

Committee: Council

Date: 21st October 2008

Title: **Communities in Control – Real People,
Real Power – Improving local
accountability consultation**

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Agenda Item

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Item for
decision

Summary

1. The White Paper, *Communities in Control; Real people, real power*, was published in July 2008 and is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
2. This is part of the Government's wider agenda to modernise the democratic system, to strengthen participatory democracy and to deliver genuine empowerment to local people and local communities. The consultation advises that central to this is a vibrant local democracy, at the heart of which are councils – providing strategic leadership delivering services and empowering communities.
3. The Government now need to consult further about a number of policy commitments. These consultations will cover both the 2008 *Communities in Control* White paper and work still in the pipeline from the earlier White Paper and the 2007 Local Government and Public Involvement in Health Act which provides the legislative framework for the implementation of that earlier White Paper. Government are planning a series of *Communities in Control* consultation papers over the coming months.
4. This, the first, seeks views on:
 - Developing and strengthening overview and scrutiny through:
 - implementing the provisions of the 2007 Act, designed to enhance councils' scrutiny powers in relation to scrutiny of Local Area Agreement partners and their delivery of LAA improvement targets; in particular, the powers to make regulations 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
 - ♦ enhancing the powers of district overview and scrutiny committees
 - ♦ scrutiny in small district councils operating a streamlined committee system.
- how best to take forward the commitments and proposals in the *Communities in Control* White Paper to raise the visibility of, and to strengthen, the scrutiny function
 - increasing the visibility and accountability of local public officers so that they are all open to public scrutiny and questioning from local communities through
 - chairs and chief executives of local public bodies attending regular public hearings
 - 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.

The consultation document poses a series of questions within the text: this report is an abbreviated form of that consultation and poses the same questions with suggested responses. The consultation closes on 30th October 2008.

Recommendations

5. That the responses suggested in the report are forwarded to DCLG along with any addition responses agreed by Council.

Background Papers

White Paper, Communities in Control

Consultation Paper, Improving Local Accountability

Impact

6.

Communication/Consultation	The purpose is to improve both
Community Safety	There are implications for the accountability of police services
Equalities	The consultation has been assessed for equalities implications.
Finance	There would be additional burdens placed on the authority, the amounts of which cannot be assessed at this stage
Human Rights	The intention is to extend the accountability of the Council to its residents
Legal implications	Constitutional changes would be required
Sustainability	Some of the proposals for remote attendance at meetings could result in fewer car journeys
Ward-specific impacts	All
Workforce/Workplace	There would be considerable implications for staff resources, in terms of numbers and training requirements, if all the recommendations are adopted

Situation

7. Local government overview and scrutiny is a tool by which a community, through its local democratically elected representatives, can address any issue relating to the wellbeing of that community with the aims of:
- highlighting past or proposed decisions by those responsible for the issues, so that the community is better able to judge the decision takers (eg through the ballot box)
 - making recommendations to decision takers so as to influence their future actions, in particular to tackle past shortcomings, to secure public service improvements, or to obtain better outcomes for the community.

8. Government considers that 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. It was introduced as a means of accountability for those Councils who adopted executive arrangements under the Local Government Act 2000, which also required those small district councils, such as UDC, operating a streamlined committee system to appoint one or more similar committees. The functions lie within Performance Select and Scrutiny Committees.
9. The practice of overview and scrutiny has developed across local government with the Health and Social Care Act 2001 enabling councils to scrutinise local health services and the Police and Justice Act 2006, which brought bodies preparing a crime and disorder reduction strategy within councils' scrutiny arrangements. In 2006 a survey showed that over 80 per cent of recommendations from overview and scrutiny had been accepted by councils' executives or policy committees.
10. Government believes that overview and scrutiny committees are good at reviewing service outcomes and involving external stakeholders but are weak at reconciling community opinion or providing a forum for community debate.
11. The Local Government and Public Involvement in Health Act 2007 enhances the ability of councillors through overview and scrutiny to champion the interests of local people across a range of local issues. The 2008 White Paper *Communities in Control: Real people, real power* seeks to raise the visibility of the scrutiny function and to further enhance its effectiveness.
12. Government is now proposing to implement the 2007 Act provisions, which are designed to enhance councils' scrutiny powers in the context of Local Area Agreements (LAAs). There is already a duty on Essex CC as the LAA's lead council to publish a memorandum relating to their LAA, setting out to local people how partners are going to tackle and measure progress against their LAA.
13. This consultation focuses on those powers to make regulations in relation to the scrutiny by council overview and scrutiny committees of LAA partners and their delivery of LAA improvement targets. In particular on the power to make regulations in respect of:
 - overview and scrutiny committees' requiring information from partner authorities

