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STATUTORY INSTRUMENTS

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**2012 No. 1020**

The Local Authorities (Committee System) (England) Regulations 2012

PART 3

Overview and scrutiny: general provisions

**Overview and scrutiny committees**

4.—(1) Parts 3 to 5 apply where a local authority resolves to appoint one or more committees as the authority's overview and scrutiny committee or, as the case may be, committees under section 9JA of the 2000 Act.

(2) The local authority must ensure that its overview and scrutiny committee has power (or its overview and scrutiny committees, and any joint overview and scrutiny committees, have power between them)—

- (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions of the authority;
- (b) to make reports or recommendations to—
  - (i) the local authority;
  - (ii) any committee or sub-committee of the local authority;
  - (iii) any officer of the authority; or
  - (iv) any joint committee on which the local authority is represented or any sub-committee of such a committee,

with respect to the discharge of any functions of the local authority; and

- (c) to make reports or recommendations to—
  - (i) the local authority;
  - (ii) any committee or sub-committee of the local authority;
  - (iii) any officer of the authority; or
  - (iv) any joint committee on which the local authority is represented or any sub-committee of such a committee,

on matters which affect the authority's area or the inhabitants of that area.

(3) In paragraph (2), "joint overview and scrutiny committee", in relation to a local authority ("the authority concerned"), means—

- (a) a joint overview and scrutiny committee within the meaning given in subsection (2)(a) of section 245 of the National Health Service Act 2006<sup>(1)</sup> appointed by the authority concerned and one or more other local authorities;

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<sup>(1)</sup> 2006 c. 41. Section 245 was amended by section 127 of the 2007 Act; section 22 of, and Schedule 3 to, the Localism Act 2011.

- (b) an overview and scrutiny committee of another local authority exercising relevant functions (within the meaning given in subsection (1) of that section) of the authority concerned by virtue of arrangements made under regulations under subsection (2)(b) of that section; or
  - (c) a joint overview and scrutiny committee within the meaning of section 123 of the 2007 Act<sup>(2)</sup> (joint overview and scrutiny committees) appointed by two or more local authorities including the authority concerned.
- (4) The power of an overview and scrutiny committee under paragraph (2)(a) to review or scrutinise a decision made but not yet implemented includes power—
- (a) to recommend that the decision be reconsidered by the person who made it; or
  - (b) to arrange for its function under paragraph (2)(a), so far as it relates to the decision, to be exercised by the authority.
- (5) An overview and scrutiny committee of a local authority may not discharge any functions other than its functions under this Part, or section 19 of the 2006 Act (local authority scrutiny of crime and disorder matters)<sup>(3)</sup>.

#### **Overview and scrutiny committees: supplementary provision**

- 5.—(1) An overview and scrutiny committee of a local authority—
- (a) may appoint one or more sub-committees; and
  - (b) may arrange for the discharge of any of its functions by any such sub-committee.
- (2) A sub-committee of an overview and scrutiny committee may not discharge any functions other than those conferred on it in accordance with paragraph (1)(b).
- (3) An overview and scrutiny committee of a local authority, is to be treated;
- (a) as a committee or a sub-committee of a principal council for the purposes of Part 5A of the 1972 Act (access to meetings and documents of certain authorities, committees and sub-committees); and
  - (b) as a body to which section 15 of the 1989 Act<sup>(4)</sup> (duty to allocate seats to political groups) applies.
- (4) Subsections (2) and (5) of section 102 of the 1972 Act<sup>(5)</sup> apply to an overview and scrutiny committee of a local authority, or a sub-committee of such a committee, as they apply to a committee appointed under that section.
- (5) An overview and scrutiny committee of a local authority, or any sub-committee of such a committee, may include persons who are not members of the authority, but subject to regulations 13 and 14, any such persons are not entitled to vote at any meeting of such a committee or sub-committee on any question which falls to be decided at that meeting, unless permitted to do so under regulation 11.
- (6) An overview and scrutiny committee of a local authority or a sub-committee of such a committee—
- (a) may require members of the local authority, and officers of the authority, to attend before it to answer questions; and
  - (b) may invite other persons to attend meetings of the committee.

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(2) Section 123 was substituted by section 32(1) of the Local Democracy, Economic Development and Construction Act 2009.

(3) Section 19 was amended by section 126 of the 2007 Act.

(4) Section 15 is modified by the Local Government (Committees and Political Groups) Regulations 1990 (S.I. 1990/1553), Regulation 16.

(5) Section 102(2) was amended (in relation to England) by S.I. 2001/1517; section 194 (1) of, and Schedule 11 to, the 1989 Act.

(7) It is the duty of any member or officer mentioned in paragraph (6)(a) to comply with any requirement so mentioned.

(8) A person is not obliged by paragraph (7) to answer any question which that person would be entitled to refuse to answer in or for the purposes of proceedings in a court in England and Wales.

(9) In exercising, or deciding whether to exercise, any of its functions an overview and scrutiny committee of a local authority, or a sub-committee of such a committee, must have regard to any guidance for the time being issued by the Secretary of State.

