

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL AUTHORITIES (OVERVIEW AND SCRUTINY COMMITTEES)**  
**(ENGLAND) REGULATIONS 2009**

**2009 No. 1919**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The purpose of these Regulations is to implement arrangements for the overview and scrutiny of Local Area Agreements (LAAs) as provided for in amendments made by the Local Government and Public Involvement in Health Act 2007 (c. 28) (“the 2007 Act”) to Part 2 of the Local Government Act 2000 (c. 22) (“the 2000 Act”). LAAs are agreements between certain local authorities (“responsible authorities”), other public bodies (“partner authorities”) and the Secretary of State.

2.2 Part 2 of these Regulations provides for the overview and scrutiny committees of district councils in areas where there is also a county council to make reports and recommendations to that county council, or that council’s executive, and allows them to require LAA partners to have regard to their reports or recommendations.

2.3 Part 3 of these Regulations provides powers for overview and scrutiny committees to obtain information from partner and associate authorities (where the overview and scrutiny committee is a committee of a district council in an area where there is also a county council, the county council and certain of its partner authorities are “associated authorities” in relation to the district council for the purposes of scrutiny of LAA matters). It sets out what information shall be provided to the overview and scrutiny committee and what information may not be provided.

2.4 Part 4 of these Regulations makes provision for the exclusion of confidential and exempt information when the reports of overview and scrutiny committees, or responses to them, are published by the executive of an authority.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 Section 21 of the 2000 Act requires local authorities to include provision in their executive arrangements for the appointment of one or more overview and scrutiny committees to review or scrutinise decisions and action taken by the authority and its executive and to make reports and recommendations on any matter which affects the local authority’s area.

4.2 Part 5 of the 2007 Act gives the Secretary of State power to require responsible authorities to prepare and submit a draft LAA. The definition of responsible authorities in section 103 of the 2007 Act excludes councils for a district in a county where there is also a county council. In preparing the draft LAA the authority is required to consult

and cooperate with certain partner authorities. The partner authorities are listed in section 104 of the 2007 Act.

4.3 Section 21C of the 2000 Act, inserted by section 122(1) of the 2007 Act, provides that certain overview and scrutiny committees in England may send their reports or recommendations to LAA partner authorities and require those partners to have regard to such reports. Section 21C does not apply to the overview and scrutiny committees of councils for districts in a county for which there is also a county council. Section 21E of the 2007 Act, as inserted by section 124 of the 2007 Act provides for the Secretary of State to regulate to allow the overview and scrutiny committees of such districts similar powers to the overview and scrutiny committees of other councils.

4.4 Section 21D of the 2000 Act, inserted by section 122(1) of the 2007 Act, provides for the exclusion of certain information when reports and recommendations of overview and scrutiny committees are published or provided by the committee or the authority. Section 22(12A) of the 2000 Act, inserted by s122(2) of the 2007 Act, allows similar provision to be made by regulation when such reports and recommendations are published or provided by the executive.

4.5 Section 22A of the 2000 Act, inserted by section 121(1) of the 2007 Act, provides that the Secretary of State may regulate as to information that LAA partner authorities must provide, and may not provide, to overview and scrutiny committees.

4.6 Additional provision for the scrutiny of health matters is contained in the National Health Service Act 2006 (which consolidated the Health and Social Care Act 2001) and the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (S.I. 2002/3048). Additional provision for the scrutiny of crime and disorder related functions is contained in the Police and Justice Act 2006 (c. 48) and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 (S.I. 2009/942).

4.7 These Regulations apply to authorities operating executive governance arrangements. For those authorities operating alternative governance arrangements (some district councils in an area where there is a county council and the resident population of the authority's area on 30<sup>th</sup> June 1999 was less than 85,000), the Department intends to make equivalent provision by amending the Local Authorities (Alternative Arrangements) (England) Regulations 2001 (S.I. 2001/1299). These Regulations now need considerable amendment and the intention is to make these changes by means of a single instrument later this year.