- publication of scrutiny reports, recommendations and responses
 - establishment of joint county and district overview and scrutiny committees
 - enhancing the powers of district overview and scrutiny committees
 - scrutiny in small district councils operating a streamlined committee system.
14. Government's intention is to achieve an appropriate balance between providing a sufficiently robust regulation based framework so that councils have the powers they need, and equally ensuring that councils and local partners have that local flexibility necessary both to allow for innovation and for overview and scrutiny effectively to serve and empower local communities. They are also proposing that wherever possible guidance should take the form of sector led best practice guidance and intend to develop this with the Local Government Association, stakeholders, and practitioners.
15. Consistent with this approach, Government's proposals for implementing each of the new provisions are set out below.

Requiring information from partner authorities

16. This provision is about the information which the partners in a LAA should make available to overview and scrutiny committees of that LAA's lead council. The provision also covers the information which in a two-tier area, the county council or partners should make available to a district council overview and scrutiny committee in relation to that LAA.
17. It is anticipated that a partner will make available to the lead council's overview and scrutiny committee such information as it may request 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. Partners should provide such overview and scrutiny committees with other information they might have which the committee has requested as facilitating its work more generally. Committees should ensure that any requests for information are well focused and thought through. Equally they should take care not to unduly burden partners and to avoid duplication and any unnecessary requests.

18. In a two-tier area the lead council or any partner in an LAA should make available to a district council overview and scrutiny committee information relevant to a target connected to that council's area and functions, including its legitimate concerns about the well being of that area. It will be particularly important that requests from district councils in a two-tier area are co-ordinated and duplication is avoided.
19. It is proposed therefore that partner authorities must provide information where that information:
 - is information in relation to any target which relates to that partner
 - relates to an agenda item of the overview and scrutiny committee concerned
 - has been requested by that overview and scrutiny committee.
20. It is also proposed to set out the types of information that, and the circumstances in which information, may be withheld by partners. Such information would include personal data covered by the Data Protection Act 1998 and information subject to commercial confidentiality: these provisions would apply equally to requests from any overview and scrutiny committee to partner or associated authorities. Equally, partner authorities would not be required to provide information where the information requested is already publicly available.
21. Finally, in the spirit of striking a balance between regulation and allowing local flexibility, no time limits for responses by partner are proposed nor the format of any such response (whether in writing or attendance at a meeting). These are detailed arrangements which will necessarily depend on the particular circumstances of individual requests.
22. **Consultation Question 1:** Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partner authorities?

Suggested Response: The Council considers the proposals adequate

Publication of scrutiny reports, recommendations and responses

23. Overview and scrutiny committees can require a response from the local authority to a scrutiny report or recommendations. Where committees publish their report or recommendations, the authority or executive must also publish their response. Equally, where a committee has provided a copy of

its report or recommendations to a council member or partner, the authority must also provide a copy of their response.

24. An overview and scrutiny committee or a local authority, in publishing these documents, or providing copies of these documents to local authority members or partners, will be required to act in accordance with the new section 21D of the Local Government Act 2000 (as will be inserted by the 2007 Act). This section details circumstances in which confidential information and any relevant exempt information must or may be excluded. This provision will extend to the overview and scrutiny committee and local authority only, and we propose to make regulations to extend these provisions without modification to local authority executives where they also publish or provide copies of such documents.
25. **Consultation Question 2:** Do you agree with the proposal to apply the provisions in relation to exempt and confidential information without modification to local authority executives?