(10) Guidance under paragraph (9) may make different provision for different cases or for different descriptions of committee or sub-committee.

### **Reference of matters to overview and scrutiny committees**

6.—(1) The local authority must ensure that it enables—

- (a) any member of an overview and scrutiny committee of the authority to refer to the committee any matter which is relevant to the functions of the committee;
- (b) any member of a sub-committee of an overview and scrutiny committee of the authority to refer to the sub-committee any matter which is relevant to the functions of the sub-committee; and
- (c) any member of the authority to refer to an overview and scrutiny committee of the authority of which the member of the authority is not a member any matter which is relevant to the functions of the committee and is not an excluded matter.

(2) For the purposes of paragraph (1), a local authority enables a person to refer a matter to a committee or sub-committee if it enables the person to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee or sub-committee.

(3) In considering whether or not to exercise the power which they have by virtue of paragraph (1)(c) in any case, the member must have regard to guidance for the time being issued by the Secretary of State.

(4) Guidance under paragraph (3) may make different provision for different cases.

(5) Paragraphs (6) to (9) apply where a matter is referred to an overview and scrutiny committee by a member of a local authority in accordance with provision made pursuant to paragraph (1)(c).

(6) In considering whether or not to exercise any of its powers under regulation 4(2) in relation to the matter, the committee may have regard to—

- (a) any powers which the member may exercise in relation to the matter by virtue of section 236 of the 2007 Act (exercise of functions by local councillors in England); and
- (b) any representations made by the member as to why it would be appropriate for the committee to exercise any of its powers under regulation 4(2) in relation to the matter.

(7) If the committee decides not to exercise any of those powers in relation to the matter, it must notify the member of—

- (a) its decision; and
- (b) the reasons for it.

(8) The committee must provide the member with a copy of any report or recommendations which it makes under regulation 4(2).

(9) Paragraph (8) is subject to regulation 8.

(10) In paragraph (1)(c) “excluded matter” means any matter which is—

- (a) a local crime and disorder matter within the meaning of section 19 of the 2006 Act; or

- (b) a matter of any description specified in an order made by the Secretary of State for the purposes of section 9FC of the 2000 Act.

**Duty of local authority to respond to overview and scrutiny committee**

7.—(1) This regulation applies where an overview and scrutiny committee makes a report or recommendation otherwise than—

- (a) by virtue of subsection (1)(b) of section 19 of the 2006 Act; or
  - (b) by virtue of subsection (3)(a) of that section.
- (2) The overview and scrutiny committee may publish the report or recommendations.
- (3) The overview and scrutiny committee must by notice in writing require the local authority—
- (a) to consider the report or recommendations;
  - (b) to respond to the overview and scrutiny committee indicating what (if any) action the local authority proposes to take; and
  - (c) if the overview and scrutiny committee has published the report or recommendations under paragraph (2), to publish the response.

(4) The notice served under paragraph (3) must require the authority to comply with it within two months beginning with the date on which the local authority received the report or recommendations or (if later) the notice.

(5) It is the duty of a local authority to which a notice is given under paragraph (3) to comply with the requirements specified in the notice.

(6) Paragraphs (2) and (5) are subject to regulation 8.

(7) In this regulation—

- (a) “the local authority” means the local authority or a committee or sub-committee of the local authority, or a joint committee on which the local authority is represented or any sub-committee of such a committee, to whom the report or recommendations are made; and
- (b) references to an overview and scrutiny committee include references to a sub-committee of such a committee.

**Confidential and exempt information**

8.—(1) This regulation applies to—

- (a) the publication under regulation 7 of any document comprising—
  - (i) a report or recommendations of an overview and scrutiny committee; or
  - (ii) a response of a local authority to any such report or recommendations; and
- (b) the provision of a copy of such a document—
  - (i) to a member of a local authority; or
  - (ii) to a relevant partner authority,

by an overview and scrutiny committee or a local authority.

(2) The overview and scrutiny committee or the local authority, in publishing the document or providing a copy of the document to a relevant partner authority—

- (a) must exclude any confidential information; and
- (b) may exclude any relevant exempt information.

(3) The overview and scrutiny committee, or the local authority, in providing a copy of a document to a member of the local authority, may exclude any confidential information or relevant exempt information.

(4) Where information is excluded under paragraphs (2) or (3), the overview and scrutiny committee or the local authority, in publishing, or providing a copy of, the document—

(a) may replace so much of the document as discloses the information with a summary which does not disclose that information; and

(b) must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible.

(5) If by virtue of paragraphs (2), (3) or (4) an overview and scrutiny committee, in publishing or providing a copy of a report or recommendations—

(a) excludes information; or

(b) replaces part of the report or the recommendations with a summary,

it is nevertheless to be taken for the purposes of regulation 7(2) to have published the report or recommendations.

(6) In this regulation—

“confidential information” has the meaning given by section 100A(3) of the 1972 Act (6)(admission to meetings of principal councils);

“exempt information” has the meaning given by section 100I of that Act(7); and

“relevant exempt information” means—

(a) in relation to a report or recommendations of an overview and scrutiny committee, exempt information of a description specified in a resolution of the overview and scrutiny committee under section 100A(4) of the 1972 Act which applied to the proceedings, or part of the proceedings, at any meeting of the overview and scrutiny committee at which the report was, or recommendations were, considered; and

(b) in relation to a response of the authority, exempt information of a description specified in such a resolution of the authority which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered.