4.8 The enabling powers to make this instrument were brought into effect on 1 April 2009; see article 4 of S.I. 2008/3110.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 Local authority overview and scrutiny can be a powerful tool for empowering communities and enabling local people through their councillors to participate in decisions which affect their day to day lives. Overview and scrutiny committees were introduced as part of new executive governance arrangements by the 2000 Act. Overview and scrutiny committees may investigate any issue of importance to their local area. However, under the 2000 Act as originally enacted, their powers to require co-operation were limited. There was no requirement for the authority or executive to respond to reports or recommendations of overview and scrutiny committees, no requirement for any other person or organisation to have regard to such reports and recommendations, and no powers to require third parties to provide information.

7.3 The Health and Social Care Act 2001 extended the powers of overview and scrutiny committees, but only in relation to scrutiny of the provision and operation of health care services, and the Police and Justice Act 2006 made similar provision with respect to bodies with crime and disorder reduction related functions.

7.4 The 2006 Local Government White Paper – *Strong and Prosperous Communities* set out proposals to give councils the freedom and space to respond with flexibility to local needs and demands, and to give local people and local communities a greater say over their lives. It set out plans to empower citizens and communities, create stronger and more visible local authority leadership, and put in place a framework of delivery agreements, LAAs, within which local authorities and their partners can work.

7.5 As part of these proposals a need was identified to ensure that council overview and scrutiny committees had sufficient powers to scrutinise the delivery of LAAs, similar to the powers they already had in relation to health matters. As a result, Part 5 of the 2007 Act, which established statutory LAAs, also provided enhanced scrutiny powers including allowing authorities with responsibility for the preparation of LAAs to enable their overview and scrutiny committees to require LAA partners to have regard to their reports and recommendations.

7.6 These Regulations further build on those enhanced scrutiny powers. In particular they provide for:

- enhanced powers for those councils not responsible for the preparation of LAAs; and
- power for overview and scrutiny committees to require information from partner authorities.

They also deal with the exclusion of certain information from documents published or provided by the executive, mirroring provision made for publication or provision of documents by the overview and scrutiny committee or authority.

7.7 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. The Government recognises that good examples of effective partnership working and scrutiny of LAAs already exist on a voluntary basis and is keen to ensure that any Regulations do not unduly restrict or limit such existing arrangements. At the same time however, the Government is aware that not all areas benefit from such voluntary

arrangements and is committed to providing a clear and robust legislative framework of minimum standards which overview and scrutiny committees, local authorities and partner authorities alike can draw upon when needed.

7.8 Part 2 of the Regulations enables district councils in areas where there is also a county council to play an active role in scrutinising the delivery of LAA targets in their area. The intention is to ensure that where district overview and scrutiny committees make reports and recommendations on matters relating to local improvement targets, they have similar powers to the overview and scrutiny committees of the authorities responsible for LAAs, which in an area with both county and district councils is the county council. Where the district council has a role in delivering a local improvement target and both the district council and partner authority are signed up to the target, the district council scrutiny committee will be able to require the county council to respond to their reports and recommendations and to require that the partner has regard to their report or recommendations in the exercise of their functions.

7.9 Part 3 of the Regulations provides a new power for scrutiny committees to require information from certain partner and associated authorities. The Government believes that in order for effective scrutiny of an agreed LAA, a partner should make available to the responsible authority's overview and scrutiny committee such information as it may reasonably require for the purposes both of examining progress on any LAA target with which the partner is concerned and of undertaking studies of local issues connected to such a LAA target. Similarly, where a district council is signed up to a particular target, its overview and scrutiny committees should also be able to obtain such information.

7.10 Part 4 of the Regulations deals with the exemption of confidential and exempt information from documents published or provided by the executive of an authority. The Government believes that where a local authority's executive publishes or provides a response to a scrutiny committee's recommendations, that publication or provision should be subject to provisions on exempt and confidential information similar to those which already apply to the publication or provision of documents by the authority or the committee under the 2007 Act.