Suggested Response: This is not relevant to Uttlesford which operates a committee system

Establishment of joint county and district overview and scrutiny committees

26. This provision is about the establishment of joint overview and scrutiny committees in areas with both county and district councils so that they may work together collaboratively to make reports and recommendations about the attainment of local improvement targets specified in the LAA for the area. A joint overview and scrutiny committee may be established by the county council and one or more of the district councils within the county area. This will provide a framework through which the county and district councils can co-ordinate their efforts with relevant partners on the scrutiny of LAA targets.
27. Joint committees should have broadly the same powers held by overview and scrutiny committees in responsible local authorities so that they may for example, appoint sub-committees and co-opt members. Similar provision is proposed for joint committees in respect of partners while ensuring that partners are not placed under unreasonable burdens for example, by handling similar requests for information from a joint overview and scrutiny committee and one or more local authority overview and scrutiny committees in the area.

28. **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?

Suggested Response: While joint committees could be useful in certain circumstances the resource implications for small authorities in servicing such committees could be considerable and probably unrealistic

Enhancing the powers of district overview and scrutiny committees

29. District scrutiny committees in two-tier areas are also given strengthened powers by the 2007 Act. To enable them to play an active role in scrutinising the delivery of LAA targets connected to the district council's area, it is proposed to broadly mirror those powers that will be available to lead councils.

- district council overview and scrutiny committees may make reports and recommendations on matters relating to a local improvement target to the relevant county council or the county council executive
- the county council, or county executive will be required to respond within two months to a district scrutiny committee report or recommendation
- associated authorities will be required to have regard to reports and recommendations made by district overview and scrutiny committees.

30. It will of course be for district overview and scrutiny committees to take decisions on their programme of work. However in doing so, it will be particularly important that they take account of any scrutiny work that is planned or being carried out by an overview and scrutiny committee of the lead council or joint committee to avoid duplication of effort and resources. The requirements on the county council to respond and partner authorities to have regard to such district overview and scrutiny reports on LAA matters will apply in relation to matters on which a joint overview and scrutiny committee in the relevant responsible local authority area has not already considered and reported.

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

Suggested response: This would be a welcome addition to the scrutiny function

Scrutiny in small district councils operating a streamlined committee system

32. The new powers in the 2007 Act currently apply only to authorities operating executive arrangements. Government have previously applied overview and scrutiny provisions to those small district councils operating a streamlined committee system (“alternative arrangements”) and propose to do so again, applying the enhanced powers for district overview and scrutiny committees as set out at paragraphs 2.27 and 2.28 above, and providing that district councils operating alternative arrangements may also form part of a joint overview and scrutiny committee within the relevant county council area.
33. **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?

Suggested response: Yes

Taking forward the 2008 White Paper commitments

34. In raising the profile of the overview and scrutiny function in local authorities, Government wants to ensure that scrutiny committees have the necessary capacity and powers to respond to the greater public interest. Building on the 2007 Act provisions, they intend to further strengthen the scrutiny function by extending the power to require information from partner authorities to matters outside LAA targets. It is also 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. .
35. Government intends to require some dedicated scrutiny resource in county, unitary and London borough councils across England. This will ensure that every area in England is covered by dedicated scrutiny resource to support the overview and scrutiny function in local government. One way this may be achieved is through making similar provision to that for monitoring officers and their resources as set out in the Local Government and Housing Act 1989.
36. The white paper also proposed a new duty on local authorities to respond to all petitions, including electronic petitions, relating to local authority functions or other public services where the local authority shares delivery responsibilities.

37. Government wants to ensure that local authorities take petitions seriously, and will ensure that petitioners can appeal if they are not satisfied with their response. If the appeals body judges that a local authority's response was not adequate they could trigger a debate of the full council. Appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee.

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

Suggested response: Complications may arise where there are different governance regimes in the component authorities. Members' views are invited

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

Suggested response: This Council has limited resource available, and the scrutiny role for fourth option councils, where much scrutiny takes place by policy Committees In the discussion of policies, is different to that of executive authorities. There is a possibility that establishment of a similar post to a monitoring officer to manage the Council's scrutiny function could give the power to dictate a budget without regard to other budgetary considerations.

