests of fostering and maintaining good partnership working arrangements, these matters are best left to local negotiation and discussion, and therefore does not intend to seek an amendment to the regulation making powers. This view was reinforced by the clear lack of consensus amongst proponents of the inclusion of a time limit on the ideal duration of any such period. The Government considers that these issues may usefully be considered in best practice guidance.

**Consultation question 2: Do you agree with the proposal to apply the provisions in relation to exempt and confidential information<sup>2</sup> without modification to local authority executives?**

12. The overwhelming majority of responses agreed with this straightforward proposal. Just two per cent of respondents disagreed, considering that sufficient frameworks were already in place to cover such matters and as such, further regulations were neither necessary nor would add value. In light of the overwhelming support shown in the responses to the consultation, the Government intends to proceed and make the regulations as set out in the consultation without modification. This will mean that where a local authority executive publishes a response to a scrutiny committee's recommendations, that publication will be covered by the provisions on exempt and confidential information.

**Consultation question 3: Do you agree with the proposed approach towards joint overview and scrutiny committees? Are there specific issues that should be considered as part of the approach?**

13. The primary legislation allows regulations to be made to provide for the establishment of joint overview and scrutiny committees by a county council and one or more of the district councils within that county area. The proposed regulations would give such joint committees broadly the same powers as scrutiny committees generally (so that they may for example, appoint sub-committees and co-opt members), and in particular similar powers to overview and scrutiny committees of responsible local authorities in relation to LAA partner authorities – such as the power to require information. Measures would be included to reduce duplication of requests for information. The joint committees would be given power to make reports and recommendations to constituent local authorities and their executives.
14. Responses again generally agreed with the overall approach and there was considerable support for the principle of similar powers for joint overview and scrutiny committees with certain limitations to deal with practicalities. A number of respondents variously felt that the regulations should include provisions to ensure full and fair representation of district council interests, the equitable distribution and use of resources to support any joint committee and the need for a flexible framework not limited to either LAAs or county areas. Many respondents were also eager to ensure that the power to establish joint committees would be discretionary.

<sup>2</sup> New section 21D of the Local Government Act 2000 (as will be inserted by the 2007 Act) details circumstances in which confidential information and any relevant exempt information must or may be excluded by an overview and scrutiny committee or local authority in publishing scrutiny reports, recommendations and responses.



15. In addition, a common theme running through all responses to this question was the need for permissive regulations to allow for local solutions and arrangements to be established without the need to follow unduly bureaucratic processes or procedures. For example, various responses commented that any framework should be flexible enough to allow for the creation of permanent or standing joint scrutiny committees, or the establishment of time and/or subject limited joint scrutiny committees akin to informal joint 'task and finish groups'.
16. Of the minority of responses that disagreed with the proposed approach it was often on the basis that existing scrutiny committees in each local authority provided sufficient accountability, and that further regulation is either unnecessary or would introduce undue bureaucracy.
17. Taking account of the responses received to this question the Government will introduce regulations to enable county and district councils to establish formal joint scrutiny committees to consider issues of common interest within the LAA. These committees will be discretionary and will have broadly the same powers as overview and scrutiny committees. Joint overview and scrutiny committees therefore will be able to make reports and recommendations to, and require a response from the executives of constituent councils on the committee. The regulations will also provide that joint scrutiny committees will have similar powers in respect of partner authorities to those of a responsible council scrutiny committee. In doing so the regulations will make provision to guard against duplication and minimise the burden on partner authorities, as supported by the responses to the consultation.
18. There will however be notable exceptions to the powers of a joint overview and scrutiny committee – namely that the powers of call in and referring decisions back to the executive will not apply – in accordance with the parameters set by Parliament in the primary legislation.
19. To enable a sufficiently flexible regulatory framework, the Government does not propose to be overly prescriptive on the process by which a joint committee may be established or on the composition, size, duration or operation of and support for any such committee other than where necessary for the regulations to comply with existing statutory requirements on such issues. Whilst a minority of responses variously commented on the need for regulation on such issues, the Government agrees with the general consensus that regulations should be flexible, and considers that these matters may be better addressed through best practice guidance.

