

LOCALISM ACT 2011

EXPLANATORY NOTES

COMMENTARY

Part 1: Local Government

Chapter 5: Governance

Section 21: New arrangements with respect to governance of English local authorities

55. **Section 21** gives effect to Schedule 2. Part 1 of Schedule 2 inserts new Part 1A into the Local Government Act 2000. New Part 1A makes provision in relation to local authority governance arrangements in England. Part 2 of Schedule 2 inserts the sections of new Schedule A1 into the 2000 Act to make further provision in relation to executive arrangements in England. Part 2 of the 2000 Act is restricted, in its application, to Wales by the amendments to the 2000 Act made by Schedule 3 (see below).

Schedule 2 Part 1: New Part 1A of the Local Government Act 2000— Arrangements with respect to local authority governance in England

Chapter 1: Permitted forms of governance

New section 9B: Permitted forms of governance for local authorities in England.

56. New section 9B specifies the forms of governance a local authority in England can operate. These are executive arrangements, a committee system, or prescribed arrangements.

New section 9BA: Power of Secretary of State to prescribe additional permitted governance arrangements.

57. New section 9BA provides that the Secretary of State may make regulations prescribing arrangements that local authorities in England may operate. It provides that the Secretary of State must have regard to any proposals received from a local authority when the Secretary of State considers whether or how to make regulations under this section. Under new section 9BA(5) a local authority can put forward a proposal asking the Secretary of State to make regulations under this section as long as the local authority:
- a) considers that the conditions set out in subsection (6) are met;
 - b) can explain why those conditions have been met; and
 - c) describes the provision that it thinks the regulations should make in respect of the way functions of the authority should be discharged and/or delegated under its proposal.

Chapter 2: Executive arrangements

New section 9C: Local authority executives

58. New section 9C provides that an executive of a local authority in England must take the form of either:
- a) a directly elected mayor together with two or more councillors of the authority appointed to the executive by the mayor, or
 - b) an executive leader, elected by full council from among the councillors, together with two or more councillors of the authority appointed to the executive by the leader.

It also prevents the chairman or vice-chairman of the authority from being a member of the executive, and limits the number of councillors who can be on the executive to 10 (unless a different maximum number is specified in regulations).

New sections 9D and 9DA: Functions which are the responsibility of an executive

59. New Sections 9D and 9DA provide the mechanism for determining which local authority functions are to be the responsibility of the executive. Section 9D allows the Secretary of State to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the authority are to be the responsibility of the executive unless specified in regulations made under this section or specified in any enactment passed or made after the Local Government Act 2000 was passed. New section 9DA makes further provision about the discharge of executive functions in a local authority.

New sections 9E to 9EB: Discharge of functions

60. These sections set out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the mayor or leader, as the senior executive member, to determine how functions which are the responsibility of the executive should be carried out.

New sections 9F to 9FE: Overview and scrutiny committees

61. New section 9F requires local authorities, which are operating executive arrangements, to set up overview and scrutiny committees.
62. Executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or authority, on any aspect of council business. They must also have the power to make reports and recommendations on other matters which affect the authority's area or its inhabitants.
63. Where an overview and scrutiny committee reviews or scrutinises an executive decision which has been made but not implemented, subsection (4) provides that it may recommend that it is reconsidered by those responsible, or else arrange for the authority to review the decision and, where necessary, ask those responsible for the decision to reconsider.
64. New section 9FA describes in detail how overview and scrutiny committees may carry out their functions, giving them the power to appoint sub-committees and make arrangements for these sub-committees to discharge any functions of the overview and scrutiny committee. It also allows an overview and scrutiny committee to require officers of the authority and members of the executive to appear before it and invite any other person to appear before it. Neither the overview and scrutiny committee nor any of its sub-committees may include any member of the authority's executive, but can include people who are not members of the authority.

