

House of Commons
Transport, Local Government and
the Regions Committee

**HOW THE LOCAL
GOVERNMENT ACT 2000
IS WORKING**

Fourteenth Report of Session 2001–02

Volume I

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Fourteenth Report of Session 2001–02

*Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices*

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TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS COMMITTEE

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by the memorandum number, eg LGA 01.

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FOURTEENTH REPORT

The Transport, Local Government and the Regions Committee has agreed to the following Report:

HOW THE LOCAL GOVERNMENT ACT 2000 IS WORKING

Conclusion

A great deal of time, money and effort has gone into changing the political management arrangements of local authorities with apparently little change to the overall quality and credibility of local government. The Government's stated intention at the time of the Act—to restore the self-confidence of local government—has been lost in the focus on internal change.

Introduction

1. As part of the Government's plans to 'modernise' local government, a Local Government Act was passed in 2000. It comprised:

- Part I—the promotion of economic, social and environmental well-being;
- Part II—new constitutions and executive arrangements including elected mayors and the cabinet model and overview and scrutiny committees;
- Part III—a new ethical framework;
- Part IV—provisions relating to local authority elections; and
- Part V—miscellaneous provisions.

2. The key changes introduced by the Act were to:

- end the reliance on the committee system as the main instrument for decision-making in local government;
- separate the roles of executive and scrutiny;
- introduce the opportunity to choose elected mayors; and
- replace the presumption of *ultra vires* with a new power for well-being which allows councils to “undertake any activity that promotes the well-being of their area, except where they are specifically restricted from doing so.”¹

3. The draft Bill was scrutinised by a Joint Committee but the Government took very little notice of its findings. Our predecessor Committee received evidence on Local Authority Governance in 2001,² which was very critical of the new arrangements. It was not able to make a report because of the dissolution of Parliament. When we were established we resolved to undertake an inquiry into ‘How the Local Government Act 2000 is Working.’ The evidence submitted to this inquiry reinforces the concerns expressed last year.

4. We received written memoranda from 41 organisations and took oral evidence from 16 individuals and organisations in April and May 2002, culminating in evidence from the Rt Hon Nick Raynsford MP, Minister of State for Local Government and the Regions. We appointed Professor Sir Michael Lyons and David Powell as our advisors and are grateful to them and all who submitted written memoranda and gave oral evidence to the Committee.

5. It is still early days with some of the provisions of the Act having only recently come into force and the regulations and guidance having been amended several times.³ Our evidence and as a result our Report, refers not only to the Act but to the plethora of regulations and guidance that accompanies it. “*There is only one Act but something like 17 sets of regulations and over 300 pages of guidance and all of it keeps being amended or revised and reissued.*”⁴ The majority of our evidence came from councils that have chosen the Leader and Cabinet model for their new executive arrangements, corresponding to the position across local authorities as a whole. Again, this is reflected in our Report.

¹ Paragraph 62, *Power to Promote or Improve Economic, Social or Environmental Well-being (Final Guidance)*, DETR, May 2001

² *Local Authority Governance*, Memoranda, HC225, March 2001 and Minutes of Evidence, HC225, April 2001

³ The Government issued the fourth version of the guidance on *Accountable Decision Making* in March 2002

⁴ LGA15

6. Our Report makes reference to three recent local government White Papers:

- (i) *Modern Local Government: In Touch With the People*, which was produced by the Government in July 1998 and set out its new programme of local government ‘modernisation’ which aimed to create a “radical refocusing of councils’ traditional roles;”⁵
- (ii) *Local Leadership: Local Choice*, published in March 1999, which accompanied the draft Bill (later to become the Local Government Act 2000);⁶ and
- (iii) *Strong Local Leadership: Quality Public Services*, which was published in December 2001 and amongst other things sets out the Government’s ambition to “remove unnecessary controls which stifle innovation.”⁷

When we took evidence, the Department for Transport, Local Government and the Regions (DTLR) was responsible for local government. The responsibility has since been transferred to the Office of the Deputy Prime Minister (ODPM).

7. The Government has recently commenced a five year study to evaluate the effectiveness of the Act.⁸ Officials told us that the ultimate criteria of success would be “the impact on the vitality of local democracy and in the quality of outcomes.”⁹ Our Report does not deal with the 2000 Act in its entirety. We concentrate on the key issues raised in our evidence which relate to the Government’s most important objectives for the Act. Our Report considers the Government’s aims to:

- create outward looking, responsive councils;
- ensure efficient, transparent and accountable decision-making;
- develop powerful roles for all councillors;
- create a clear split between the executive and scrutiny;
- undertake overview and scrutiny;
- encourage people to become councillors; and
- consult local communities about governance arrangements.