**Consultation question 4: Do you agree with the proposed approach to enable district scrutiny committees to review the delivery of LAA targets?**

20. This provision enables district councils to play an active role in scrutinising the delivery of LAA targets connected to their area. The proposed regulations would ensure that where district overview and scrutiny committees make reports and recommendations on matters relating to local improvement targets, they have similar powers to overview and scrutiny committees of responsible authorities. This will enable district councils to play an active role in the delivery of LAA targets connected to their area. As with the proposals on requests for information and joint committees, certain limitations were proposed in order to minimise the potential for duplication and secure efficient use of scrutiny resources to best effect across the LAA area.
21. Responses agreed with the proposed approach in the main, with many supporting the view that co-ordination between county and district overview and scrutiny committees is essential to avoid duplication, and the potential burden such duplication could create for councils and partner authorities across the LAA area. Other respondents however, were concerned that limitations to reduce duplication could give rise to the perception that district scrutiny must fit around that of the county. Various practical issues were also raised, particularly on the operation of the proposal that a district scrutiny committee would not be able to require a response from a county council or partner authority on an issue recently considered by a joint overview and scrutiny committee.
22. The Government intends to introduce regulations providing enhanced powers for district council overview and scrutiny committees when considering relevant LAA matters. As with the approach to joint committees, there will however be certain limitations to minimise duplication and ensure scrutiny resources are used locally to best effect. Regulations will retain the proposed approach that county councils and partner authorities will not be required to respond to a report or recommendations by a district council scrutiny committee on issues already considered by a joint overview and scrutiny committee. In retaining this approach however, the Government will have regard to the helpful practical and technical suggestions contained in the responses to ensure that measures to reduce duplication do not restrict a district council scrutiny committee's ability to consider issues of real importance to the area.

**Consultation question 5: Do you agree with the proposal to apply these new powers in councils operating alternative arrangements? Are there any specific implications that should be taken into account in doing so?**

23. The proposal to make regulations to apply the enhanced powers for district council scrutiny committees to those small district councils operating a streamlined committee system was met with overwhelming support in consultation responses. Just five respondents actively disagreed with the proposal, arguing that such authorities would lack the capacity to utilise the new powers. The vast majority

of responses however consider the proposed approach to be both sensible and desirable and a number of such responses highlighted the benefits that the new powers would bring to such councils – many argued that the ability to engage in joint working would improve scrutiny capacity in these councils. The Government considers it essential that all district councils, regardless of the decision making system in operation, have equal powers to engage in scrutiny of LAA issues, and given the overwhelming agreement with the proposed approach, will make the regulations as set out in the consultation.

## Taking forward the 2008 white paper commitments

### **Consultation question 6: What issues should be considered as part of any new power to establish area scrutiny committees?**

24. The Government proposed to introduce a power for county and district councils to combine their respective scrutiny resources in 'area scrutiny committees' where they wish to do so. Such area committees would operate within the county area, combining district and county resource in a powerful partnership.
25. Responses to this proposal identified a wide range of issues for consideration, which can be grouped into three key issues as follows:
  - the need for any joint arrangement to ensure fair and equitable representation of all interests, and that any such joint arrangement should complement, not constrict existing individual scrutiny arrangements
  - again, the need to ensure that any new power is sufficiently flexible to enable arrangements to take into account local needs and circumstances and
  - considerations about governance and resourcing of any such arrangements – in particular the need to ensure that committees do not become so large that they are unwieldy and ineffective
26. Building on the existing joint overview and scrutiny framework introduced through the 2007 Act, the Government has included provision in the Local Democracy, Economic Development and Construction Bill to broaden the remit of any joint scrutiny arrangements – currently restricted to LAA targets. This will increase the scope for joint working enabling district and county councils to combine their efforts and resources on a wider range of matters. The Government will take account of the issues raised by respondents in preparing any supporting secondary legislation.