## **8. Consultation outcome**

8.1 Consultation on proposals for a framework of secondary legislation and guidance to underpin the strengthened scrutiny powers and implementation of LAA scrutiny powers introduced by the 2007 Act ran from 7 August to 30 October 2008 (*Communities in control: Real people, real power: Improving local accountability* <http://www.communities.gov.uk/publications/localgovernment/localaccountability>).

8.2 During the consultation period, working with the Centre for Public Scrutiny (CfPS), the Local Government Association (LGA) and networks of council officers and members involved in overview and scrutiny, officials attended a number of events across England to present and discuss the proposals. These events were well attended - by approximately 300 people across all events, and provided an opportunity to examine in depth the practicalities of the Department's proposals, both for scrutiny practitioners and the partner authorities affected by the new powers.

8.3 199 written responses to the consultation were received, mainly from local authorities, members of overview and scrutiny committees, local government officers, national representative bodies and LAA partner authorities.

8.4 The written responses, and the feedback from the events held in conjunction with the consultation, all broadly welcomed the proposed approach to the regulatory and guidance framework that was set out in the consultation paper.

8.5 On the issue of scrutiny in areas with both district and county councils, many respondents were of the view that co-ordination between county and district overview and scrutiny committees is essential to avoid duplication, and recognised the potential burden such duplication could create both for councils and for partner authorities across the LAA area. A smaller number of respondents however, were concerned that limitations imposed on district councils to reduce duplication could give rise to the perception that district scrutiny must fit around that of the county. The Regulations seek to address these concerns by putting in place a framework which does not hamper or restrict existing voluntary arrangements that might already be in place and working well, but equally provides a framework on which authorities in areas where this might not be the case can rely.

8.6 Although stakeholders have put forward opposing views about how to deal with the provision of information to overview and scrutiny committees, some being in favour of very broad requirements, others wanting a very narrow approach, on this issue the majority of respondents again agreed with the proposed approach. Many also made suggestions related to effective partnership working, which the Department believes will be best addressed by a combination of Government guidance and sector-led good practice guidance.

8.7 The overwhelming majority (98%) of responses agreed that provisions relating to the exclusion of confidential and excluded material when scrutiny-related documents were published or provided by local authorities and overview and scrutiny committees should be extended to apply to publication or provision of such documents by the executives of local authorities.

8.8 The Government response to the consultation was published on 26 January 2009 (*Communities in Control: Real people, real power - Government response to improving local accountability consultation* (<http://www.communities.gov.uk/publications/localgovernment/govresponselocalaccountability>)). Taking into account the responses received, the Government response confirmed the Government's intention to proceed with the approach as set out in the consultation paper.

8.9 Having prepared draft Regulations in accordance with the published approach, the Government has shared those Regulations with key stakeholders. These stakeholders, such as LGA, CfPS and scrutiny practitioners, were given the opportunity to comment on the technical detail of the draft Regulations.

8.10 The CfPS and LGA raised a number of issues on the draft Regulations to include a number of additional provisions, in particular providing a deadline for the provision of information and requiring partner authorities to attend overview and scrutiny meetings. Such provisions, however, would fall outside the scope of the enabling powers in the primary legislation. Whilst such matters are outside the scope of these Regulations, the Department believes that they can be appropriately addressed and discussed in best practice guidance.

8.11 The LGA also sought changes to further strengthen scrutiny powers beyond the LAA framework – for example, to allow scrutiny of the community strategy in addition

to the LAA. Although a wider duty to provide information to overview and scrutiny committees would be within scope of the regulation making power, it would impose additional burdens on partner authorities, and in consideration of the conflicting views expressed during the main consultation by other stakeholders, it was decided not to extend the provisions beyond the LAA framework at this time.