The report below examines the extent to which these aims have been met.

8. As we have undertaken our inquiry we have become increasingly aware and concerned about the councillors who report that they feel “excluded”¹⁰ from the decision-making process. A number of witnesses have suggested that the creation of a small, separate executive has left the vast majority of non-executive councillors less well informed¹¹ and less able to take on their new role as ‘community leaders.’¹² Questions are asked about whether this will reduce the flow of informed members who might take on executive roles in the future.¹³ We are concerned that the Government has tended to discount the views of these councillors as transitional problems as they

⁵ *Modern Local Government: In Touch With the People*, Department for the Environment, Transport and the Regions, July 1998, CM4014

⁶ *Local Leadership: Local Choice*, Department for the Environment, Transport and the Regions, March 1999, CM4298

⁷ *Strong Local Leadership: Quality Public Services*, Department for Transport, Local Government and the Regions, December 2001, CM5327

⁸ Qq118-123

⁹ Q117

¹⁰ LGA14

¹¹ LGA35

¹² LGA26

¹³ LGA15

adapt to changes their ways of working.¹⁴ **The Government should recognise that if there are problems with the legislation, it is likely that they would identified most quickly by councillors who are operating under the new arrangements.**

Outward looking, responsive councils

The power to promote economic social and environmental well-being

9. In *Modern Local Government: In Touch with the People*, the Deputy Prime Minister called on Councils to become outward looking and more responsive to their local communities:

*“A fundamental shift of culture throughout local government is essential so that councils become outward looking and responsive.”*¹⁵

10. The Government wanted to create self-confident councils, acting as community leaders—changing the role of councillors to become advocates of their constituents rather than the defenders of current practice and sometimes poor service provision. In particular Part I of 2000 Act introduced a new power to promote social, economic and environmental well-being. This was explicitly intended to strengthen councils’ responsibility for, and ability to respond to, the distinctive needs of their communities. Departmental officials told us that the well-being power was one of the most important parts of the Act¹⁶ yet they “have difficulty in providing specific uses of the power in the sense of pointing to concrete examples of things being done which could not previously have been done.”¹⁷ The Society of Local Authority Chief Executives (SOLACE) noted,

*“These powers were welcomed by local authorities but we are concerned that Part I of the Act may have lost its way both in the short term and in the longer term. It needs to be relaunched in a more meaningful way ... We have heard little since its launch as to how—or even if—it is being used. Although its introduction was accompanied by guidance notes of various kinds, for many legal advisors in local government that launch was a false dawn. At some point its ambiguous form together with experience of its use by practitioners needs to be reviewed. Doing so would then allow for a re-launch. Without such a re-launch, we suspect it will start to gather dust on the shelves of cautious local government lawyers. It is felt that a more rigorous approach to co-ordinate the use of these powers needs to be taken.”*¹⁸

The Government and Local Government Association should emphasise their expectation that councils will use the well-being power and give simple, practical advice as to how and take steps to monitor its use.

11. One of the difficulties appears to have been that the Act introduced the well-being power and new political structures simultaneously. Councils have so far been looking inwards to put in place their new political structures. Even councils such as the City of Chester which have been experimenting with new constitutional arrangements for at least three years have not yet used the new power to promote the social, economic and environmental well-being of their communities. Chester City Council observed,

¹⁴ Q124

¹⁵ Page 5, *Modern Local Government: In Touch With The People*, DETR, 1998

¹⁶ Q152

¹⁷ LGA22(b)

¹⁸ LGA14

“Perhaps too much attention from everyone, Government, LGA and individuals has been on the whole structural debate and insufficient attention has been paid to these wider issues.”¹⁹

As the Audit Commission stated,

“The structural changes set out in Part II form only part of the picture and cannot in themselves renew local democracy.”²⁰

The evidence we have received is that local government is so distracted that it is not using the well-being power, and that as a result the transformation of previously inward looking local authorities into outward looking, responsive councils is unlikely to take place.