**Consultation question 7: How might the requirement for dedicated scrutiny resource be put into practice?**

27. The Government announced in the 2008 white paper its intention to raise the profile of the scrutiny function in councils by requiring some dedicated scrutiny resource in county, unitary and London borough councils across England, thereby ensuring that all areas in England are covered by dedicated scrutiny resource to support the overview and scrutiny function in local government.
28. Responses to this question were mixed. Some welcomed the commitment to require a dedicated scrutiny resource, seeing it as an important means of ensuring that scrutiny is seen as a necessary and core function. Others held the opposite view, regarding the proposal as an unnecessary intervention in the allocation of resources which is a matter for councils. Conversely, a number of respondents considered that the Government should go further and set out detailed definitions of the resources and budgets that should be allocated to the scrutiny function in councils in addition to the organisation and statutory duties of that function. Proponents of this view also tended to consider that the requirement should apply equally to all principal councils.
29. The Government believes that it is important to raise the profile of this vital function in local authorities, and considers that requiring some dedicated resource for the function will go some way to achieving this. Having regard to the responses to this consultation, the Local Democracy, Economic Development and Construction Bill contains provision to require county, unitary and London borough councils to designate an officer as 'scrutiny officer', responsible for providing scrutiny support and promoting the scrutiny function. In recognition of the contrasting views received, the Government does not propose to introduce prescriptive requirements regarding the organisation, role or level of resources to be allocated to the scrutiny function – considering that a 'one size fits all' approach is neither appropriate nor desirable in this case. It is through this careful balance that the Government considers that further weight may be given to the scrutiny function whilst maintaining councils' flexibility to determine their own organisational arrangements as appropriate to individual circumstances.

**Consultation question 8: Do you agree that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee? What practical issues might arise?**

30. Responses to this question were split. Many respondents agreed that given that overview and scrutiny committees are independent of the executive, and that from April 2009 overview and scrutiny committees will be considering Councillor Calls for Action, they should also review petitions where the petition organiser is dissatisfied with the response they received from the local authority. Other respondents questioned the need for a statutory duty to respond to petitions, and central prescription over how appeals about petitions should be dealt with. Others believed that there should be no appeal mechanism for petitions.
31. A YouGov poll found that 90 per cent of people think councils should take petitions into account, but a Local Government Association survey found that less than a third of local authorities guarantee a response to petitions. Further research by Communities and Local Government highlighted that even fewer local authorities make information about how to petition publicly available. Leicester DeMontfort University has found that petitions empower people when there is a clear relationship between the petition and government decision making.
32. The Government therefore believes there is a strong case to place a duty on principal authorities to respond to petitions, and to create a national framework for dealing with appeals to petitions. The Local Democracy, Economic Development and Construction Bill provides for overview and scrutiny committees to consider appeals to petitions, which will ensure that local people's views expressed through petitions are built into local decision-making, bringing all councils up to the standards of the best.
33. Many useful points were made about the practical issues which might arise from the Government's proposals. Several respondents proposed that petitions on planning applications should not go to overview and scrutiny committees for appeal. The Government intends to use secondary legislation to exclude petitions on planning applications from the scope of the duty to respond to petitions, as there are already extensive processes for dealing with public comments on planning applications.
34. Some respondents were concerned about the volume of appeals which may be lodged, and whether overview and scrutiny committee time might get tied up in considering vexatious petitions. Based on these concerns, the Local Democracy, Economic Development and Construction Bill provides that there can only be one appeal per petition, by the petition organiser. Vexatious, abusive or otherwise inappropriate petitions will not be eligible for a response from the authority.
35. While some respondents wanted statutory guidance to be kept to a minimum, others requested advice on dealing with petitions and appeals under the new system. The Government intends to support the local government sector in producing with the sector, a best practice guide to offer practical support to councils.