40. **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?

Suggested response: The Council's normal response is to receive a petition and either comment/act upon it or refer it to the relevant committee. There would seem to be little point in appealing a Council decision to a scrutiny committee, which would have the power to refer the matter back to Council, if the matter has already been debated unless new information comes to light. Great care needs to be taken in giving weight to petitions, as these can sometimes reflect the determination of the organisers rather than reflecting the feelings of the wider community

Holding local public officers to account

41. The ability to hold to account those who hold power locally is central to any real empowerment of local communities. It is for this reason that the

Communities in Control White Paper is proposing to raise the visibility of local public officers so that they are all open to public scrutiny and questioning from local communities through:

- chairs and chief executives of local public bodies attending regular public hearings
- a new right for people served by local service providers and agencies to petition to hold local officers to account.

Without cutting across established lines of accountability, including the democratic accountability of councillors to local electors through the ballot box, it is considered that local people would be more empowered if they have direct means of being able to influence local decisions, and a means by which local decision takers can explain their decisions to the local communities affected by them. It is against this background that Government are consulting on how to put in practice a scheme that will allow people to petition to hold local public officers to account.

42. The *Communities in Control* White Paper seeks to bring consistency across the range of local public services by proposing that a key part of the role of a chair or chief executive of a local public body should be that they attend a regular public hearing to explain their actions and decisions and to listen to the views and concerns of local people.
43. A public hearing in this context may mean a public meeting or forum where local people are able to receive information about the recent work of the local public body and have the opportunity to ask questions or raise issues of importance. The expectation is that these meetings should take place every three or four months and that they should be held in places easily accessible to the general public, for example, at a local leisure centre or community hall as opposed to the offices of the body in question.
44. The requirement to attend such meetings should be reflected in the job descriptions of the chair or the chief executive, and in recognition that a number of public bodies already have similar provision or requirements, such as local health bodies for example, we propose that it should be for those responsible for such job descriptions to determine the precise arrangements by which the chair or chief executive will attend regular meetings.
45. **Consultation Question 9:** Do you agree with this approach that those responsible for the job descriptions should determine the precise

arrangements by which the chair or chief executive will attend regular public meetings?

Suggested response: The assumptions that Chief Officers are not publicly accountable is indicative of the lack of weight given to the operation of a fourth option Council. The Chief Executive attends the Community Forums 6 times a year where questions can be raised directly by the public, as well as other Council and Committee meetings. It would be expected that a Chief Executive would not need to have it spelt out in a job description that he or she needs to be accountable.

46. The White Paper also proposes a new right for people to petition to hold local officers to account whereby if enough people served by a local service or agency sign a local petition, then senior officers working for that local public body should be required to attend a public meeting. In developing any scheme for petitioning to hold local officers to account, the intention is to achieve an appropriate balance between providing a sufficiently robust legal framework while retaining that flexibility necessary to allow for local circumstances across the range of local public bodies.
47. In each LAA area, the lead council with its strategic partners, including local service providers and agencies, should be required to agree and publish locally a scheme for petitions to hold local officers to account. In agreeing such a scheme, the council and its partners will wish to have regard to any other local petition arrangements within the area. Any scheme should complement, or form part of the council's scheme for responding to petitions more generally.
48. As a minimum, such a scheme would set out:
 - the officers (or category of officers) to whom the scheme would apply locally
 - any relevant petition criteria, such as agreed thresholds, who may sign a petition, the format a petition must take
 - the local service providers and agencies covered by the agreed scheme and how they will respond to petitions
 - arrangements for the hearing.
49. It would be open for Government to specify certain minimum standards for the various elements of the scheme. Such minimum standards might include the timescale by which such schemes should be in place, specified local

officers or categories of officers, and specified local service providers and agencies which must be covered by a scheme. For example, it is proposed that this power should apply to senior officers only – perhaps those who are members of the executive board or senior management team. One option for defining such officers in local government could be to specify that in addition to the chief executive, the scheme would apply to “statutory officers” and/or “non-statutory chief officers” as defined in the Local Government and Housing Act 1989¹.