65. Overview and scrutiny committees are able to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights unless they are permitted to vote under paragraphs 11 and 12 of new Schedule A1. The restriction on voting rights is also subject to provision made by or under paragraphs 6 to 8 of Schedule A1 or section 20(6) of the Police and Justice Act 2006. New section 9FA(6) provides that Part 5A of the Local Government Act 1972 on access to meetings and documents of certain authorities, committees and sub-committees, and Section 15 of the Local Government and Housing Act 1989 on the duty to allocate seats to political groups will apply to overview and scrutiny committees.
66. New section 9FB provides that local authorities (except those district councils for an area for which there is a county council) must designate one of their officers as scrutiny officer to perform the functions set out in this section. New section 9FB(4) provides that the local authority may not designate its head of paid service, monitoring officer or chief finance officer as its scrutiny officer.
67. New section 9FC provides that a local authority's executive arrangements must make provision to enable members of an overview and scrutiny committee, including a sub-committee of such a committee, to refer matters to the committee or sub-committee. It also stipulates that such local authorities must make arrangements to enable councillors who are not members of either the committee or sub-committee to refer any matters, which are not local crime and disorder matters (within the meaning of section 19 of the Police and Justice Act 2006), or specified as excluded matters in an order, to overview and scrutiny committees. A person is treated as enabled to refer a matter if that person is able to ensure that the matter is put on the agenda and discussed at a meeting of the committee or sub-committee.
68. New section 9FD makes further provision in relation to references of matters to overview and scrutiny committees by a member of a local authority who is not also a member of the committee. It specifies certain factors that the committee may have regard to when considering whether to exercise its powers to review and scrutinise matters which have been referred by such a non-member.
69. New section 9FE makes further provision about reports and recommendations of overview and scrutiny committees. It provides that overview and scrutiny committees may publish reports and recommendations and must, in writing, require the authority or executive to take steps set out in new section 9FE(3). Subsections (4) to (6) of the new section describe how the local authority or executive must comply with notices made under subsection (3).

New section 9FF: Reports and recommendations of overview and scrutiny committees: duties of certain partner authorities

70. New section 9FF applies where an overview and scrutiny committee or sub-committee makes a report or recommendations to an authority or an executive and the report or recommendations relate to the functions of a relevant partner authority that are exercised in the authority's area or affect the people in that area. It does not apply where the report or recommendations are made by a crime and disorder committee by virtue of section 19(1)(b) or (3)(a) of the Police and Justice Act 2006.
71. The overview and scrutiny committee or sub-committee may give the relevant partner authority notice in writing requiring them to have regard to the report or recommendations in exercising their functions. A relevant partner authority which is a health service body i.e. a National Health Service Trust, an NHS Foundation Trust or a Primary Care Trust cannot be required to have regard to a report or recommendations made to that body under regulations made under section 244 of the National Health Service Act 2006. Alternatively, a health service body cannot be required to have regard to a report or recommendations made to it by a committee of a non-unitary district council. The relevant partner authority has a duty to comply with the requirement specified in the notice.

New section 9FG: Publication etc of reports, recommendation and responses: confidential and exempt information

72. New section 9FG makes provision in relation to an overview and scrutiny committee or a local authority excluding “confidential information” and “relevant exempt information” when publishing a document or providing a copy of it to a relevant partner authority. “Confidential information” is defined in new section 9FG(8) and has the meaning given by section 100A(3) of the Local Government Act 1972. “Exempt information” is also defined in that subsection and has the meaning given by section 100I of the 1972 Act but also includes exempt information under section 246 of the National Health Service Act 2006.

New section 9FH: Overview and scrutiny committees: flood risk management

73. New section 9FH requires lead local flood authorities to make arrangements for overview and scrutiny committees to review and scrutinise risk management authorities. Risk management authorities are placed under a duty to comply with a request made by an overview and scrutiny committee for information or a response to a report in relation to its flood or coastal erosion risk management functions. New section 9FH(4) provides for the Secretary of State to make regulations about this duty.

New section 9FI: Overview and scrutiny committees: provision of information etc by certain partner authorities

74. New section 9FI enables the Secretary of State to make regulations which determine what information relevant partner authorities must provide to a relevant committee or may not disclose to such a committee. This does not apply to information in relation to which provision can be made regarding the supply or non-disclosure of information under the power conferred by section 20(5)(c) or (d) of the Police and Justice Act 2006 or section 244(2)(d) or (e) of the National Health Service Act 2006.