## Section 3

# Increasing the visibility and accountability of local public officers

### Attendance at regular public hearings

**Consultation question 9: Do you agree with this approach that those responsible for the job descriptions (within local public bodies) should determine the precise arrangements by which the chair or chief executive will attend regular public meetings?**

36. This proposal received a mixed response, many were in agreement with the principle that chairs and chief executives of local public bodies should attend regular public meetings, but noted that such practices are already common in some local public bodies, and as such, specific provision by Government on this issue is not necessary. A common theme running through the responses, was that any such arrangements should be left to local determination.
37. Analysis of the responses also showed that there was a preference for public meetings to be held annually, rather than three or four times per year, and another common theme was that officers should not be held to account for decisions taken by democratically elected members.
38. The Government, having regard to the consultation responses, does not currently propose to legislate on this issue, and will seek to build on the experience of those public bodies that already have similar provision or requirements by promoting this practice in guidance.

### Petitions to hold local public officers to account

**Consultation question 10: Do you agree with our proposals to require the local authority with its strategic partners to agree a local scheme for petitions to hold officers to account? What practical issues might arise?**

39. Responses to this question were mixed, with many respondents commenting on practical issues rather than expressing support or opposition for the proposals. Some respondents believed that senior officers attending public hearings would help make local decisions more transparent and increase public accountability. Other respondents were sceptical about the need for officers to be required to appear in public. Some councils reported that they already had similar procedures in place, and that officers attended public meetings on a regular basis.
40. Other respondents were concerned that these public hearings could lead to officers being scrutinised for political decisions taken by elected members. The Government proposes that senior local authority officers should be required to attend public hearings if requested by a petition with the number of signatures set in the council's petitions scheme. To ensure that lines of accountability are not blurred, the Local Democracy, Economic Development and Construction Bill provides that senior officers would only be required to attend these hearings when the grounds for the petition related to the officers' job responsibilities. This would mean that the officer could be publicly scrutinised about the operational decisions they took, or the advice they gave to members, but not about the political decisions taken by members.
41. A number of respondents emphasised the importance of protecting officers' rights to privacy in their personal life, and the importance of ensuring the hearings are not a forum for bullying or harassment. The requirement that the grounds for the petition must relate to the officer's job responsibilities ensures that the officer's personal circumstances cannot be the grounds for a hearing, or be discussed at the hearing. The Local Democracy, Economic Development and Construction Bill also provides that petitions which are vexatious, abusive or otherwise inappropriate would not be able to trigger a public hearing.

**Consultation question 11: Should the Government provide some minimum standards for local schemes to hold officers to account? What should they be? Which, if any, local service providers and agencies must, or must not be in any scheme?**

**Consultation question 12: Do you agree that the scope of the scheme should be agreed locally subject to any statutory minimum standards and whether this would be an effective means of empowering communities?**

42. There was broad support among respondents for setting minimum national standards for petitions schemes to hold officers to account, and many respondents thought that these proposals would empower local people and make local decisions more transparent.

43. A common reason for wanting minimum standards was to ensure that junior officers are not forced to attend public hearings to explain the delivery of services which they are not responsible for. Several respondents proposed that Government should also set minimum standards for the number of signatures required to trigger a hearing of a local officer, and should offer guidance on how quickly such hearings should take place. Many respondents felt that these standards should allow significant local flexibility.
44. Others believed that the schemes should be completely local, or that there was no need for the schemes at all. Some councils said that their senior officers already attend public hearings, and believed that these proposals would therefore not be an effective way of empowering communities. Other respondents believed there was no need for additional mechanisms for the public to influence local decisions.
45. In contrast to these responses, the 2007 Citizenship Survey found that only two-fifths (38 per cent) of people felt they could influence decisions in their local area. Qualitative evidence suggests that the quantity and quality of information provision by local councils can be important in determining the extent to which people feel that they can influence local decisions. Participants in ten focus groups felt that local authorities often did not do enough to involve local people in decision-making.
46. The 2006-07 Best Value User Satisfaction Survey found that less than half (47 per cent) of local authority residents felt that their council kept them well informed about the services and benefits it provided, a decline of nine percentage points since 2003-04. Given the evidence that people who feel more informed tend to be more satisfied with their council overall, the Government believes that requiring councils to have schemes so that local people can trigger hearings of senior officials will benefit both local people and councils.
47. Views were split on which local service providers should be required to have such a scheme. Some respondents believed that all bodies delivering public services should be involved, others referred to organisations involved in the delivery of local area agreement targets, and others discussed the proposals applying to councils as part of their existing petitions schemes and overview and scrutiny arrangements.
48. As suggested in the consultation document, the Government proposes that petitions should be able to require principal authority statutory chief officers and non-statutory chief officers to explain their activities in meetings of overview and scrutiny committees. The Government believes that Chief Executives should also be required to attend these meetings if called for by a petition signed by enough people.