Regulations and guidance

12. The internal focus on structural changes has been reinforced by the plethora of regulations and guidance which accompanies the Act. Gateshead Council stated:

“This Part of the Act [Part II] has given rise to a plethora of secondary legislation, much of which is of greater than usual obscurity. While a degree of complexity may be inevitable in dealing with matters of detail, part of the problem appears to lie in an over-prescriptive approach. An example can be found in the rules which specify which members may or may not be appointed to joint committees; these rules have now been amended but only after authorities had spent a great deal of effort trying to make sense of the original, highly prescriptive rules. It is not a mark of good legislation that regulations have to be amended by further regulations before the primary legislation is fully in force.”²¹

Doncaster Borough Council added:

“Generally the volume and complexity of the regulations and guidance has caused some concern. There is the possibility that the modernisation objectives of openness and clarity are being frustrated by the complexity of the regulatory framework.”²²

We recommend that the volume of regulations and guidance which accompanies the 2000 Act should be dramatically reduced.

13. We consider later in the report the evidence that we have received about specific regulations and guidance which governs key decisions.

Freedom to respond to local circumstances

14. RJB Morris²³ contrasted the difference between Part I of the Act, which creates a general power to promote social, economic well-being and Part II which sets out in detail how the new executive arrangements should work, for example, *“What is, and is not, within the powers of the executive (or cabinet) is now elaborately prescribed in a way which seems the antithesis of trust and confidence in local government to act responsibly.”* He concluded,

¹⁹ LGA06

²⁰ LGA24

²¹ LGA04

²² LGA19

²³ Chief Executive of Northampton and former President of SOLACE, writing in a personal capacity

“Is it not a final irony that the Act which gave councils powers of well-being in the interests of their communities felt unable to give those same councils duties of good governance within their council chambers?”²⁴

15. This level of prescription from central Government has stifled the ability of councils to experiment with arrangements that could reflect the different needs of different local communities. Councillor Kemp of Liverpool City Council told us:

“We believe that there should have been more room for local experimentation, because Liverpool is different from Manchester or Sheffield, and there ought to be greater differences in the way we run things, providing what we do it coherent and works.”²⁵

The most recent Local Government White Paper—*Strong Local Leadership: Quality Public Services* set out the Government’s desire to redress the balance away from central government prescription and towards local freedom. In his foreword the Prime Minister wrote that within a national framework of standards and accountability there should be:

“Devolution to local councils to encourage diversity and creativity, giving them the freedom they need to respond to and meet their communities’ needs.”²⁶

The Government should give local authorities the freedom to develop constitutions that respond to local needs and should consider both amendments to regulations and guidance and primary legislation.

Local Strategic Partnerships

16. One of the ways in which it was intended that councils would become more outward looking and exercise their well-being power was through Local Strategic Partnerships (LSPs). We received evidence from local authorities concerned about the democratic legitimacy of such partnerships, including Cumbria County Council’s concern about the *“democratic deficit.”*

“As such partnerships start to develop community strategies that set the vision for Cumbria in 10-15 years, where is the democratic accountability? How do we ensure that truly reflect local opinion? Our assumption is that this is the role of elected members on the council who have a democratic mandate to represent the views of local communities but if we are in a minority [on the LSP], how can we ensure this happens.”²⁷

We are pleased that the DTLR, in its supplementary memorandum, has clarified that in the case of a dispute between the LSP and the local authority, it is the council as the democratically elected body which will be the final arbiter.

“Irrespective of who chairs an LSP, someone needs to take responsibility and be accountable for ensuring that:

- *the membership and methods of consultation and engagement are balanced and inclusive;*

²⁴ LGA13

²⁵ Q71

²⁶ Foreword, *Strong Local Leadership: Quality Public Services*, Department for Transport, Local Government and the Regions, December 2001, CM5327

²⁷ LGA33

- *difficult decisions are addressed and resolved, not just the easy ones. Those decisions should not simply represent the ‘lowest common denominator;’ and*
- *the partners properly resource and support the LSP.*

In one sense these responsibilities are shared by all partners. But someone needs to step forward and take a lead on these issues if others are failing to do so. This is a key part of every council’s responsibility as the community leader.”²⁸

The Government should give further thought as to how Local Strategic Partnerships fit with the executive structure of local authorities.

17. We were very concerned by Nick Raynsford’s suggestion that LSPs create an opportunity for people to become involved in decision-making, without standing for election:

“Many of those people, for very good reasons—whether it is the demands of their work or other considerations—simply do not have time to serve on a local council. It would be quite wrong to exclude them because they have not been elected, if they have a useful contribution to make.”²⁹

If Local Strategic Partnerships are to become a way in which people can take decisions without standing for election, this would undermine the role of democratically elected councillors and create further concerns about how LSPs can be held accountable.