New Sections 9G and 9GA: Meetings and access to information etc

75. New sections 9G and 9GA allow the Secretary of State to specify in regulations the circumstances in which meetings of the executive or its committees must be open to the public and which must be held in private. Other than where specified in regulations, it will be for the executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the executive held in private or by individual members of the executive must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must be made available to the public. Regulations could ensure that failure by the executive to cause to have such a record made and failure by the proper officer of the authority to make the record public would be criminal offences.
76. Regulations under these sections would also be able to apply provisions of Part 5A of the Local Government Act 1972, with or without modifications, to meetings of the executive and its committees, whether held in public or in private. The regulations may make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees which are discharging functions which are the responsibility of the executive.
77. New section 9GB gives effect to Schedule A1.
78. New section 9GC provides that section 15 of the Local Government and Housing Act 1989, which is about the duty to allocate seats to political groups, does not apply to a local authority executive or a committee of an executive.

New section 9H: Elected mayors etc

79. New section 9H provides that an “elected mayor” means an individual elected to that post by local government electors in the authority’s area. The section provides that references in any enactment to a member or councillor of a local authority do not include the elected mayor, unless the Secretary of State has provided in regulations that an elected mayor is to be treated as a member or councillor for the purpose of an enactment, or contrary intention appears in an enactment.
80. The section also provides that subject to regulations made under new sections 9HB or 9HE the elections of mayors are to take place on the same day as council elections, and that an elected mayor’s term of office is four years.

New section 9HA: Election as elected mayor and councillor

81. New section 9HA provides that no one may be the elected mayor and a councillor for the same authority. It also makes provision in relation to circumstances where an individual elected as mayor is already a councillor of the authority or stands for election as both mayor and councillor at the same elections.

New section 9HB to 9HE: Mayoral elections

82. New section 9HB enables the Secretary of State to make regulations providing for the timing of mayoral elections. It also empowers the Secretary of State to make provision by regulations in relation to the term of office of elected mayors and the filling of vacancies in the office of elected mayor.
83. New section 9HC and Schedule 2 to the 2000 Act describe the method for electing a directly elected mayor. This will normally be by a supplementary vote system unless there are fewer than three candidates where it will be by simple majority (first past the post). Section 9HD provides that entitlement to vote at elections of elected mayors is the same as the electoral franchise for local government elections.
84. New section 9HE provides for the Secretary of State to make regulations regarding the conduct of elections for elected mayors. This includes a power to apply or modify any statutory provision relating to the conduct of elections. Before making any regulations under this section, the Secretary of State must consult the Electoral Commission.

New section 9I: Election and term of office of leader

85. This section provides what executive arrangements by a local authority operating a leader and cabinet executive may and must include with respect to the election of a leader and their term of office.

New section 9IA: Removal of leader

86. This section provides that executive arrangements by a local authority operating a leader and cabinet executive must include provision for the council to remove the executive leader by resolution. If such a resolution is passed then a new leader must be elected at the meeting where the leader is removed from office or at a subsequent meeting.

New section 9IB: Leader to continue to hold office as councillor

87. This section provides that the person who is the executive leader of a leader and cabinet executive remains a member of the council during the period that they are the leader. While they remain executive leader any enactment which provides for their early retirement as a councillor does not apply. This section does not affect anything by which the executive leader may cease to be a councillor otherwise than by retirement.

New section 9IC: No other means of removing leader

88. This section applies to a local authority which operates a leader and cabinet executive. An executive leader may not be removed from office except in accordance with new section 9IA or regulations under new section 9ID.

New section 9ID: Regulations

89. This section allows the Secretary of State by regulations to make provision in relation to the election and removal from office of executive leaders, their terms of office and the filling of vacancies in the office of executive leader of a leader and cabinet executive.

