

To: Cabinet Scrutiny Committee – 24 January 2007

From: Corporate Policy

Subject **IMPLICATIONS OF THE LOCAL GOVERNMENT BILL FOR THE OVERVIEW AND SCRUTINY FUNCTIONS OF KCC.**

## **1. Sources**

In the Bill, the sections concerning overview and scrutiny arrangements are to be found in Sections 92 – 96 in Part 5 (sub-titled “Cooperation of English authorities with local partners etc”), Chapter 2. There are no references in the Bill itself to the Community Call for Action. The proposed Implementation Plan (possible publication during January 2007) may shed more light.

In the White Paper, the relevant paragraphs about overview and scrutiny are mainly to be found in Chapter 3, particularly paragraphs 3.29 – 3.37. There are numerous further references, particularly in Volume 2 of the White Paper.

## **2. The Context**

The White Paper - and now the Bill - has been brought forward with the intention of strengthening the role of local government in helping to create “strong and prosperous communities”. To this end, the Secretary of State, when appointed in May 2006, was tasked by the Prime Minister with introducing “a radical and devolutionary” White Paper on local government.

The medium-term policy backdrop has been a growing consensus amongst political groups (as well as academic and media pundits and think-tanks) in favour of “localism”. This is in quotes because, like multi-culturalism or place-shaping, there is no single, commonly agreed definition for the term. There is also the continuing push from rising public expectations for improved public services to reinvigorate local accountability to strengthen the voice of those using local public services.

The spirit of a double-devolutionary approach to localism is very evident in the Bill, even if it is now refracted through Sir Michael Lyon’s “place-shaping” prism. The new duty to cooperate amongst a wide range of local public service providers with regard to Local Area Agreements (Part 5, Chapter 1) is linked with the Community Call for Action and the extended scope for local scrutiny (Part 5, Chapter 2). Equally importantly, from the viewpoint of future governance, these provisions are both closely linked with the new Best Value duty on councils (Part 7 of the Bill) to engage with the communities they serve, to encourage their participation in policy and service development and the review and monitoring of service delivery as well. This in turn reads across to the specific provisions on Local Involvement Networks (Part 11) regarding health and social care.

Some commentators have suggested that the original scrutiny powers created in the Local Government Act 2000 transposed a somewhat ineffective model of scrutiny from a Parliamentary to local government setting and that the new provisions are an effort to address some of those deficiencies.

### **3. *What is new?***

Essentially, the provisions in sections 92 to 96 the Bill concern matters of due process, dealing with:

- the extended scope of how elected members can get issues raised on the agenda of an overview and scrutiny committee (OSC);
- the enhanced powers of an OSC to require elected members to attend and answer questions;
- the extended powers of OSCs to require the provision of information from "relevant partner authorities" (ie those authorities and bodies itemised in "duty to cooperate" provisions);
- the extended duties of authorities and executives to consider and respond (publicly, subject to exemptions) and in the case of partner authorities "have regard" to OSC reports and recommendations;
- the new duty to ensure that where matters are raised via OSCs by an individual elected member, the individual member concerned is kept involved and informed throughout;

As mentioned above, Part 11 of the Bill (sections 153 – 164) is relevant to the extent it requires local authorities with responsibilities for personal social services to establish through contractual arrangements Local Involvement Networks (LInKs) as independent people-powered scrutineers of health and social care services in the area covered by the local authority. It is outside the scope of this paper but it is self-evident that close links will need to be forged between "scrutiny plus" and LInKs – and indeed with CDRPs on crime and disorder issues.

It seems somewhat obscured by the legalistic language of the Bill but it is the provisions in Section 92 which appear to point the way to what has been deemed "scrutiny plus", whereby the generality of public services in an area are opened up to local authority overview and scrutiny functions. It is noteworthy that the scrutiny of crime and disorder and NHS issues are governed by separate processes determined respectively by the Police and Justice Act 2006 (the legislative birthplace of the Community Call for Action) and the National Health Service Act 2006 (a consolidating Act, incorporating the NHS scrutiny provisions of the Health Care & Social Care Act 2001). This is thought to be a reflection of inter-Departmental realpolitik in Whitehall. However, the principles, processes and scopes of scrutiny look reassuringly and reasonably consistent across the piece.

There may be a good case for having a single integrated (within a local authority) "scrutiny plus" arrangement, rather than potentially parallel but separate processes. However, the fact that this need not be an insurmountable inconvenience (for local authority interests) can be evidenced

in Kent by the operation of the Policy & Overview Committee Coordinating Committee since the 2000 legislation came into effect as a way of anticipating and managing the kinds of issues that need examination.

It is open to interpretation but the “due process” wording in the Bill seems consistent with an attitude towards scrutiny that enables local authorities to take a wider view and more flexible approach.

#### **4. Future options**

KCC already has an established track record on scrutiny. NHS scrutiny arrangements were being piloted even before policy guidance or draft regulations were issued. Since the Local Government Act 2000 came into effect, non-executive Members have not limited themselves to a purely internal scrutiny role but through managed programmes of topic reviews have examined a wide range of issues of importance to the county council and the people of Kent. This has been achieved without recourse to powers to demand attendance and cooperation.

Looking to the future, Members might well wish to consider the added value that comes not just from the extended statutory ‘due process’ provisions themselves but also how involving people and communities directly can help strengthen local democracy and public confidence in its institutions. Many Members will be aware of the findings and conclusions of the Power Commission which published the results of its nationwide investigations in the Spring of 2006. It is a challenging report but where it highlights good practice, it demonstrates that finding innovative ways to engage public engagement in the holding-to-account and place-shaping roles of local government will pay dividends.

The Community Call for Action will vest new powers in local councillors. The power to ‘gate-keep’ local issues brought to their attention implies, according to the White paper but not the Bill, that local councillors will be expected to attempt to secure local resolutions through their local endeavours, of which referring to the appropriate scrutiny body is but one means at their disposal.

With the emphasis here on local issues and in order to be consistent with the Bill’s new Best Value duty for community engagement and the ‘localism’ theme of the White Paper, there is an expectation that scrutiny can be undertaken at a local level. What constitutes “local” appears at this stage to be a matter of local determination – in shire areas this could be ward division, parish (where applicable) or district.

Subject to what finally passes on to the statute book and any necessary changes to the County Council’s constitution, there are extensive opportunities to progress towards a more ‘broad brush’ and more inclusive, flexible and informal approach to scrutinising the policies and services of a wide range of public services, with non-executive members playing a pivotal role.

It is beyond the scope of this scene-setting report but it is clear that to give full effect to these opportunities will require resources both to better support non-executive Members in their local constituency roles as well as supporting a more substantive scrutiny function.

## **5. Recommendation**

Members are asked to NOTE the contents of this report.

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