

Pulling it together

A guide to legislation covering overview
and scrutiny in English local government



Introduction

Since 2010, several major pieces of legislation have been enacted that make significant changes to the way that local government operates. The Localism Act, Police Reform Act and Health and Social Care Act together will bring about profound changes in the delivery of local services.

Overview and scrutiny, too, will be subject to some significant changes. While much of the existing legislation on scrutiny remains the same, there are some key alterations that are likely to have a direct, day-to-day impact on how scrutiny is carried out – particularly in two-tier areas. Wider changes to accountability across the public sector point to the atomisation of decision-making and governance – a theme which we have developed in previous publications – which emphasise the potential importance for overview and scrutiny, sitting at the middle of the “web of accountability”, in understanding, investigating and where necessary challenging decisions that affect ordinary people’s lives.

The statutory provisions which we have outlined in this document provide a means of doing this. Legislation should, in this context, be seen as an enabling framework rather than a narrow menu for compliance. Statute only takes us so far - local activity depends on councillors determining what is important to their communities. Having a coherent and comprehensive understanding of this legislative framework allows scrutiny councillors, and the officers who support them, to ensure they use all the powers available to them to help make improvements to local services.

In this edition, we have also provided information on the exercise of executive functions and delegation, which we think will be particularly important in the context of the freedom for local authorities to adopt the governance arrangements of their choice.



Wales

Welsh scrutiny provisions are covered in a separate document. This document will be published following the final publication of the guidance on the Local Government (Wales) Measure by the Welsh Government.

IMPORTANT NOTE

The content of the following is based on the UK Statute Law Database and the content of regulations which at the time of writing were laid in Parliament. The intention is to reflect the state of the law in England on 4 May 2012. Although every attempt has been made to ensure its accuracy we can make no guarantees. As such, this document should not be relied upon as giving legal advice, and officers and members in individual authorities are advised to contact their Monitoring Officer for further advice on specific provisions.

Any references to “the Secretary of State” should be taken as a reference to the Secretary of State for Communities and Local Government, unless otherwise indicated.

CfPS provides a “helpdesk” service (on 020 7187 7369) for overview and scrutiny in local government, and we would be happy to provide further informal advice, guidance and support to any officer and councillor on the statutory responsibilities and powers of scrutiny.

Contents are as follows:

Overview – setting out the legislative picture for scrutiny in general terms.

Act by Act detail

Summary of White Papers and consultations – information on various White Papers and consultations issued since 2010.

Summary of prospective legislation and guidance

Index – allowing readers to search for common themes (co-option, for example) to identify relevant pieces of legislation.

Local government scrutiny was formally introduced in the **Local Government Act 2000**. However, law affecting scrutiny – in particular, scrutiny committees – goes back to the legislation which established modern local government, the **Local Government Act 1972**. Provisions relating to admission to committee meetings goes back further, to the **Public Bodies (Admission to Meetings) Act 1960**.

Between the 1972 and 2000 Acts came other Acts that are relevant to the operation of scrutiny (principally, the operation of scrutiny committees). The **Local Government (Access to Information) Act 1985**, **Local Government and Housing Act 1989** and **Data Protection Act 1998** are all relevant. The Freedom of Information Act 2000, which didn't come into force until 2005, also has some profound implications for the operation of the decision-making process in the public sector, and provides some crucial tools for the scrutiny process.

Since 2000, there has been a slew of Acts, often accompanied by secondary legislation (in the form of statutory instruments, or SIs) which have gradually increased the powers of overview and scrutiny, albeit in a haphazard and inconsistent way. The **Localism Act 2011** has sought to consolidate a significant amount of these provisions, which are still formally located in the 2000 Act. This incorporates powers originally brought in through measures such as the **Health and Social Care Act 2001**, **Local Government Act 2003**, **Local Government and Public Involvement in Health Act 2007** and the **Local Democracy, Economic Development and Construction Act 2009**. Powers to scrutinise community safety partnerships can still be found in the **Police and Justice Act 2006**.

New powers for scrutiny can be found in the **Police Reform and Social Responsibility Act 2011** and, most recently, the **Health and Social Care Act 2012**.

It should be noted that almost all of the provisions relating to scrutiny in legislation refer to “scrutiny committees”, with activity undertaken at these formal bodies being quite closely prescribed in terms of procedure. However, the bulk of scrutiny business in most authorities is conducted away from committees, at task and finish groups and in more informal settings. Readers should bear this in mind when reading and referencing the material in this report. There is nothing in legislation, or at law, that prohibits the transaction of scrutiny business at informal task and finish groups.

In this edition, we have included provision about moving between different forms of governance, and have also highlighted new standards requirements in the 2011 Act.

Act by Act detail

Local Government Act 1972

Introduction and general powers

LGA 1972 was the first significant change to local government since the late nineteenth century. County and district councils were reorganised and new rules put in place about the operation of committees and decision-making, which are still in force. The fact that these provisions were designed for decision-making committees, rather than scrutiny committees, has not caused significant problems since 2000 but is something to consider when reading the individual sections.

The provisions below include amendments made by subsequent legislation, including amendments to Schedule 12A made by the Freedom of Information Act 2000. A number of recent Acts have amended the 1972 Act.

Specific provisions

Section	Description
85(1)	Covers disqualification of members who fail to attend meetings for six months.
100(1)	Gives effect to s1 of the Public Bodies (Admission to Meetings) Act 1960 in respect of making meetings open to the public (ie when “publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted”).
100A	Identifies the circumstances in which the public can be excluded. Subs 4 requires a resolution to be made to exclude at the meeting. Subs 5 requires that this be justified with reference to Schedule 12A of the Act (below). Subs 6(a) states the requirement that public notice of meetings needs to be given five clear working days in advance (see also Local Government (Access to Meetings and Documents) (Period of Notice) Order 2002 (SI2002/715))
100B	Deals with access to the agenda and reports. Subs 2 allows an officer to exclude certain papers where he feels that the relevant part of the meeting will not be open to the public. Under Subs 5, where this happens the report must be clearly marked “not for publication” and a reason given for exclusion under Schedule 12A. Subs 3 and 4 deal with the requirement for reports to be on public deposit for five clear days, other than where the meeting is convened at shorter notice or there is a reason for urgency.
100C	Subs 1 requires papers (agenda, reports, minutes) to be available at the council officers for six years after the date of the meeting. Subs 2 requires that, where part of a meeting was held which excluded the public, a “summary” of the discussion should be provided which does not disclose the exempt information.
100D	Requires background papers to be made available (where relied on in drafting the report) on the terms specified in s100C.

100EA	Requires information to be made available relating to the exercise by members of delegated powers under s236, LGPIH 2007.
100F(2A)	Provides additional access rights for council papers for Members where they relate to contract negotiations.
102	Permits the establishment of joint committees of more than one authority. Subs 2 – number of members on committees to be fixed by the appointing authorities. Subs 3 – joint cttes may include co-optees Subs 4 – provision for joint executive committees. Subs 5 – members who lose their seat in elections also lose their seat on a committee.
103	Joint committees: expenses to be decided as agreed by the authorities.
106	Joint committees: standing orders to be decided by the authorities – although, subject to standing orders, meeting arrangements are at the discretion of the committee.
113(1)	Allows councils to place officers at the disposal of officers (ie provides for the creation of shared officer teams, eg shared support for scrutiny)
Sch 1, 12, 13 and 14	Local authorities may make a scheme which relates to the co-option of voting members of an OSC. Schemes can include details about the nature of the co-option and its duration, and can provide the committee with the power to decide on voting co-option of its own volition. Schemes can be varied or revoked at the authority's discretion. (Under these provisions there is no automatic exclusion of the rule of political proportionality, which still applies)
Sch 12, 1	Annual meetings for principal councils to be held in March, April or May (specific provisions apply in election years). ss2-4 make additional provision for full council.
Sch 12A, 1	Exempt information: information relating to any individual (ie, further to the Data Protection Act).
Sch 12A, 2	Exempt information: information which is likely to reveal the identity of an individual
Sch 12A, 3	Exempt information: information relating to the financial or business affairs of any particular person (including the authority holding at information, except where that info is required to be published by another Act)
Sch 12A, 4	Exempt information: “information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority of a Minister of the Crown and employees of, or office holders under, the authority” (ie employment negotiations)
Sch 12A, 5	Exempt information: “information in respect of which a claim to legal professional privilege could be maintained in legal proceedings” (ie, legal advice)



Sch 12A, 6	Exempt information: proposals to impose requirements on a person or the making of orders and directions.
Sch 12A, 7	Exempt information: “information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime” (NB further to guidance/regs, this covers operational activity only)
Sch 12A, 10	Makes clear that the exemptions are qualified, not absolute – the public interest in maintaining the exemption must outweigh the public interest in disclosing. “Public interest” is defined by regs and guidance pursuant to the FOIA 2000.