Chapter 3: The committee system

New section 9J: Secretary of State's power to prohibit delegation of functions etc

90. New section 9J provides that the Secretary of State may by regulations specify or describe those functions or actions of a committee system local authority that are to be non-delegable functions or actions and specify or describe cases or circumstances in which any specified or described function or action is to be non-delegable. If these functions or actions are non-delegable then they must be carried out by the local authority and section 101 of the Local Government Act 1972 does not apply to them.

New section 9JA: Overview and scrutiny committees

91. New section 9JA states that a committee system local authority may by resolution appoint one or more committees as its overview and scrutiny committee or committees. There is, however, no statutory requirement for such local authorities to appoint an overview and scrutiny committee.
92. Under this section the Secretary of State may by regulations make provision about the functions, composition and procedure of a committee that has been appointed as an overview and scrutiny committee and also the appointment by committee system local authorities of joint committees and sub-committees as overview and scrutiny committees. Regulations made by the Secretary of State may include provision which applies or reproduces any provision of, or made under, new sections 9F to 9FI or paragraphs 6 to 13 of Schedule A1.

New section 9JB: Overview and scrutiny: flood risk management

93. New section 9JB makes provision for committee system local authorities that are lead local flood authorities to review and scrutinise the exercise by risk management authorities of flood risk management or coastal erosion risk management functions which may affect the local authority's area.

Chapter 4: Changing governance arrangements

New sections 9K and 9KA: Changing from one form of governance to another or from one form of executive to another

94. These sections make provision for local authorities to change their forms of governance, or to vary their executive arrangements so that they provide for a different form of executive, if they wish to.

New section 9KB: Executive arrangements: other variation of arrangements

95. This section makes provision for local authorities that operate executive arrangements to vary these if they wish to so that they differ from the existing arrangements in any respect but still provide for the same form of executive.

New section 9KC: Resolution of local authority

96. New section 9KC provides that a local authority must make a resolution if it wants to change its governance arrangements and outlines the steps that the local authority needs to undertake once a resolution to change governance arrangements has been passed.
97. This section also provides that a local authority which passes a resolution to change its governance arrangements, in the manner set out in new sections 9K and 9KA ('Resolution A'), cannot pass another resolution ('Resolution B') that makes such a change until 5 years have elapsed since Resolution A was passed. This is unless Resolution B is approved in a referendum held in accordance with this Chapter.
98. New section 9KC(5) provides that the section does not apply in relation to a change to a mayor and cabinet executive as a result of an order made by Secretary of State under new section 9N.

New section 9L: Implementation: change in form of governance or change in form of executive

99. This section provides that if a local authority passes a resolution which makes a change in governance arrangements of the kind set out in new sections 9K or 9KA, at a 'relevant change time' the local authority must cease operating the old form of governance and start operating the new form of governance. It provides that a local authority may take steps to prepare for or implement its change in governance arrangements. 'Relevant change time' is defined according to the form of governance that is currently in operation and the form that is proposed.

New section 9M: Cases in which change is subject to approval in a referendum in accordance with sections 9MA and 9MB

100. This section provides that a where a local authority proposes to change its governance arrangements by resolution, that change is subject to a referendum where either the proposed change is of a kind set out in new sections 9K or 9KA and the implementation of the local authority's existing form of governance or executive was approved in a referendum under this Chapter, or where the authority resolves that the proposed change is to be subject to approval in a referendum.

New sections 9MA and 9MB: Referendums

101. These sections apply to a local authority that wishes to make a change in governance arrangements that is subject to approval in a referendum and outlines what a local authority must do in such an event.

New sections 9MC to 9ME: Referendum following petition, direction or order

102. New section 9MC gives the Secretary of State a power to make regulations concerning public petitions in relation to whether a local authority should operate a certain form of governance arrangements. It provides that regulations made under this section could require a local authority to hold a referendum where it has received a petition signed by at least 5% of local electors. Regulations may specify matters such as the form of petitions (including electronic petitions), their verification, the timing of referendums, the action to be taken by a local authority on receipt of a petition, and the manner in which and times at which the number of electors required to sign the petition is to be calculated and publicised. Regulations may also vary the 5% threshold for petitions.
103. New section 9MD allows the Secretary of State to make regulations specifying circumstances in which the Secretary of State may direct a local authority to hold a referendum on whether to adopt a particular form of governance. The regulations may include provision as to the timing of the referendum and the action to be taken by the authority in relation to it.