(7) In this regulation, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

### **Relevant partner authorities: reports and recommendations**

9.—(1) This regulation applies where—

(a) an overview and scrutiny committee makes a report or recommendation to the authority, otherwise than—

(i) by virtue of subsection (1)(b) of section 19 of the 2006 Act; or

(ii) by virtue of subsection (3)(a) of that section; and

(b) the report or any of the recommendations relates to the functions of a relevant partner authority so far as exercisable in relation to—

(i) the authority’s area; or

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(6) Section 100A was inserted by section 1(1) of the Local Government (Access to Information) Act 1985 (c.43) and subsequently amended by S.I. 2002/715.

(7) Section 100I was inserted by section 1(1) of the Local Government (Access to Information) Act 1985, and subsequently amended by S.I. 2006/88.

(ii) inhabitants of that area.

(2) The overview and scrutiny committee may, by notice in writing, require that relevant partner authority to have regard to the report or recommendations in the exercise of its functions.

(3) A notice under paragraph (2) must be accompanied by a copy of the report or recommendations.

(4) It is the duty of the relevant partner authority to which a notice is given under paragraph (2) to comply with the requirement specified in the notice.

(5) Paragraph (4) does not apply if—

(a) the relevant partner authority is a health service body; and

(b) either—

(i) the relevant committee is a non-unitary district council committee or;

(ii) by virtue of section 244 of the National Health Service Act 2006<sup>(8)</sup>, the report was, or the recommendations were, made to the health service body (as well as to the authority).

(6) In paragraph (5) “health service body” means—

(a) a National Health Service Trust;

(b) an NHS foundation trust; or

(c) a Primary Care Trust.

(7) A relevant partner authority must provide to an overview and scrutiny committee such information as that committee may reasonably require in order to discharge its functions which has been requested in writing.

(8) A relevant partner authority may not provide to the overview and scrutiny committee—

(a) information that was obtained by the authority from any other person where the provision of that information to the committee by the authority would constitute a breach of confidence actionable by any person;

(b) information the disclosure of which would, or would be likely to, prejudice the exercise of the functions of the authority or the legitimate interests of any person (including the authority holding it);

(c) personal information within the meaning of the Data Protection Act 1998<sup>(9)</sup>, unless the disclosure is permitted by or under that Act; or

(d) other information the disclosure of which is prohibited by or under any enactment.

(9) Where, but for this paragraph, the disclosure of information would be prohibited by paragraph (8)(c), the relevant partner authority must—

(a) revise it so that the individual concerned cannot be identified; and

(b) if satisfied that disclosure of the information in that revised form is permitted by or under the Data Protection Act 1998, and is not otherwise prohibited, disclose it.

(10) In this regulation, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

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<sup>(8)</sup> Section 244 was amended by section 121(4) of the Local Government and Public Involvement in Health Act 2007 (c.28); section 22 of, and Schedule 3 to, the Localism Act 2011.

<sup>(9)</sup> 1998 c.29.

## Scrutiny officers

**10.**—(1) Subject as follows, where a local authority resolves to appoint one or more committees as its overview and scrutiny committee, it must designate one of its officers to discharge the functions in paragraph (2).

(2) Those functions are—

- (a) to promote the role of the local authority’s overview and scrutiny committee or committees;
- (b) to provide support to the local authority’s overview and scrutiny committee or committees and the members of that committee or those committees;
- (c) to provide support and guidance to—
  - (i) members of the local authority; and
  - (ii) officers of the local authority,in relation to the functions of the local authority’s overview and scrutiny committee or committees.

(3) An officer designated by a local authority under this regulation is to be known as the authority’s “scrutiny officer”.

(4) A local authority may not designate any of the following under this regulation—

- (a) the head of the authority’s paid service designated under section 4 of the 1989 Act<sup>(10)</sup>;
- (b) the authority’s monitoring officer designated under section 5 of that Act<sup>(11)</sup>;
- (c) the authority’s chief finance officer, within the meaning of section 5 of that Act<sup>(12)</sup>.

(5) The duty in paragraph (1) does not apply to a district council for an area for which there is a county council.

(6) In this regulation, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

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<sup>(10)</sup> Section 4 was amended by section 119 of, and Schedule 6 to, the Local Democracy, Economic Development and Construction Act 2009.

<sup>(11)</sup> Section 5 was amended by section [S.I. 2001/2237](#) (in relation to England); section 107 of, and Schedule 5 to, the 2000 Act; section 52 of, and Schedule 14 to, the Police and Justice Act 2006.

<sup>(12)</sup> Section 5(8) was amended by [S.I. 2001/2237](#); section 132 of the Greater London Authority Act 1999 ([c.29](#)); section 321 of, and Schedule 22 to, the Marine and Coastal Access Act 2009 ([c.23](#)).