Note: the provisions of Schedule 12A need to be seen in the context of the Freedom of Information Act (more details below)



Local Government (Access to Information) Act 1985

General powers

This Act updated the 1972 Act to introduce provisions relating to the publication of data and information, and reports being submitted to council committee meetings. Its provisions are contained in sections 100A to 100F of the Local Government Act 1972.



Local Government and Housing Act 1989

Introduction and general powers

This Act introduced political restriction for officers in certain posts and placed political proportionality for council meetings on a renewed statutory footing.

It put into force the recommendations made by the commission chaired by David Widdicombe, which reported in 1986 on political organisation and activity in local authorities. These recommendations reflected, in part, concerns expressed about the practice of “twin-tracking” (whereby some people were officers and Members in the same authority) and instances where council officers were seen to be engaging in overtly political activity.

Specific provisions

Section	Description
1	Disqualifies members of authorities from holding politically restricted posts at that, or any other, British authority.
2	Defines politically restricted posts. Includes certain chief officers, those providing support and advice to committees of the council and those who regularly speak on the authority's behalf to journalists.
4	Designation of head of paid service
5	Designation of monitoring officer
13	People co-opted onto committees (ie non-members) may not vote (subs 5 excludes education co-optees)
15	Political proportionality. Subsection 5 requires that the provision of seats on committees be in proportion to the political parties in the authority as a whole (but not all the seats on any body can be allocated to a single political group)
17(1)(b)	Authorities may dispense with the requirements of political balance if there is a “nem con” vote (ie a vote where nobody objects) of all members to that effect at full council.
19	Declarations of interest: powers to the Secretary of State to make regulations.



Education Act 1996

s499 of this Act makes provision for the appointment of various statutory education co-optees, to sit on the council's education committee.

This provision pre-dates the executive/scrutiny split. The original purpose of statutory co-option was to influence the decision-making powers of the authority, but with the shift of the co-optees to the scrutiny function, their role has changed accordingly.

Further regulations/guidance on the role of the statutory co-optees (in particular, the parent governor representatives) can be found under the 2000 Act.



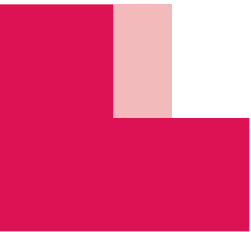
Data Protection Act 1998

The DPA 1998 replaced earlier data protection legislation from the early 1980s. It provided clarity relating to computer records and updated the legislative context for personal data following the enactment of the Human Rights Act 1998 and the proposals in that year's White Paper on Freedom of Information.

The DPA should be regarded as the framework sitting behind the various exemptions to publication of information which relates to specific individuals, which is of relevance to scrutineers where they request information of this type relating to partners.

Of importance is **section 7**, which gives data subjects the right to request that data collectors (such as public authorities) provide them with any relevant personal information they may hold, and **Part 1 to Schedule 1** which sets out the "data protection principles" which govern how public bodies should process data.

These principles are:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
 2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
 3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
 4. Personal data shall be accurate and, where necessary, kept up to date.
 5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
 6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
 7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.
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Freedom of Information Act 2000

Introduction and general powers

FOIA 2000 (which came into force in 2005) applies to public authorities, placing them under an obligation to release information, on request, unless it is covered by one of a number of exceptions. There is a large list of public authorities which are covered by the Act although the Statute Law Database at OPSI does not provide an up to date list (see below). A small number of private companies delivering a public function are included, although by and large private companies are excluded.

The Act sets up the post of the Information Commissioner. The long lead-in to the Act's commencement allowed the IC to help to prepare for the onset of the Act, the requirements of which (in terms of the preparation of publication schemes, and so on) were thought by some to be onerous.

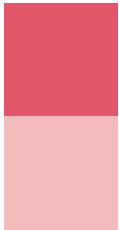
Regulations were made under FOIA 2000 to alter the "Schedule 12A" provisions around access to information. The applications of these provisions have been widely misinterpreted by local authorities; it is important to read them in the context of FOIA 2000 for them to make sense.

FOIA 2000 can be used, and has been used, by scrutiny functions to secure information from partner organisations who are unwilling to provide it (for example, in local health trusts).

At the time of writing, FOIA 2000 was being subjected to post-legislative scrutiny by a House of Commons Select Committee. The Government plan to make amendments to the FOI regime, expanding its scope. We have provided more information on these plans in a later section.

Specific provisions

Section	Description
1	Sets out the general right of access to information held by a public authority.
3	Defines "public authority". There is a full list at Schedule 1 of the Act.
8	Requests for information must be made in writing (incl e-mail) and the address of the requester must be included.
10	Public authorities have 20 days to respond to the request.
13	A public authority may charge a fee for disclosure where the cost of gathering the information will exceed a limit which the authority has set further to Regulations.
14	Vexatious or repeated requests do not have to be complied with (the meaning of the word is discussed in guidance and has been the subject of case law).
19 & 20	Public authorities should put together a publication scheme which sets out all their publicly available information. Further guidance suggests that publication schemes should be regularly updated so as to include information which has been published further to FOI requests.



21 - 44	<p>The exceptions. Many will not be relevant to local government. Ones of particular interest are:</p> <p>Section 33 – “audit information”, including VFM analyses, if the disclosure would prejudice the exercise of the authority’s functions.</p> <p>Section 35 – “formulation of Government policy” – but not formulation of the policy of any other body.</p> <p>Section 36 – “prejudice to effective conduct of public affairs” – this is a catch-all where the publication of information would inhibit the provision of advice or the deliberative nature of decision making. It does not include the risk of embarrassment from something being made public. ICO guidance on this section is available.</p>
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Supplementary guidance is available on the Information Commissioner’s website. http://www.ico.gov.uk/home/what_we_cover/freedom_of_information/guidance.aspx#secguidance

Local Government Act 2000

Introduction and general powers

This Act established executive arrangements for local government in England and Wales. The publication of the Audit Commission's report, "We can't go on meeting like this: the changing role of local authority members" in 1990 is usually seen as the starting-point of the debate that took place throughout the 1990s about the role of councillors in providing political leadership in their authority. This was followed up by a White Paper in 1998, which did not focus on proposed new executive arrangements but did put the establishment of scrutiny into Government policy for the first time.

This debate culminated in the Act, which saw the abolition of the "committee system" of decision-making in all but a handful of authorities. The traditional system was replaced by one of four options – a leader with a cabinet, an executive mayor, a mayor with a council manager, and the "fourth option" of retaining an "enhanced" version of the committee system for small county districts with a population of fewer than 85,000.

With changes to executive arrangements came changes to the way that decision-makers were held to account. The Act established scrutiny committees of the council to carry out this function.

The Act has been successively amended by further legislation in 2003, 2006, 2007, 2009 and now by the Localism Act 2011. The below reflects the new organisation and numbering of the 2000 Act, as amended by the 2011 Act in particular.

The sections relating to scrutiny can now be found in a new Part 1A of the 2000 Act.

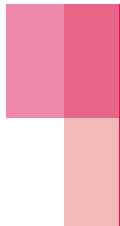
Specific provisions

Section	Description
9B	<p>Subs 1 sets out the three main governance options for local authorities – exec arrangements, committee system or "prescribed arrangements"</p> <p>Subs 2 sets out that authorities operating under exec arrangements must conform with the provisions set out in Chapter 2 (see below, and see also relevant regulations)</p> <p>Subs 3 sets out that committee system authorities must comply with the terms of Chapter 3 (and see also relevant regulations)</p> <p>Subs 4 defines the meaning of "exec arrangements" and "committee system".</p>