104. New section 9ME enables the Secretary of State, by order, to require all local authorities, or all authorities of a particular description, to hold a referendum on a particular form of governance arrangements.

New section 9MF: Further provision with respect to referendums

105. New section 9MF provides that if a local authority holds a referendum (Referendum A), it may not hold, or be required to hold, another referendum (Referendum B) for ten years, except in the following circumstances:
- a) where Referendum A was held by virtue of an order under section 9N and the proposal to operate a mayor and cabinet executive was rejected; or
 - b) Referendum B is required by virtue of an order made by the Secretary of State under new section 9N.

New section 9MG: Voting in and conduct of referendums

106. New section 9MG provides that entitlement to vote at referendums is the same as the electoral franchise for local government elections. This section gives the Secretary of State the power, by regulations, to make provision for the conduct of referendums. This includes a power to apply or modify any statutory provision relating to the conduct of elections or referendums. Before making any regulations under this section that include provision as to the question to be asked in a referendum, the Secretary of State must consult the Electoral Commission.

New section 9N: Requiring a referendum on change to mayor and cabinet executive

107. This section gives the Secretary of State the power by order to require a specified local authority to hold a referendum on whether the authority should operate the mayor and cabinet executive. An order made under this section may make provision as to the date of the referendum.

New section 9NA: Effect of section 9N order

108. This section provides that should local people vote in favour of the mayor and cabinet executive at a referendum instigated by an order under new section 9N, then the local authority may not move away from that governance model.

New section 9NB: Variation of mayoral executive

109. New section 9NB provides that a local authority may not resolve to vary its existing mayor and cabinet executive arrangements without the written consent of the elected mayor. This provision only applies to proposals to vary existing arrangements, and not to proposals for changes from one form of governance arrangements to another.

New section 9O: General

110. This section provides that a local authority may not cease operating a form of governance arrangements, or vary executive arrangements, other than in accordance with this Chapter.

Chapter 5: Supplementary

New section 9P: Local authority constitution

111. New section 9P requires a local authority to maintain a constitution and ensure that it is available for inspection by members of the public. The authority will have to supply a copy to anybody who requests one, upon payment of a reasonable fee. The constitution is to include the standing orders, a copy of the authority's code of conduct,

such information as the Secretary of State may direct and such other information as the authority considers appropriate. In the case of a local authority operating the committee system the constitution must also contain a statement as to whether it has an overview and scrutiny committee.

Section 9Q: Guidance

112. Section 9Q provides that a local authority must have regard to any guidance issued by the Secretary of State for the purposes of Part 1A of the Local Government Act 2000.

Schedule 2Part 2: New Schedule A1 to the Local Government Act 2000 - Executive arrangements in England: further provision

113. New Schedule A1 sets out further details of the working of executive governance arrangements and makes provision about the role of church and parent governors on overview and scrutiny committees.
114. For a mayor and cabinet executive, the arrangements must allow the mayor to determine the size of the executive (subject to a maximum of 10 members - unless a different maximum is specified under new section 9C(5)). These arrangements must also require the mayor to appoint his or her own deputy mayor from amongst the executive.
115. For a leader and cabinet executive, the arrangements must allow the leader to determine the size of the executive (subject to a maximum of 10 members – unless a different maximum is specified under new section 9C(5)). The arrangements must also require the leader to appoint his or her own deputy leader from amongst the executive.
116. The Schedule permits executive arrangements to cover such matters as the conduct of meetings, and similar matters in relation to meetings of committees of the executive. It also enables the Secretary of State to make regulations for appointment of an assistant for the mayor.
117. The Schedule also makes detailed provision about the appointment of church and parent governor representatives to overview and scrutiny committees.