18. The Government has very different approaches to codes of conduct and conflicts of interest in LSPs and councils. Part IV of the Act introduced new codes of conduct for councillors, with each local authority required to adopt one of four model constitutions, each of which sets out the definition of an ‘interest’ and specifies that the councillor must take no part in and not seek to influence the decision-making process.³⁰ By contrast, the Minister told us that for an LSP, declarations of interest are “very much an issue, I think, for Local Strategic Partnerships themselves to determine.”³¹ **Government policy on issues of interest and personal conduct should be consistent across the public sector, for example across local councils and Local Strategic Partnerships.**

Efficient, transparent, accountable decision-making

19. The White Paper, *Local Leadership: Local Choice* identified four characteristics that should be displayed in the political management arrangements of a ‘modernised’ local authority—*efficiency, transparency, accountability and high standards of conduct.*³²

Speed of decision-making

20. We received some evidence that decision-making may have become faster under the new arrangements.³³ This may be of benefit for decisions that are non-controversial. The decisions made by local authorities can be very different to the type of decisions made by businesses and many controversial decisions can benefit from slow, thoughtful decision-making which can enable councils to get agreement from a range of people. David Clark of SOLACE said,

²⁸ LGA22(b)

²⁹ Q574

³⁰ Paragraph 8-15, *The Model Code of Conduct*, Authorities Operating Executive Arrangements, DTLR

³¹ Q576

³² DETR, 1999

³³ LGA15

“Decisions, for example, to close old people’s homes are sometimes better taken slowly and being involved. I think many people have had experience of those sorts of decisions. I, for one, have found that slowing some decisions stops stupidity taking place.”³⁴

21. One way to allow greater debate of controversial issues is to encourage scrutiny before decisions are made.

“Those that feel their scrutiny committees have a real influence tend to be from authorities where a substantial amount of pre-decision scrutiny is taking place ... Making all the information available to scrutiny members, members of the public and stakeholders organisations well in advance of a decision being taken is a key part of effective pre-decision scrutiny and ensures they are able to participate, object or submit alternative proposals.”³⁵

It is therefore surprising that Government guidance on overview and scrutiny under executive arrangements is dominated by provisions for the call-in of a decision after it has been made and before it is implemented.³⁶ **Councils should give emphasis to high quality pre, rather than post, decision scrutiny of controversial matters.**

‘Key’ decisions

22. The definition of what is a ‘key decision’ is the subject of eight, much criticised, paragraphs of Government guidance.³⁷ Under the new arrangements, ‘key decisions’ must be publicised in advance, relevant papers must be made publicly available and if taken collectively, they must be taken in public.³⁸ The definition of a ‘key decision’ is one that involves ‘significant’ expenditure or savings (as identified by the decision-maker) and/or one that will be significant in terms of its effects on communities. The detailed definition has been criticised for being “imprecise” yet also “over prescriptive and too involved in small detail” and Manchester City Council’s memorandum noted that the guidance and regulations are inconsistent.³⁹ Indeed one memorandum stated that the definition “manages both to be prescriptive and inconsistently imprecise.”⁴⁰ The Audit Commission’s memorandum warns of the possibility of legal challenge over the definition.

23. It is clear that councils themselves have the capacity to identify which decisions are controversial, without central government guidance. Indeed what is controversial locally may be hard to predict nationally. Councillor Brant explained that under Liverpool City Council’s pilot arrangements (which the Council explained are no longer in operation because they were not consistent with the 2000 Act⁴¹):

“The 95% of decisions which are non-controversial went through within a couple of weeks and it meant those on the outside who wanted to see a decision go through quickly saw it

³⁴ Q422

³⁵ LGA12

³⁶ Replacement Chapter 3, *New Council Constitutions Guidance Pack*, DETR, March 2001

³⁷ Paragraphs 7.15-7.22, Replacement Chapter 7, *New Council Constitutions Guidance Pack*, DTLR, March 2002

³⁸ Replacement Chapter 7, *New Council Constitutions Guidance Pack*, DTLR, March 2002

³⁹ LGA15 and LGA32

⁴⁰ LGA13

⁴¹ LGA28

happen. However, where there was a form of controversy or greater scrutiny required, any member of council (I think it was five members) could call it up and make sure that it went through, in effect, the old committee structure, up to the main committee and then to full council.”⁴²