9BA	<p>Gives the Secretary of State the power to make regulations around different governance arrangements.</p> <p>Subs 2 makes clear that these regs must cover delegation and provision about the discharge of functions more generally.</p> <p>Subs 5 permits authorities to make proposals for new arrangements which the Secretary of State can approve;</p> <p>Subs 6 requires that the local authority meets conditions that new arrangements would be an improvement on existing ones, that new arrangements would be “efficient, transparent and accountable” and that arrangements would be appropriate for all local authorities, or “any particular description” of local authority.</p> <p>Subs 4 requires the Secretary of State to have regard to such proposals in making his decision on prescription.</p>
9C	<p>Subs 2 defines mayoral arrangements, consisting of an elected mayor with two or more councillors appointed to the executive by the mayor.</p> <p>Subs 3 defines leader-cabinet arrangements as a councillor elected as leader of the executive by the authority (strong leader), with two or more councillors appointed to the executive by the executive leader.</p> <p>Subs 4 states that the executive may not include the chairman or vice-chairman of the authority.</p> <p>Subs 5 states that cabinets must not exceed ten members (unless the Secretary of State specifies otherwise in regs)</p> <p>Subs 6 states that the function of electing a leader cannot be discharged by any body other than the full Council. Arrangements for delegating the discharge of certain council functions are otherwise dealt with in section 101 of the Local Government Act 1972 (see above).</p>
9D	<p>Authorities operating under executive arrangements are responsible for any function of the authority, other than those specified in regulations.</p> <p>Subs 3 gives the Secretary of State power to make regulations to define when functions “may” rest with the executive, or when they will not rest with the executive.</p> <p>Subs 4 and 5 specify that where regs state that executive power “may” be exercised in other ways, executive arrangements will have to clearly indicate whether the executive will or won’t exercise those functions, with details on how this will happen.</p> <p>Subs 6 gives the Secretary of State the right, through regs, to specify particular circumstances when exec functions will not be vested in the executive.</p> <p>Subs 7 sets out that functions which may not be delegated under s101 of the LGA 1972 may still be the responsibility of the executive by virtue of all the above.</p> <p>Section 9DA makes further provision in this issue, including powers for the Secretary of State to make regulations on executive functions.</p>



9E, 9EA	<p>These sections also relate to the discharge of functions. Regulations have been issued further to some of these provisions.</p> <p>The sections, taken together, provides for different circumstances in which functions of an authority may be delivered by area committees, individual members or by another authority (subject to the approval of the mayor or leader). In particular, delegation of powers to area committees allows those committees to exercise various powers to make decisions, and to delegate to officers, without the approval of the council's executive (once the initial decision to discharge functions in this way has been agreed).</p>
9EB	<p>Provides a framework for the agreement of joint exercise of local authority functions, further to the provisions in section 101 of the LGA 1972 (referring to joint decision-making). The section makes provision for regulations on this matter.</p>
9F	<p>Overview and scrutiny</p> <p>From this point on, these sections replace/repeal the existing s21, and associated sections, of the Local Government Act 2000.</p> <p>Subs 1 – exec arrangements (nb leader-cabinet and mayoral authorities only) must make provision for appointment of O&S committees.</p> <p>Subs 2 sets out powers and duties for overview and scrutiny committees, including the right to investigate, and make reports and recommendations on, anything which is the responsibility of the executive (see sections above on discharge of functions) or not the responsibility of the executive. In this section, “discharge of functions” means the discharge of local authority functions).</p> <p>The subsection also, at (e), gives scrutiny the power to make recommendations on “matters which affect the authority’s area or the inhabitants of that area”.</p> <p>The subsection also ties in the statutory health scrutiny powers.</p> <p>Subs 3 allows for the establishment of joint overview and scrutiny committees.</p> <p>Subs 4 – call-in – an O&S committee may recommend that the decision be reconsidered, or that it be implemented.</p> <p>Subs 5 – O&S committees may not exercise any functions other than those mentioned above, or those in the PJA 2006.</p>



9FA	<p>Subs 1 – power for OSC to appoint sub-committees and arrange for those sub-committees to discharge any of its functions. Subs 2 limits the sub’s powers to those conferred on it by subs 1.</p> <p>Subs 3 – OSCs may not have any exec members on them.</p> <p>Subs 4 and 5 – OSCs may co-opt members from outside the authority (as non-voting members) – repeals s115 of LGA 2003.</p> <p>Subs 6 – OSCs are local government committees under LGA 1972 and must be politically proportionate in line with LGA 1989.</p> <p>Subs 7 – further to s102(2) and (5) LGA 1972, OSCs may be established as joint committees.</p> <p>Subs 8 – attendance to answer questions (members of the executive and officers may be required – this confers a duty under subs 9 - to attend); any other member may attend to answer questions relating to an s236 LGA 2007 function; others may be “invited” to attend.</p> <p>Subs 11 – general guidance-making powers for SoS.</p>
9FB	<p>County and unitary authorities must designate a scrutiny officer, to promote the role of O&S, support OSCs, and to provide advice to officers and members about OSCs.</p> <p>Subs 4 states that this person may not be the head of paid service, the monitoring officer or the s151 officer.</p>
9FC	<p>Councillor Call for Action Exec arrangements must make provision to allow any member of an OSC to refer to the cttee/sub-ctte any matter with is relevant to its function. Must also allow any member of the authority to refer any matter relevant to the functions of the committee if it is not an excluded matter.</p> <p>[NB – the exclusions therefore apply only to a standard CCfA, not to an instance where a committee member wants an item put on their committee’s agenda]</p> <p>Subs 3 – provision for guidance (currently, the statutory guidance published in March 2009).</p> <p>Subs 5- an excluded matter is a crime and disorder matter, or a matter specified by order of the SoS.</p>
9FD	<p>Councillor Call for Action Where a member of the authority (not a member of the committee) requests something to go on a committee agenda, the committee does not have to grant the request. If it doesn’t it must give the member its decision, and the reasons for it.</p>

9FE	Responses to OSCs – where an OSC publishes a report/recommendations under subs 2 it must (subs 3) require the authority or executive to consider, and respond to, recommendations indicating what if any action the authority or executive proposes to take. This response should be published, and provided within (subs 4) two months.
9FF	Duties of partner authorities. Partner authorities are defined in the 2007 Act, Chapter 1 and Part 5. This section gives all councils – including shire districts – the right to require partner authorities to “have regard to” reports and recommendations (subs 2). There is an exemption for health service bodies which are dealt with under separate legislation, where shire districts may not exercise these powers (subs 5).
9FG	Detailed provisions on publication of confidential and exempt information. It requires reports from scrutiny, and responses to scrutiny from the executive, to exclude confidential information (under s100A(3) of the 1972 Act). Exempt information “may” be excluded. Under subs 4 there is a requirement to replace any exempt information which is omitted with a summary, where otherwise the report would not be understandable.
9FH	Flood risk management – lead local flood authorities operating exec arrangements must make provision for review and scrutiny of flood risk management and erosion functions. Subs 3 says that authorities must comply with requests for information and responses to reports. Subs 4 gives the SoS powers to make further regulations on this issue – further regs under s123 of the 2007 Act may make provision for joint committees.
9FI	Partner authorities’ duties to give information to OSCs are covered by separate regs . . This does not include crime and disorder and health issues, which are covered in the 2006 Acts.
9G	Subs 1 states that exec meetings may be held in public or in private. Where they are held in private a written record must be kept of decisions made under subs 3. A written record of cabinet member decisions must be kept under subs 4.
9GA	Gives power to make further regs on the subject of access to information, and access to meetings, by the public.
9GC	Cabinets, or cabinet committees, are not bodies to which political proportionality applies.
9J	Regulations may be enacted to deal with the discharge and delegation of functions. Non delegable activities must be carried out “by the local authority” (ie at full council).
9JA	Committee system authorities may have one or more OSCs – the SoS may be regulations make provision about how they operate.
9JB	Committee system authorities must make provision for the scrutiny of flood risk management issues (see 9FH)
9K	Permits changes to governance arrangements (this, and ensuing provisions, are subject to the SoS directing mayoral referendums in May 2012).

9KA	Local authorities may vary their executive arrangements to provide for a different form of executive although this may be subject to an order for a referendum by the SoS.
9KB	Local authorities may vary executive arrangements where they alter them without changing the form of executive. Such changes will not be subject to an order of the SoS.
9KC	<p>Subs 1 requires a resolution of local authority to make a change in governance arrangements.</p> <p>Subs 2 says that after passing a resolution the council must make a document setting out the proposals available to the public, and publish in a local paper a notice setting out the changes.</p> <p>Subs 4 limits local authorities to not changing their arrangements for 5 years following a previous change, unless it is a s9KB change or unless there is a referendum.</p>
9L	<p>Provides for a “relevant change time” for altering governance arrangements. For a move between leader-cabinet and committee, this is (subs 4) the first AGM after the resolution, or a later AGM, as specified in the resolution.</p> <p>Subs 5 provides for changes to mayoral systems, where the relevant change time will be a time during the third day after the day of the declaration of the result of mayoral election.</p> <p>Subs 6 provides for changes from mayoral systems, the change time is the third day after when the mayoral election would have been held.</p>
9M	Deals with referendums. Changes in governance under 9K or 9KA are subject to referendums.
9MA	<p>Proposals for the change must be drawn up in advance of a referendum, which include a timetable for the implementation of proposals and details on transitional arrangements.</p> <p>Subs 5 and 6 cover moves to executive arrangements, and say that any proposals must explain how delegation and discharge of functions (under regulations) will be dealt with under a new governance approach.</p>
9MB	A resolution to make a governance change must not be passed until a referendum approves it. A resolution must be passed within 28 days of the day of the referendum.
9MC - E	Regulations will provide for referendum petitions. Referendums must be held following an order or direction by the secretary of state. An order may require every local authority to hold a referendum on a change of governance.
9MF	An authority holding a referendum may not hold another referendum on governance change for 10 years.
9N / 9NA	The Secretary of State may require a specified council to hold a referendum on mayor and cabinet.
9P	<p>Sets out requirement for council constitutions, including a copy of standing orders and a copy of the code of conduct.</p> <p>Subs 2 requires the constitution to set out whether a committee system authority will have an OSC.</p>
9R	Provides general powers to the SoS to issue guidance.