8.12 Stakeholders have different views as to the provisions included in the draft Regulations, empowering overview and scrutiny committees to require others to provide information. In the Regulations the Government has sought to maintain the approach to the regulatory framework of minimising detailed prescription which is to be supplemented by guidance. Such guidance could in relation to information requirements provide examples of how different types of requests for information might be handled in practice. This approach reflects that overview and scrutiny committees already enjoy a very broad remit and the flexibility to scrutinise any matters of local concern and can request information, on a voluntary basis, from anybody. However, the Government intends to keep this important area under review so that, if appropriate, it can be addressed as part of the future development of scrutiny powers

8.13 The CfPS, in commenting on the draft Regulations, highlighted the differences in councils' practices that these Regulations seek to accommodate. Some councils have already made good progress in engaging with partners and building a significant capacity for scrutinising their work on a voluntary basis. These councils have come to individual, local agreements with a number of partners. Such councils will want any regulations, and future guidance, to provide sufficient freedom to build on those relationships based on local needs and aspirations and are unlikely, as a rule, to welcome detailed regulations and guidance. On the other hand, there are councils who have found it more difficult to find a place for scrutiny within existing partnership working arrangements. These authorities tend to welcome detailed regulations and guidance on the new scrutiny powers. The CfPS consider that, in broad terms, the Regulations successfully balance these varying expectations, particularly in terms of the powers for district councils to request responses to reports and recommendations by county councils.

## **9. Guidance**

9.1 The Government intends that, wherever possible, guidance on overview and scrutiny should take the form of sector-led good practice guidance, and has provided support to CfPS to this end. The Department understands that good practice guidance will be published by CfPS later this year.

9.2 Statutory guidance on overview and scrutiny was published in October 2000 as part of the New Council Constitutions guidance package. This guidance does not reflect changes made by the 2007 Act, these Regulations and proposals on overview and scrutiny contained in the Local Democracy, Economic Development and Construction Bill, currently before Parliament. Working with stakeholders such as the LGA and CfPS, the Government proposes updating this guidance later this year. In particular the Government proposes providing guidance on seeking information from partner authorities in order to allay the contradictory concerns that the information requirements may allow unduly burdensome demands to be placed on partners, but equally may not allow sufficiently full information to be obtained.

## **10. Impact**

10.1 The Regulatory Impact Assessment (RIA) produced for the 2007 Act shows that the impact of enhanced scrutiny on the public sector for the entire 2007 Act scrutiny package is estimated at £25.5m. These costs are to improve officer support and budget for training or external advice due to the widening remit of the committees. This includes £0.5m for local service providers to comply with overview and scrutiny. The impact on the public sector of these Regulations is estimated at around £4.8m, and, as no impact on business or charities is envisaged, a separate regulatory impact assessment has not been prepared. The Regulatory Impact Assessment for the 2007 Act is attached at Annex A:

<http://www.communities.gov.uk/documents/localgovernment/pdf/769458.pdf>

10.2 Where these costs fall on local government, Communities and Local Government makes available the funding in accordance with the Government's commitment to fund all new burdens placed on local authorities by Central Government.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Government will continue its dialogue with stakeholders on the development of scrutiny, for example, monitoring the impact of district council scrutiny of LAA matters and, if and when the Local Democracy, Economic Development and Construction Bill currently before Parliament is enacted, on the new provisions for joint overview and scrutiny committees. This dialogue with stakeholders, including the LGA and CFPS, will include monitoring and evaluating the impact of these Regulations and associated guidance.

12.2 In the forthcoming Local Democratic Renewal consultation the Government intends to seek views on the further strengthening of the role of local authority overview and scrutiny committees acting on behalf of their electorate, to enable local people to play a greater part in the scrutiny of all public expenditure on the delivery of local services and the actions of service providers and agencies whose activities are crucial to their local area. The experience of LAA scrutiny from the perspective of both local and partner authorities will play an important part in taking forward these proposals.

## **13. Contact**

13.1 Helen Moores at the Department for Communities and Local Government (tel. 020 7944 6148) or email [Helen.Moores@communities.gsi.gov.uk](mailto:Helen.Moores@communities.gsi.gov.uk)) can answer any queries regarding the instrument.