50. As with the policy for chief executives and chairs to attend regular public hearings, we consider the term public hearing in relation to this power to mean an opportunity for a public meeting (this might be an existing meeting of the local authority overview and scrutiny committee for example) at which the officer would be available to discuss the matter and respond to questions.

51. **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?

Suggested response: Officers are first and foremost accountable to their employers. Safeguards would need to be in place to prevent abuses which could lead to over-frequent or repetitive attendances at hearings. The scope should include relevant civil servants.

52. **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?

Suggested response: High thresholds need to be set for fourth option councils where senior officers have a much higher public visibility than in councils operating a cabinet system. The petition must be relevant and timely in relation to the work of the relevant authority. It is suggested that the minimum standards should be set locally and not by government, because of the variety and diversity of local governance

53. Government proposes that it will be for a local authority and its partners, including local service providers and agencies to agree to which of their officers the scheme should apply, subject to any statutory minimum

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standards (eg any requirements about which local service providers and agencies must or must not be covered by a scheme). In doing so the council and its partners will wish to consider those local service providers and agencies whose decisions can have a significant effect on the day to day lives of local people and their communities.

54. **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?

Suggested response: Agreed

Remote attendance and voting by authority members

55. In an age where it is commonplace for people to contribute to a meeting without being physically present, for instance through teleconferencing, and where the internet allows common use of video conferencing and the almost instant sharing of documents, the Government believes it is right that these technologies are applied to help overcome the barriers of time, circumstance and distance that might discourage members from participating in meetings.
56. The Government wants to enable councillors to participate in council meetings and vote remotely and will introduce legislation to support these activities in the forthcoming Community Empowerment, Housing and Economic Regeneration Bill. Any changes in attendance or voting procedure for the authority would have to be balanced with measures to preserve accountability and transparency, so that citizens can remain confident that they are being properly represented by their councillor.
57. Legislation is proposed to allow authorities to modify their attendance and voting procedures as necessary to allow remote voting. We would envisage that, apart from certain members not being physically present, meetings and votes would continue essentially in the same manner as they did when members were physically present at meetings and votes. This would extend to the public having the same ability to witness proceedings.
58. It would be for the authorities themselves to decide how much or how little use they wished to make of remote attendance and voting and to consider matters of security and propriety. It is envisaged that in resolving to modify their attendance and voting procedures – most probably through an amendment to the authority's 'standing orders', the authority will in effect have to 'opt-in' to remote attendance and voting and, in doing so, will

demonstrate that it has positively considered the effect and consequences of remote attendance.

59. The legislation would apply to county councils, district councils, London boroughs and parish councils and make certain basic requirements.
60. At least one member must be physically present at the meeting, and that person must be in audio contact with any member attending remotely, with or without a video link. In addition members of the public physically present at the meeting must be able to witness what is happening, at least through audio contact. If the opportunity for the public to participate in the meeting is available, this must be provided for and remote attendees must be able to hear the contributions.
61. The legislation will contain safeguards to ensure that those attending remotely must be able to participate in and listen to the meeting when and as required. If they are unable to sustain communication, then they are not considered present. The legislation will allow authorities to establish procedures for what the protocols for the meeting would be if contact with a remote attendee were to be lost.
62. We do not consider that a local authority adopting remote attendance or voting measures would result in additional costs as it would involve the use of existing facilities in a more flexible way. Indeed, it may result in costs savings as travel expenses are cut.
63. **Consultation question 13** - do you agree with the proposed approach

Suggested answer - From an officer perspective the prospect of an audience attending a public meeting at which only one participant was present in the room would stretch the limits of accountability. The suspicion of collusion by off-line participants would always be present. Members views are anticipated.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The Council does not respond to the document	1 There is adequate time to finalise the Council's comments	3 DCLG would not be able to take UDC's comments on board	The response is sent by 30 th October

1 = Little or no risk or impact

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2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.