Sc A1 1	Deals with the powers of mayors to compose their cabinets.
Sc A1 2	Deals with the powers of leaders to compose their cabinets.
Sc A1 4	A non-executive member is entitled to attend and speak at a private meeting of the executive only if invited to do so.
Sc A1 6 onwards	<p>Education co-optees (applies to authorities with education functions only)</p> <p>7 – deals with diocesan representatives. Where there are CoE / RC schools in the area such reps are required on the education OSC. Such members will be entitled to vote. Under subs 6 the SoS may by direction require representation on OSCs from foundation governors or by reps from community schools too.</p> <p>8 – regs deal with the appointment to the OSC of parent governor reps, which make provision for elections etc. Regs can also make provision for the SoS to state that, where there are a small number of maintained schools in an area, parent governor rep places will instead be taken up by reps of registered pupils.</p>
Sc A1 11	<p>Co-opted members of OSCs (ie members of ctees who are not members of the authority) may be permitted to vote, in accordance with a scheme made by the council.</p> <p>Subs 3 – a scheme may include provision for a maximum or minimum number of such co-optees.</p>
Sc A1 12	The SoS may make regulations about schemes in paragraph 11.

Associated regulations and guidance

This includes regulations and guidance issued further to the 2007 Act.

Regulations

Parent Governor Representatives (England) Regulations 2001 (SI 2001/478) (PGR 2001)

- **Requirements** (clause 3) – LEAs should appoint at least two and not more than 5 PGRs to “each of their education OSCs”.
- **Elections** (clause 4 to 6) – a postal election process, by secret ballot, shall be organised. If not enough people come forward the LEA must repeat the process in a year.
- **Disqualification** (clause 7) – a PG representative is disqualified from continuing as the rep if they cease to be a PG.
- **Term of office** (clause 8) – no fewer than two but no longer than four years.
- **Voting** (clause 10) – the PGR may vote on any item at an OSC meeting relating to education.

Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011 (FLM 2011)

This sets out more detailed provisions relating to flood risk scrutiny under s9FH.

Clause 3 explains the duty to comply with a request made by a local authority for information within 28 days. This includes responses both to reports and recommendations. There is also a duty to attend before a committee to give



evidence orally, if requested.

The paragraph states that this duty includes the right to confidential information, but that where such information is tabled and discussed the meeting must be held in private.

The regulations also provide for review by the secretary of state of the regulations after five years. They will cease to have effect seven years after coming into force (ie in April 2018).

Local Authorities (Committee System) (England) Regulations 2012 (SI 2012/1020) (LACS 2012)

These regulations are made under s9JA of the 2000 Act, and deal with the operation of O&S in committee system authorities, as well as other aspects of business in committee system authorities.

Clause 4 onwards extends the applicability of the provisions of the 2000 Act (relating to scrutiny) to committee system authorities that choose to appoint an OSC. This includes the statutory scrutiny officer, powers over partners, education co-option and so on.

Important note about scrutiny under the committee system – authorities must arrange for a committee, which does not need to be a scrutiny committee, to transact health scrutiny functions and flood risk management functions. However, because other functions, in law, are vested specifically with an OSC, they cannot be exercised by a committee system authority that does not have an OSC. This includes:

- CSP scrutiny (under the 2006 Act);
- Partnership scrutiny more generally (the powers originally given by the 2007 Act).

Service committees making education-related decisions do not have to co-opt education representatives.

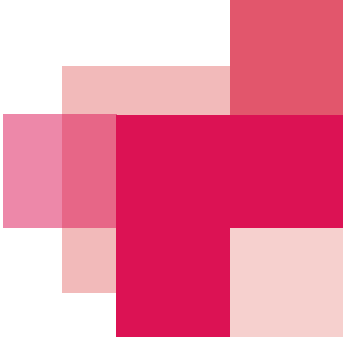
Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012 (SI 1022) (OSRC 2012) – this SI relates to exclusions to CCfA, and updates regulations on the same subject from 2008. It is made under s9FC.

Clause 3 – any matter relating to a planning or a licensing decision, and any matter relating to a person where that person has a right of appeal, or any matter that is “vexatious, discriminatory or not reasonable” is excluded. This is a slight change of wording from the previous regs which used “persistent” instead of “not reasonable”. For more on vexatious requests see s14, FOIA 2000.

Clause 4 – something should not be excluded if it forms part of an “allegation” of systemic failure of the function in question. This opens up the possibility that problems with multiple planning or licensing decisions in a given area could be considered as a CCfA.

Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2012 (SI 1021) (LAR 2012)

These regulations update those issued in 2009 on the same subject.



Clause 4 – a relevant partner authority (defined by s104, 2007 Act) must supply information to an OSC which the OSC may “reasonably require”, following a request in writing, so long as the request relates to the functions of the partner in the authority’s area or relating to the area’s inhabitants.

Clause 5 – disclosure of information not required where that information was provided to the partner authority in confidence or where disclosure might “prejudice the exercise of the functions of the authority” – although see the FOI Act for further context. Personal information within the meaning of the Data Protection Act cannot be provided (further to which the partner must redact the relevant information).

Clause 6 – makes clear that this section does not affect powers provided by the PJA 2006 or the NHS Act 2006.

Part 3 – where a response is provided by the executive, it must comply with the standard Schedule 12A rules around exempt information and the standard provisions around confidential information. .

Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (SI 1019) (LADF 2012)

These regulations make provision for the discharge of an executive’s functions (under executive arrangements) by another authority or another executive (**clause 5**). Where such arrangements are made, under clause 7 those functions will be regarded as belonging to the executive of the other authority. This is relevant for the scrutiny of such shared or transferred functions.

Under **clause 8** normal rules of delegation apply to such functions.

Clause 10 provides for changes to be made where services are provided jointly under s101 of the LGA 1972. Under **clause 11** joint arrangements may be discharged by a joint committee.

Guidance

Guidance on parent governor representatives

CfPS has published an “induction pack” for new PGRs <http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=68> which explains that role, and the usual business undertaken by scrutiny committees.

Best Practice Guidance: Councillor Call for Action

<http://www.cfps.org.uk/what-we-do/publications/cfps-general/?id=92>



Health and Social Care Act 2001

Introduction and general powers

This Act established the legal framework for health scrutiny in England (a different system operates in Wales, where primary responsibility for health oversight still lies with Community Health Councils). Health scrutiny was the first experience of many local scrutiny practitioners of scrutiny of partners, and partnership working.

The Act put into place proposals from the NHS Plan (2000). It has been superseded by the National Health Service Act 2006 and the Health and Social Care Act 2012, but its subsequent regulations (and a direction issued by the Secretary of State) are still in force.

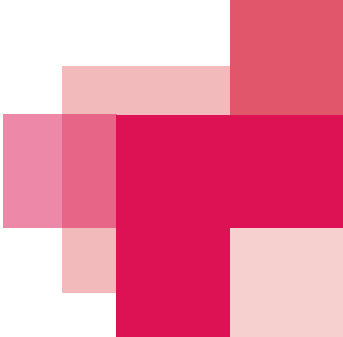
Associated regulations and guidance

Regulations and guidance made further to the HSCA 2001 provide more detail about the scope and nature of health scrutiny. CfPS has run a Department of Health-funded support programme for health scrutiny since 2004 and there is a large body of evidence and guidance available to support those scrutinising local health services, particularly in the context of substantial variations to local services. See <http://www.cfps.org.uk/what-we-do/publications/cfps-health/> for further information

Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (SI 2002/3048) (HSR 2002).

