

The World Will Be Your Oyster?

Reflections on The Localism Act 2011

Chapter Six

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Governance arrangements and their
implications for Overview and Scrutiny
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Context

As much trailed and anticipated, the Act provides for all forms of local government that so decide to “return” to a committee system.

Until this new millennium the committee system had been the bedrock of how local authorities took their collective decisions.

From the time central government started taking an interest in local government through the Municipal Corporation Act of 1835 and the subsequent Acts of Parliament that created County Councils, District Councils, London Boroughs, Parish Councils and finally Metropolitan Borough Councils, councils in the UK were governed by committees of elected Councillors. There is, therefore, a longstanding track record of many councils successfully working through a committee system.

Thus, the Local Government Act 2000 which effectively ended the committee system was revolutionary. But it did not come out of the blue. For, whilst there were many enthusiastic defenders of the committee system it also had critics who argued that it entrenched departmental interests and was clumsy, time consuming and slow until in 1990 the Audit Commission argued that “we can’t go on meeting like this”. (Somewhat ironic, given now the position of that body.)

The reality now, however, is that many Members, Local Authority Officers and a new generation of the public have no experience of how the committee system worked. They are dependent upon the recollections of others and as with all such reminiscing some might be a bit too nostalgic.

The Act requires that all authorities operate governance arrangements in one of three forms:

- Executive arrangements (either Leader, Cabinet and Scrutiny or Executive Mayor, Cabinet and Scrutiny)
- A Committee system
- Another prescribed arrangement as approved by the Secretary of State

Governance arrangements can be changed either by a Council resolution alone or by one instigated by a referendum.

In the Bill the process for change was a two-stage one – first the full Council resolution with implementation following the next “appropriate election of Councillors”.

Now, however, in the Act, a “relevant change time” is the first annual meeting of the Local Authority to be held after the resolution to make the change in governance arrangements.

Once a change has been made it will be locked in for a fair period of time. There are two ways to call for a further change. Where the original change had been made through a resolution, another resolution for a change may not be made within the next five years. If the change had been brought about through a referendum another change cannot happen within the next ten years. Another important point to bear in mind is if a local authority has moved its governance arrangements through a referendum, the subsequent change must also be through a referendum.

This does not encourage piloting. It makes it all the more important that a thorough assessment is made before embarking on change. It is very likely that there will be divided opinions amongst Councillors on this matter. Some may be unwilling to see existing decision making powers changed, whilst others currently excluded from the decision making process, albeit from the same political party in control, might see this as an opportunity to redress the balance. It is also likely that chief executives will have strong views on these matters, typically being more in favour of fewer rather than larger numbers of Members being involved in taking decisions. In these circumstances some external and independent advice and mediation could prove very helpful here.

Implications

Having provided an overall context this paper now focuses on the implications for Overview and Scrutiny. Whilst acknowledging that scrutiny undoubtedly has had a chequered history, sometimes being tepid or even non-existent, that there are also plenty of examples, where given the right organisational culture and environment, Overview and Scrutiny has been able to make real and lasting contributions to the improvement agenda of local authorities and partners.

The Act consolidates in one place previous scrutiny legislation and regulations, (although provisions relating to crime and disorder remain in the Police and Justice Act 2006 and health provisions remain in the NHS Act 2006). It replaces the relevant provisions in the 2000 Act in full. This consolidation of the patchwork of

legislation on Overview and Scrutiny is undoubtedly helpful for local authorities and their partners making it easier to understand its scope.

At the report stage of the Bill three noteworthy amendments were made to the scrutiny provisions.

- The deletion of the prescription about matters non-scrutiny committee members may refer to a scrutiny committee. Councillors who are not members of scrutiny committees will no longer be restricted to referring only local government matters to scrutiny committees. This means that any members of an authority may refer any matter to scrutiny committees for consideration.
- The removal of the link between the scrutiny committee powers to scrutinise partner authorities and improvement targets in local area agreements. In future partners will be required to have regard to the reports and recommendations of the overview & scrutiny committees that relate to any of their functions exercised in relation to the committee's area or residents of that area. This widens the partners' activities that overview & scrutiny committees can scrutinise.
- The removal of the distinctions in the scrutiny provisions between district councils in county councils' areas and other partners authorities. This places the scrutiny committees of non-unitary district councils into an equivalent position to those of other authorities.

However, having seemingly set out its stall for the continuing importance of scrutiny, the Act then introduces a demarcation line according to whether a local authority opts for Executive arrangements or Committee arrangements.

If an Authority settles on Executive arrangements these **MUST** include provision for the appointment of at least one scrutiny committee. The rest of the provisions concerning scrutiny will then apply.

But if an Authority settles on a committee system it **MAY** have one or more scrutiny committee.

Whilst there is the retention of Health, Community Safety and Flood Risk Management scrutiny powers for all Councils, the implication is that all other aspects of current scrutiny arrangements are discretionary.

Two reflections

Health Scrutiny

The Act contains provision for local authorities to continue to have a role in scrutinising the work of health authorities.

In the consultation stage leading up to the bill there were proposals to merge local authority scrutiny functions into Health and Wellbeing Boards.

A number of bodies like the Centre for Public Scrutiny, the Unitary and County Scrutiny Network as well as INLOGOV pointed out that, given that it was almost certain that senior Executive Members and Officers would be appointed to these Boards, the scope for scrutiny would be limited with the scope for conflict of interests increased. It would also be very difficult for the proverbial person on the Clapham omnibus to see such a Board being independent and impartial. Bluntly, the proposals were flawed.

It was heartening that these representations were listened to and what we now have is the continuing opportunity for scrutiny to contribute to the work of the NHS. It is this focus on the difference between Executive and Scrutiny powers (which Parliament is very clear about in its own arrangements for Select Committees) that must provide a continuing thread through the implementation stages of the Health and Social Care Act.

Designated Scrutiny Officer

The role of a designated scrutiny officer involves:

- Promoting the role of authorities' of O&S committee(s)
- Providing support to O&S committee(s)
- Providing support and guidance to "Members, Members of the Executive and Officers of the Authority"

Furthermore in stating that this Officer should not be the Head of Paid Service, Monitoring Officer, or Section 151 Officer and placing it in this category suggests that it is envisaged that this role should be at a senior level.

Our view is whether or not a Council chooses to conduct its affairs through committees; it should properly resource a capacity to undertake scrutiny. For committees, or for that matter cabinets (and cabinets are, in the last resort, just single party committees, dealing with detailed and complex agendas) there is no substitute for the analysis of an issue or service in depth which scrutiny is properly placed to do and where an input from non-executive Members can bring out choices and alternatives that otherwise might never see the light of day.

In Sum

The Government explains its purpose as wanting to increase transparency and also give local authorities the choice in deciding their appropriate governance arrangements. The Act provides for local authorities operating Executive arrangements to have scrutiny committees and designated scrutiny officers. For local authorities that choose to operate a committee system, they will have the flexibility to decide the appropriate arrangements (including having a scrutiny committee) that will enable local people and their elected Members to hold their Councils to account.

At a time when the Government is placing great emphasis on transparency, accountability and local scrutiny, it is important that the narrative it provides around the Act does not give the impression that those authorities who opt for committee governance arrangements can water down the scope for effective local authority Member scrutiny.

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