49. The Local Democracy, Economic Development and Construction Bill requires principal authorities to have a petitions scheme, which includes a threshold number of signatures which would trigger a public hearing of these officers. The threshold number of signatures would be decided by the principal authority, and the authority could add other officers to the scheme as well. The Bill provides the Secretary of State for Communities and Local Government with the power to specify what the threshold should be in secondary legislation, or to intervene with individual authorities, if their schemes were drafted in a way which did not empower local people.
50. This proposal means that officers would be questioned by members of the authority at a public meeting, whilst ensuring that there is a clear separation between the democratic accountability of council members, and council officers' accountability to those members.
51. Overview and scrutiny committees would also be able to ensure that these public meetings are carefully chaired, ensuring that officers are not exposed to bullying or harassment. Overview and scrutiny committees already examine the activities of officers, and have powers to require officers to attend public meetings. These proposals mean that overview and scrutiny committees would be required to use their existing powers when a petition with enough signatures is received.
52. The Local Democracy, Economic Development and Construction Bill provides the Secretary of State for Communities and Local Government with a power to extend the petitions proposals to other types of local authority using secondary legislation. The proposals could be applied in a modified form. This means that in the future, the proposals could be extended to other types of local bodies, who do not have overview and scrutiny committees. The Government would carry out a public consultation before exercising this power.

## Section 4

### Facilitating the work of councillors

#### Remote attendance and voting by authority members

**Consultation question 13: Do you agree with the proposed approach (to legislate to allow authorities to modify their attendance and voting procedures as necessary to allow remote voting)?**

53. Of the 143 responses to this question, half of respondents opposed the proposals outright, a third gave support qualified to a greater or lesser extent for some or all aspects of the proposal and less than a quarter supported the proposal in the consultation document. There was no correlation between the type of respondent and the opinion they expressed.
54. The most common concern raised was that remote attendance and voting is contrary to the work of the council and councillors being transparent and accountable and that in lacking transparency and accountability it erodes public confidence in democracy. There was a very clear message from those consulted that not only do councillors have to meet face to face to get the best out of their meetings with each other, but citizens want to be able to attend public meetings and see their councillors at work.
55. Concerns were also raised about the practicality and cost of remote attendance and voting, with respondents suggesting that the proposals could benefit from being trialled to determine how remote attendance and voting could be successfully achieved.
56. It was acknowledged that while there are advantages to remote attendance and voting, there are also risks involved not just in terms of damage to confidence in local government but also in terms of increased risk of challenge on decisions arrived at through meetings or decisions that involve remote attendance.
57. We acknowledge the concerns but believe that these can be addressed successfully. The Government believes the implementation of the proposals will require primary legislation and accordingly we intend to work with the Local Government Association, local authorities and other stakeholders to address the particular concerns raised pending introduction of primary legislation which the Government intends to seek at the next convenient opportunity.

# Annex A

## Breakdown of consultation responses

District Council	72
County Council	24
Metropolitan Council	14
Unitary Council	16
London Borough Council	14
Parish Council	8
Health	5
Fire	6
Police	1
Third Sector	5
Members of public	4
Other <sup>3</sup>	30
Total	199

<sup>3</sup> This includes the Local Government Association, the Centre for Public Scrutiny and other national representative bodies.

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