These regulations make provision for further guidance on health scrutiny. They will be superseded by regulations currently being drafted, that will be released for consultation in the autumn and which will come into force in April 2013. They:

- **Require that, where a report or recommendation is made to an NHS body, that body must reply within 28 days** (where a response is requested) (clause 3)
- **Where there is a substantial development or variation to health services, NHS bodies are required to consult with the relevant OSC.** This does not apply to the establishment or dissolution of an NHS trust or to the establishment of a “pilot scheme” under the NHS Act 1997 (clause 4). Subsection 4 contains an “in extremis” exception to the consultation requirement, but sets a high bar.
- **Where a committee feels that consultation, or the reasons given for an exception to the consultation, are inadequate, or where they consider the proposals not to be in the interests of local health services, it may refer the matter to the Secretary of State (clause 4 subsection 5).** It is important to note that a reference to the SoS can only be made in respect of the adequacy of the consultation with the OSC rather than for substantive reasons.

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- **A trust must provide a health OSC (or joint OSC) with information** (clause 5)
 - **An officer of a trust must attend a meeting to provide information needed by the committee to discharge its functions** (clause 6). However, reasonable notice needs to be given.
 - **Joint committees can be established** (clause 7). Under clause 8, one authority can delegate their scrutiny powers to another authority to carry out this work.
 - **Counties may co-opt district councillors onto OSCs** (clause 9)

Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) 2003.

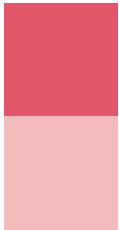
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4066609.pdf

These Directions amend the HSR 2002, above, stating that when a more than one authorities are consulted on a substantial variations, those authorities “shall” establish a joint committee, and that joint committee will be the only body with the right to exercise powers under clauses 4, 5 and 6 of the Regs, set out above.

See also the **Strategic Health Authorities (Consultation on Changes) Regulations 2003 (SI 2003/1617)** which go into more detail on the role to be played by OSCs when a substantial variation is proposed.

See also the **Local Involvement Networks Regulations 2008 (SI 2008/528)** which explains the roles and responsibilities of LINKs, including “enter and view”.

These provisions will all be amended and/or repealed by April 2013, when the new structural arrangements for health in England begin.



Local Government Act 2003

Introduction and general powers

This Act made various changes to the 2000 Act, further to two White Papers prepared in 2001 (“Urban Cities” and “Strong local leadership – quality public services”). Sections on governance etc have now been entirely superseded by other provisions.

National Health Service Act 2006

Introduction and general powers

This Act makes various provisions relating to health scrutiny, replacing the relevant sections of the Health and Social Care Act 2001. The Health and Social Care Act 2012 makes substantial amendments to this Act. These changes are highlighted in the section on “prospective legislation” at the end of this document.

Specific provisions – current (prospective legislation can be found at the end of this document)

Section	Description
242	Duty to involve. Health trusts have a responsibility to involve local people in decisions being made. This replaces section 11 of the Health and Social Care Act 2001.
244	Enabling section for further regulations (with application for counties and unitaries only). This gives force to the HSR 2002 and replaced section 7 of the Health and Social Care Act 2001.
245	Joint committees: health. This replaces s8 of the Health and Social Care Act 2001. Subs 2 – regs may make provision for joint committees, or for one council's OSC to take on the responsibility's of that in another area. County committees may also include district members.
246	Exempt information – any information covered in Schedule 17 should not be provided to OSCs.
247A	Where authorities do not have an OSC, they must establish a committee to exercise health scrutiny functions, which will be given the health scrutiny powers. Sections 9F and 9FA of the 2000 Act (which deal with scrutiny powers and responsibilities) will also apply to the committee.
Sch 17	Exempt information broadly covers info that would otherwise be covered by the DPA 1998, as well as information relating to certain NHS contracts.

Police and Justice Act 2006

Introduction and general powers

The Police and Justice Act brought in powers for scrutiny committees to investigate work being undertaken by Community Safety Partnerships.

It should be noted that this is a power to look at the work of the partnership as a whole rather than a power to scrutinise individual partners. A popular misconception of the PJA 2006 is that it gives councillors the power to scrutinise the police. This task will, from November 2012, rest with the Police and Crime Commissioner, who will him/herself be held to account by a Police and Crime Panel. More information on these new bodies can be found below.

Specific provisions

Section	Description
19	<p>Subs 1 requires local authorities to designate a committee as a “crime and disorder committee” with responsibility for the “responsible authorities” (CSP partners).</p> <p>Subs 2 requires the local authority to copy the responsible authorities in to reports/recommendations made to the exec.</p> <p>Subs 3 councils must ensure that the C&D committee has power to refer reports/recs on C&D issues to the authority and must enable any member of the authority not on the C&D committee to refer any local C&D matter to that committee (crime and disorder CCfA).</p> <p>Subs 4 enables a councillor to ensure that a C&D matter is discussed at a meeting of the committee.</p> <p>Subs 6 relates to CCfA. When deciding whether to make a report or recommendations further to a CCfA, the committee should have regard to any powers under s236 of the 2007 Act which might be relevant (delegated functions to single ward members) and any representations made by the member in question.</p> <p>Subs 7 requires the OSC to notify the member of its reasons if it decides not to make a report or recs to the local authority.</p> <p>Subs 8 requires the OSC to provide a copy of the report/recs to the member who referred the issue, to provide a copy to the responsible authorities as appropriate.</p> <p>Subs 8A & 8B requires the OSC to notify the recipient of the report/recs that they must consider the report and recommendations, respond to them and “have regard to” them in exercising its functions.</p> <p>Subs 9 requires the C&D committee to be an OSC.</p> <p>Subs 9A states that, in a committee system authority that has appointed one or more OSCs, the C&D committee is to be one of those bodies.</p> <p>Subs 10 applies Schedule 8 to those authorities without a relevant OSC (see below).</p>
20	Powers to make regulations and guidance.

21	Inserts new subsections into s5 of the Crime and Disorder Act 1998 (s5(1B), (1C), (1D). This permits the establishment of joint crime and disorder committees across a geographical area (allowing counties in two-tier areas to become involved)
Sc 8	Establishes that a committee that is not an OSC, but that is designated as a crime and disorder committee, will have the same powers as those set out in s19.

Associated regulations and guidance

One SI was issued, and one set of statutory guidance.

- **Crime and Disorder (Overview and Scrutiny) Regulations 2009 (CDR 2009).**

The regulations contain the following elements

Clause 3 – co-option. C&D Committees may co-opt representatives of CDRP partners as non-voting members of the committee. The regulations state that “only” a representative from a responsible authority may be co-opted. However, this does not affect the wider provisions for general co-option in the 1972, 2000 and 2003 Acts.

- **Clause 4** – committee should meet once a year at least.
- **Clause 5** – information must be provided to committees by the date indicated or “as soon as reasonably possible”. This information should be depersonalised; an exemption applies for info which might prejudice legal proceedings.
- **Clause 6** – attendance of an officer/employee of a responsible authority can be required (but reasonable notice must be given).
- **Clause 7** – responses to reports/recommendations of the committee must be made in writing and within 28 days.
- **Statutory Guidance.** This was issued in April 2009 and was prepared jointly by CfPS and LGiU, having been commissioned by the Home Office. Some points to note are:
 - More detail on the specific role of the crime and disorder committee;
 - Emphasis on the importance of partnership working and on the possibility of developing protocols for scrutiny with CSP partners;
 - Options for the operation of co-option schemes within the terms of the 2000 Act, taking account of the role of police authorities;



Local Government and Public Involvement in Health Act 2007

Introduction and general powers

The 2007 Act made some major changes to the conduct of “partnership scrutiny”, opening the way for scrutiny functions to scrutinise other organisations which deliver services on the council’s behalf, or whose local operations have a significant impact on the well-being of the local community. These changes were made to the 2000 Act and have since been consolidated by the 2011 Act.

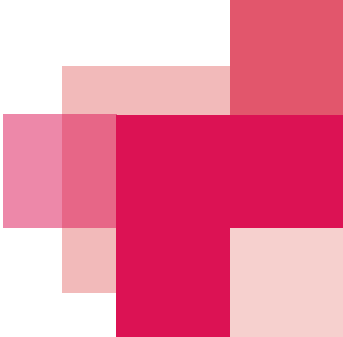
The Act brought in the Councillor Call for Action for all matters other than crime and disorder.

All the changes to scrutiny powers involve changes being made to the 2000 Act. Consequently, they are listed in the relevant section above.

It also allows councils to make bids for unitary status, and permits authorities currently electing councillors by thirds to move to whole-council polls (and vice versa).

Specific provisions

Section	Description
123	<p>A group of authorities may form a joint committee to make reports and recommendations which relate to any local matters covering a two or more authorities. Crime and disorder issues are excluded as they are covered by the PJA 2006.</p> <p>Regulations and guidance cover this issue in more detail. It should be noted that this does not rescind the general power in other legislation to set up joint committees.</p> <p>This section is an amended version of the original s123. The amended version was brought in by the 2009 Act. The original version ostensibly limited joint committees to the consideration of local improvement targets in two-tier areas.</p>
236	<p>Arrangements can be made to permit a single member to discharge any function of the authority.</p> <p>These can be executive functions (at the discretion of the executive member) or any other function.</p> <p>(See also s100EA, LGA 1972)</p>



Regulations and guidance

Regulations

Exercise of Functions by Local Councillors (Written Records) Regulations 2009 (SI 2009/352) (EFLC 2009) – these short regulations affirm the need for councillors exercising their s236 responsibilities (delegated functions) to record their decisions.

Guidance

Delegation of powers to individual members

The power to delegate functions in s236 of the Act is covered in the guidance on the Councillor Call for Action (which is covered under the 2000 Act, above).

The guidance highlights the opportunities for the use of the powers to delegate functions. To be worthwhile this will need to be accompanied by delegated budgets. Many authorities already have similar schemes in operation, in the form of Area Forums or joint working between parish councils and ward councillors. The Act places those provisions on a statutory footing. It is most likely to be used for the delegation of powers around “clean and green” issues.



Local Democracy, Economic Development and Construction Act 2009

Introduction and general powers

The 2009 Act brought in major changes relating to regional government in England, curtailing the role of Regional Assemblies (and preparing the way for their abolition) and recasting the role to be played by Regional Development Agencies and Leaders' Boards. Since 2009, the Government has abolished RDAs and replaced them with Local Enterprise Partnerships. Multi-area agreements – a significant feature of the legislation – have also been abolished, although this does not affect the fact that cross-border scrutiny will still be necessary to an extent.

New provisions were brought in relating to joint committees under the 2007 Act which have now been rolled in to the 2000 Act.

The 2009 Act also brought in the duty to promote democracy and requirements around petitions. These provisions have all now been repealed along with the relevant guidance.

Police Reform and Social Responsibility Act 2011

Introduction and general powers

This Act brings about significant changes to policing governance and accountability – notably, the creation of the new elected post of Police and Crime Commissioner, to be held to account by a Police and Crime Panel. Regulations have been / are to be published further to this Act.

Provisions relating to PCPs will be coming into force very shortly to allow for the panels to be established by November 2012.

Specific provisions

Section	Description
10	Sets out basic principles of co-operative working for the PCC and “responsible authorities” under the 1998 Act. This section should be seen in the context of s28(2) below.
28	Sets out provisions for police and crime panels outside London. Subs 2 states that the PCP must “[support] the effective exercise of the functions of the police and crime commissioner for that police area”. Subs 3 sets out statutory functions for the PCP in reviewing the draft police and crime plan. Subs 4 sets out functions for the PCP in scrutinising the PCC annual report. Subs 5 gives effect to Schedules 1, 3 and 8 of the Act, which provide for senior staff confirmation hearings, a veto over the policing precept, and confirmation hearings for PCC appointees respectively (see below). Subs 6 sets out general powers for the PCP, to review or scrutinise decisions/action taken by the PCC, and to make reports and recommendations. Subs 7 requires a PCP to publish any reports made to the relevant PCC, and subs 8 requires it to send this report to local authorities in the area.
29	There are various powers for the PCP to require the PCC and his/her staff to attend to answer questions, and to respond in writing. Subs 6 gives power to require the PCC and the chief constable to attend on the same occasion.
30	Gives powers for the PCP to suspend the PCC, if the PCC is charged with an offence carrying a maximum term of imprisonment exceeding two years.
45	Chief officers of police must obtain the views of people within neighbourhoods in the police area.
Sc 5	This schedule deals with the precept.
Sc 6	Schedule 6 covers PCPs in more detail.
Sc 6 1	English PCPs are covered by Part 2, unless the Secretary of State uses powers to establish a PCP in a given area herself, under Part 3 where a local authority has failed to nominate cllrs to the PCP.

Sc 6 3	Paragraph 3 onwards applies to PCPs in England established by local authorities (which we will refer to as “Part 2 PCPs”. Paragraph 3 itself requires councils to set up a PCP and make the necessary panel arrangements (para 24).
Sc 6 4	Part 2 PCPs will consist of members (minimum of ten, with more if there are more local authorities in the force area) and co-optees (minimum of 2, but more can be appointed by resolution). This must be agreed by the Home Secretary. A PCP is a joint committee of the relevant local authorities.
Sc 6 5	Where there are fewer than 10 authorities in the Force area, panel arrangements have to make provision for who will appoint the additional members to make the panel up to ten.
Sc 6 6, 7, 8, 9	Deal with detail of nomination process in multi-authority and single authority areas in order to bring the size of the panel up to its full complement.
Sc 6 10	Where an authority fails to nominate a member the Home Secretary may nominate directly. In doing so she must have aim to meet the “fair representation” objective – ie that every authority has only one of its cllrs as a member of the panel if there are more than ten authorities, and if nine or fewer that every council has at least one member on the panel.
Sc 6 11	Panel arrangements must provide for how authorities will meet the PCP’s costs, including how funds will be distributed.
Sc 6 12	The sections below deal with Part 3 Panels – panels established by the Home Secretary. The Home Secretary is responsible for drafting the panel arrangements for such PCPs. They will be established if local authorities in the area cannot agree on the setup of a PCP. Welsh PCPs will all be Part 3 panels.
Sc 6 13	Part 3 PCPs will have their cllrs appointed by the Home Secretary but may decide who to co-opt. A Part 3 PCP will not be a joint committee, or a committee, of an authority or authorities.
Sc 6 18	Provides more detail on the nomination process (including the process by which cllrs may accept, or not accept, nominations).
Sc 6 19 – 20	Part 3 Panels’ liabilities are liabilities of the Home Secretary, and is responsible for providing resources. These resources may be subject to conditions imposed on local authorities in the area (additional to the resources issues mentioned in 19, below).
Sc 6 21	The remaining parts of the Schedule apply to all PCPs equally. The PCC may not sit on the PCP.
Sc 6 22	A person may not sit on the PCP as a co-opted member if they sit on a devolved administration, are an MEP, an MP, or a member of staff of the PCC or a civilian member of staff of the police force in the area.
Sc 6 23	If there are only two co-opted members a local authority member may not be one of these co-optees, but if there are three or more co-optees, then they may be councillors (as long as at least two co-optees aren’t).
Sc 6 24	Deals with panel arrangements. These must make provision on co-option and ordinary members, including terms of office, resignation and removal, and re-appointment.

Sc 6 25	PCPs will have to make rules of procedure (these are not the same as panel arrangements). Rules of procedure must make provision for the appointment, removal and resignation of the chair, the method of making decisions [which presumably means recommendations] and the formation of sub-committees.
Sc 6 27	Special functions of the PCP may only be performed by the PCP itself, not a sub-committee. These are scrutiny of the police and crime plan (s28(3)), scrutiny of the PCC's annual report (s28(4)), considering the precept (set out in Schedule 5) and confirmation hearings for the chief constable, and for senior appointments (para 10 and 11 of Schedule 1).

Regulations and guidance

Regulations are expected to be published by July 2012 covering the following issues:

The extent to which the PCP will need to conform with the 1972 Act, as a council committee – ie whether there are any provisions which apply to 1972 Act committees, but which it would be necessarily / appropriate to disapply to the PCP.

Notification – the Home Secretary will need to be formally notified by July/ November that PCPs have been established in shadow form, and that subsequently they are ready to operate.

Nominations to the PCP and appointments to the PCP – the process by which nominations and appointments to the PCP will have to be notified to the Home Secretary, and more detail on how the appointments process is to be managed.

Guidance

Sector-led guidance to powers and composition of Police and Crime Panels (LGA / CfPS, 2011)

Sector-led guidance to the scrutiny role of the PCP (LGA / CfPS, 2012)
This guidance published in July 2012, will set out the key scrutiny responsibilities of the PCP, drawing examples from local government.

Sector-led guidance to PCP confirmation hearings (LGA / CfPS, 2012)
This guidance published in July 2012 will explain the issues that authorities will need to consider when planning and carrying out confirmation hearings for senior officials, including chief constables.

Localism Act 2011

Introduction and general powers

The Localism Act brought in a number of changes to local government. For scrutineers, the principal changes are a consolidation of existing scrutiny legislation, which is now all located in the 2000 Act. Other new sections in the 2000 Act include ones relating to mayoral referendums and governance changes. There are a number of associated regulations.

Specific provisions

Section	Description
1	General power of competence – “a local authority has power to do anything that individuals generally may do”.
23	Allows the SoS to, by order, make transitional arrangements in connection to new governance arrangements brought in under the Act.
24	Timetables for changing electoral schemes in shire districts. Amends provisions in the 2007 and 2009 Act about moving to and from election by thirds or halves.
25	Prior indications of view of a matter will not amount to predetermination (eg for planning and licensing decisions).
26, 27, 28	Requires local authorities to put in place a standards regime, including a code of conduct highlighting the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Subs 4 – standards problems do not invalidate decisions made which may link closely to those problems. Subs 6 – there must be arrangements under which allegations can be investigated, and decisions on those allegations can be made. Subs 7 – decisions must involve at least one independent person, appointed by the authority. (Independence is defined in subs 8)
29	Register of interests.
30 / 31	Deal with pecuniary interests, and the need to declare them where they are not entered in the register of interests.
45 / 46	Repeal of the duties to promote democracy and to have a petition scheme.
Sc 4	More detail on codes of conduct.

Health and Social Care Act 2012

Introduction and general powers

The HSA 2012 will bring in a range of changes to the NHS in England. Principally, the creation of the NHS Commissioning Board and clinical commissioning groups, the abolition of PCTs and SHAs and the transfer of public health responsibilities to local authorities. Changes are being made to the health scrutiny provisions in the 2006 Act, which will come into force in April 2013 (when regulations are expected to be laid in Parliament).

CfPS is putting together a more detailed guide to the Health and Social Care Act which is to be published shortly.

Specific provisions

Section	Description
181	<p>Establishes Healthwatch England as a committee of the CQC, to provide the CQC with “advice, information or other assistance”. (This section amends the Health and Social Care Act 2008)</p> <p>Also introduces a new section 45A into the 2008 Act, which provides for Healthwatch England to provide local Healthwatch organisations with advice and assistance on their responsibilities.</p>
182	<p>Sets out activities for local Healthwatch relating to local care services, amending s221 of the LGPIH 2007.</p> <p>Local Healthwatch will be responsible, amongst other things, for:</p> <ul style="list-style-type: none">Providing advice and information about access to local care services, and about related choices;Receiving views on local care services and transmitting them to Healthwatch England and the CQC;Making recommendations to Healthwatch England about specific reviews and investigations. <p>Those receiving reports from Healthwatch will need to have regard to those reports and recommendations.</p>
183	<p>Local authority arrangements – amendments to s22 of the LGPIH 2007.</p> <p>Gives power to regs to set out exactly what criteria local authorities will need to use to make arrangements for the discharge of local Healthwatch functions. Local Healthwatch bodies must be social enterprises but can contract other organisation(s) to carry out their functions. Joint working is permitted.</p>
185	<p>Independent advocacy. This section inserts a new s223A into the LGPIH 2007, requiring councils to put in place independent advocacy arrangements in their area.</p>
186	<p>Info requests and “enter and view” – passes these responsibilities to Healthwatch from LINKs.</p>
188	<p>Transitional arrangements. Gives the Health Secretary the right to create a scheme to manage the transition to Healthwatch, incl transfers of liability.</p>



190	Scrutiny functions, amending s244 of the NHS Act 2006. This section amends the 2006 Act to make health scrutiny the responsibility of the authority, instead of a specific OSC. It expands the scope of health scrutiny by applying it to “health service providers” as well as “NHS bodies”.
191	Makes consequential amendments, particularly relating to joint scrutiny.
192	Makes amendments relating to the requirement to consult over Joint Strategic Needs Assessments.
193	Makes amendments, including a new section 116A to the LGPIH 2007, around joint health and well-being strategies, including responsibilities to consult.

Summary of prospective legislation and guidance

Further legislation and guidance is expected on a number of areas covered in this document. Here, we summarise the expected position, as at May 2012.

Policing

Regulations are expected in the summer on the following issues:

- Nominations to Police and Crime Panels;
- Appointment of members to Police and Crime Panels;
- The application of the Local Government Act 1972 to Police and Crime Panels.

The Home Office plans to introduce “light touch” statutory guidance on the new policing arrangements. It is planned that this will cover non-criminal complaints about the PCC, and guidance on the publication of information. These are expected to be released in the summer. The IPCC is also expected to publish further technical guidance on dealing with complaints, in November.

Health

New regulations will be laid in Parliament in early 2013, replacing the existing health scrutiny regulations. They will ensure that councils’ health scrutiny powers will apply to CCGs and other health bodies.

DH plan to consult widely on these regulations in the autumn. The Health and Social Care Act, and the associated regulations, will come into force in April 2013.

Freedom of information regime

The Government plans to make changes to the Freedom of Information regime in this Parliament. It is unclear whether this will be through primary or secondary legislation.

Suggestions – none of which form Government policy, and which have not been expressed as such – include:

Expanding FOI to include private organisations / voluntary organisations that provide public services;

Expanding the scope of the exemption for policy formulation, making it a “class” exemption rather necessarily than one to which a public interest test will apply;

Removing “motive and requester blindness” so that a person’s motive may be relevant in deciding whether to release information (this could involve classifying certain individuals as “vexatious requesters”);

Charging for certain, or all, FOI requests;

Moving towards a more proactive vision of FOI whereby public bodies will be required to public certain information as a matter of course.

White Papers, non-binding guidance and other consultations since 2009

A number of papers have been published relating to Government policy since 2010. Not all of these have led directly to legislation and some of the more prominent are listed below in date order.

Title	Summary
“Control Shift” (Conservative Party, 2009)	This document was the first detailed setting out of the Conservatives’ vision for localism and local government. It presaged significant amounts of policies that found their way into the Localism Act (including the community right to challenge and the community right to buy, urban perishing and neighbourhood planning) and touched on the governance and transparency changes that were expected to ensue.
“Equity and excellence: liberating the NHS” (DH, 2010)	The Health White Paper presented policies on GP commissioning and the introduction of more market-based elements into the health service. This preceded the publication of the draft Health and Social Care Bill later that year.
“Policing in the 21st century: reconnecting police and the public” (Home Office, 2010)	This consultation on policing (governance and powers) was not a formal White Paper but did set out many of the policies that ended up in the Police Reform and Social Responsibility Bill.
Code of Recommended Practice for Local Authorities on Data Transparency (DCLG, 2011)	Non-binding guidance for local authorities on data transparency. Amongst other things, the code argues that councils should follow three key principles in publishing data: Responding to public demand; Released data in open formats available for reuse (eg, in CSV rather than PDF format); Releasing data in a timely way. The code recommends that local authorities should publish all expenditure information over £500.

This index includes some provisions which are not explained in full in the accompanying legislative summaries. Prospective legislation (ie that which has not come into force by 4 May 2012 is cited in italics)

Abbreviations:

LGA 1972	Local Government Act 1972
LGA 2000	Local Government Act 2000
HSA 2001	Health and Social Care Act 2001
PJA 2006	Police and Justice Act 2006
NHSA 2006	National Health Service Act 2006
LGPIH 2007	Local Government and Public Involvement in Health Act 2007
PRSR 2011	Police Reform and Social Responsibility Act 2011
LA 2011	Localism Act 2011
HSA 2012	Health and Social Care Act 2012

Sc	Schedule
Cl	Clause

Provision	Section number / Act
Access to information	s100B(2),(5), LGA 1972 s100C(1),(2), LGA 1972 s22, LGA 2000 Public interest test: Sch 12A, LGA 1972, FOIA 2000 Part 3, LAR 2012 (Sch 12A applies to responses by the executive) s9FH(3), LGA 2000 (scrutiny of flood risk management) s9FI, LGA 2000 (for other partners excl crime and health) <i>Prospective: s186 HSA 2012 (Healthwatch)</i> See also "exempt information" For Local HealthWatch
Access to information (crime and disorder)	Clause 5, CDR 2009
Access to information (health)	Clause 5, HSR 2002
Access to information (for Members)	s100F(2A), LGA 1972 See also Sch 12A
Access to information (from partner organisations)	Cl 4, 5, 6, LAR 2012

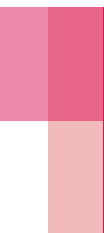
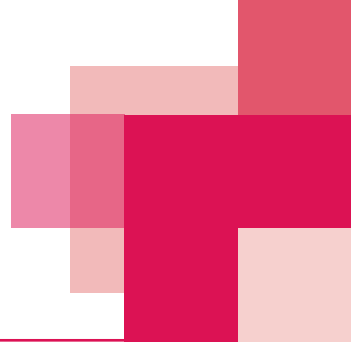
Access to meetings	s100(1), LGA 1972, s9FA(6), LGA 2000 s9G, Sc A1 cl 4, LGA 2000 (cabinet)
Allowances	ss174 (travel), 175 (attending conferences), LGA 1972 ss18(a) (basic allowance), 18(c) (SRA), LGHA 1989
Attendance at meetings (officer and cllr witnesses)	s9FA(8), (9), LGA 2000, s28, LPPIH 2007
Attendance at meetings (policing)	s28(5), Sc 1, 3, 8 PRSR 2011 (confirmation hearings), s29 PRSR 2011 (general)
Attendance at meetings (witnesses from other partners)	LAR 2012
Call-in	s9F(4), LGA 2000
Co-option	s9FA(4) and (5) (general), Sc A1, cl 11 and 12 (voting), LGA 2000
Co-option (crime and disorder)	Clause 3, CDR 2009
Co-option (education)	s13(5) LGHA 1989, s499, Ed Act 1996, Sc A1 cl 6 onwards, LGA 2000, PGR 2001
Co-option (health)	Clause 9, HSR 2002
Co-option (police and crime panels)	Sc 6 cl 23, PRSR 2011
Committee system: overview and scrutiny	s9JA, s9P(2), LGA 2000, CL 4, LACS 2012
Committee system: health scrutiny	s247A, HSA 2012
Consultation (health)	s242, NHSA 2006 See also HSR 2002
Constitutions	s9P, LGA 2000
Councillor Call for Action (crime and disorder)	s19(3) – (6), PJA 2006
Councillor Call for Action (excl crime and disorder)	s9FC, s9FD, LGA 2000, OSRC 2012
Crime and disorder (committees)	s19(1) & (9), PJA 2006
Crime and disorder (frequency of committee meetings)	Clause 4, CDR 2009
Crime and disorder (reports and recommendations)	s19(8), PJA 2006
Declarations of interest	s19, LGHA 1989

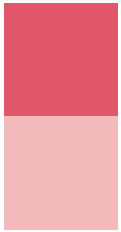
Delegated functions (generally)	s9BA(2), s9J, LGA 2000,
Delegated functions (leader-cabinet authorities, general)	s9D, s9DA, LGA 2000,
Delegated functions (leader-cabinet authorities, to area committees etc)	s9E, s9EA, LGA 2000
Delegated functions (to another authority)	LADF 2012
Delegated functions (to individual members to take action in their ward)	s236, LGPIH 2007 s100EA, LGA 1972 DFLC 2009
Disqualification for non-attendance at meetings	s85(1), LGA 1972
Disqualification of parent governor representative on an OSC	Clause 7, PGR 2001 (further to LGA 2000)
Duty to involve	s242, NHSA 2006
Exempt information	Sch 12A, LGA 1972 s9FG, LGA 2000 Sch 1, HSCA 2001, s246 and Sch 17, NHSA 2006 (health issues only) See also FOIA 2000, DPA 1998
Flood risk management scrutiny	s9FH, LGA 2000, s9JB (committee system), FLM 2011
Freedom of information (definition of “public authority”)	s3, FOIA 2000 Sch 1, FOIA 2000
Freedom of information (exceptions)	ss22-44, FOIA 2000
Freedom of information (general process for requests)	ss8 & 10, FOIA 2000
Freedom of Information (publication schemes)	ss19 & 20, FOIA 2000
Freedom of information (vexatious requests)	s14, FOIA 2000
Full council	Sch 12, ss1-4, LGA 1972
Governance arrangements: committee system	s9B(3), also Chap 3, LGA 2000

Governance arrangements: exec arrangements generally	s9B(2), also Chap 2, LGA 2000
Governance arrangements: leader-cabinet	s9C(3), (5), (6), Sc A1, cl 2, LGA 2000
Governance arrangements: mayoral	s9C(2), Sc A1 cl 1, LGA 2000
Governance arrangements: options	s9B(1), (4), LGA 2000
Governance arrangements: prescribed option	S9BA(4), (5), (6), LGA 2000
Governance arrangements: transition	s9K, s9KA, s9KB, s9KC, s9L, LGA 2000 , s23, LA 2011
Governance arrangements: transition - referendums	s9M – s9MF, LGA 2000 (general), s9N, s9NA, LGA 2000 (SoS powers to require individual councils to hold them)
Guidance (general power to the SoS to make it)	s9FA(11), s9R, LGA 2000
Health scrutiny See also “Consultation”, “Joint committees: health”, “Reports and recommendations”.	ss242, 244-246, NHSA 2006 Prospective: ss190, 191 HAS 2012
Healthwatch England	Prospective: s181, HSA 2012
Healthwatch (local)	Prospective: s182, HSA 2012 s183, HSA 2012 (discharge of functions)
Healthwatch (transitional arrangements)	s188, HSA 2012
Joint committees	s102(1)(b), LGA 1972, s9F(3), s9FA(7), LGA 2000, s123 LGPIH 2007
Joint committees (health)	s245, NHSA 2001 Clauses 7 & 8, HSR 2002 Prospective: s191, HSA 2012 See also Directions to OSCs issued by the Sec of State, 2003 (further to HSR 2002)
Joint committees (crime and disorder)	s21, PJA 2006 (amending s5, CJA 1998)
Joint committees (expenses)	s103, LGA 1972
Joint committees (standing orders)	s106, LGA 1972

Joint working generally	s9EB, LGA 2000, LADF 2012
Non-attendance at committee meetings (as a reason for disqualification)	See “disqualification”
Notice periods for public meetings	s100A(6)(a), LGA 1972
Parent governor representatives on education OSCs	PGR 2001 (further to LGA 2000)
Police and crime commissioner: co-operative working	s10, PRSR 2011
Police and crime commissioner: suspension (by PCP)	s30, PRSR 2011
Police and crime panels: general composition	Sc 6, cl 21 PRSR 2011 (PCC not to sit on PCP) Sc 6 cl 22 PRSR 2011 (other exclusions)
Police and crime panels: costs	Sc 6, cl 11, PRSR 2011
Police and crime panels: duties	s28, PRSR 2011 (general), Sc 6 cl 27 PRSR (special functions)
Police and crime panels: establishment in England by local authorities	Sc 6, Part 2, PRSR 2011 Sc 6, cl 4-10, PRSR 2011 (composition)
Police and crime panels: establishment in England by the Home Secretary, and establishment in Wales	Sc 6, Part 3, PRSR 2011 Sc 6, cl 13, 18, PRSR 2011
Police and crime panels: rules and procedures	Sc 6 cl 25, PRSR 2011
Political proportionality (including nem con votes)	s15(5), s17(1)(b), LGHA 1989, s9FA(6), LGA 2000 s9GC, LGA 2000 (disapplication to cabinet and cab ctees)
Political restriction (officers)	ss1 and 2, LGHA 1989
Publication of agenda papers / public deposit	s100B(3),(4), LGA 1972 s100B(1),(2), LGA 1972 s100D, LGA 1972

Recommendations and reports (scrutiny)	s9FE, LGA 2000 (for the council), s9FE(5) (exemption from these general powers for health issues) s9FG(3), LGA 2000 (flood risk management) clause 3, HSR 2002 (for health) s19(2), s19(8A), & (8B), PJA 2006 and clause 7, CDR 2009 (for crime and disorder) s28(6), (7) and (8), PRSR 2011 (police and crime panels) s9FF(2), LGA 2000 (all other partners)
Reference to Secretary of State (health)	clause 4(5), HSR 2002
Referendums on governance change	See "Governance arrangements: transition"
Registers of interests (see also "standards")	ss29, 30, 31 LA 2011
Scrutiny (req'ment for committee in leader-cabinet authorities)	s9F(1), LGA 2000, s9FA(3) states that cttees cannot have cab members on them
Scrutiny officer (statutory)	s9FB, LGA 2000
Scrutiny powers (extent)	s9F(2), LGA 2000
Scrutiny powers (limitations)	s9F(5), LGA 2000
Scrutiny sub-committees (power to establish)	s9FA(1), (2), LGA 2000
Standards	ss26, 27, 28, Sc 4, LA 2011
Substantial variation to NHS services	Clause 3, HSR 2002
Ward powers (delegated functions to individual councillors)	s236, LGPIHA 2007
Witnesses at meetings	See "attendance"
Witnesses at meetings (health)	Clause 6, HSR 2002
Witnesses at meetings (crime and disorder)	Clause 6, CDR 2009





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