24. Following the commitment in the White Paper, *Strong Local Leadership: Quality Public Services* that “local authorities are best placed to make the choice as to what constitutes a key decision for this purpose,”⁴³ Nick Raynsford confirmed that the definition of a key decision “should be left to local authorities to determine.”⁴⁴ We have received further clarification from DTLR of what he meant by this:

*“There are no immediate plans to amend these paragraphs [current Government guidance], to remove the two stage test or give further guidance on the meaning of ‘significant’ expenditure. As announced to the House on 8 February 2001 and 21 March 2002, there are plans to review the operation of the access to information arrangements, including the operation of key decisions. The review is planned for this summer with findings to be promulgated in November. The review may lead to changes in guidance if a good case is made, or an unacceptable degree of variation in practice, not justified in relation to local circumstances, becomes apparent.”*⁴⁵

Each council should be able to define the characteristics of what is a controversial, i.e. key decision, based on the specific needs of its local area. It is not practical for central government to specify the tests for a key decision.

Transparency

25. The new arrangements were intended to improve transparency. Our evidence suggests that in many councils decisions continue to be made in private and are merely being “rubber stamped” or justified in public,⁴⁶ that public awareness of who is taking those decisions has not improved⁴⁷ and that public and media interest in council meetings has, if anything, reduced⁴⁸. The Audit Commission noted:

*“Implementing the new political management arrangements has not in itself resulted in increased levels of public engagement in the democratic process. In fact, some councils report a decreased attendance at public meetings following the implementation of the new system. This is partly attributed by them to increased levels of confusion about where decisions are made in the new arrangements, following the loss of easily labelled service committees and the sheer number of meetings within the new structure.”*⁴⁹

We are very concerned by reports of lower levels of public awareness and reduced local media interest in the new structures, especially as increasing accountability and transparency was one of the main objectives of the Act.

⁴² Q319

⁴³ Paragraph 2.29, *Strong Local Leadership: Quality Public Services*, Department for Transport, Local Government and the Regions, December 2001, CM5327

⁴⁴ Q539

⁴⁵ LGA22(c)

⁴⁶ LGA35

⁴⁷ Q326

⁴⁸ LGA03

⁴⁹ LGA24

Powerful roles for all councillors

26. *Local Leadership: Local Choice* stated:

*“The legislation would be for every council to move to one of a range of new forms of local governance with ... powerful roles for all councillors to ensure transparency and local accountability.”*⁵⁰

The role of full council

27. We have received evidence that the role of full council has been weakened under the new arrangements, contrary to the intentions of those who drafted the Act.⁵¹

*“Political scrutiny, which has its place more within the arena of full council is also an important democratic function for non-executive councillors and opposition, as the executive must be held to account politically. It is important to provide proper checks and balances and to probe and expose differences of policy and political management. Members need to have a credible and public forum to ask pertinent questions on behalf of their electors. The new arrangements have effectively emasculated the role of the council.”*⁵²

Yet many councillors view a stronger role for full council as a way to enhance accountability. Liverpool City Council argued that full council should be given the same powers to call-in decisions as overview and scrutiny committees.⁵³ **We recommend that full council should be given the power to call-in, delay and if needs be, reject controversial executive decisions.**

Non-executive councillors

28. Before the new executive arrangements, introduced as a result of the 2000 Act, all councillors were involved in executive decision-making through service committees. Under the Leader and Cabinet model, decisions are made by an executive of up to 10 councillors, or delegated to officers. As a result, most councillors no longer have a decision-making role. Many of them feel disenfranchised and disengaged. The memorandum from SOLACE stated:

*“In the new system, the frustration comes for many members in not being able to influence the final decision by being able to vote when that decision is being taken. This was a fundamental part of the Government’s proposals to reduce the number of councillors in the decision-making role. Many councillors now feel excluded from this process, even though they have the opportunity to scrutinise the decisions.”*⁵⁴

29. Not only are the majority of councillors no longer involved in decision-making; we also received evidence that they have also lost the access to information and informal contact that they had with officers under the old structures.

⁵⁰ Page 19, *Local Leadership: Local Choice*, DETR, 1999

⁵¹ Q133

⁵² LGA36

⁵³ LGA29

⁵⁴ LGA14

“The flow of information has been one of the major areas of change. Cabinet papers are very much an abbreviated version with no reference to any background papers. Non Cabinet members find it difficult to tap into the council’s information systems; it is fair to say that the system is even more closed to the general public. There is a feeling amongst non-executive members that their access to council officers and council information has decreased under the new political arrangements.”⁵⁵

This loss of information and contact with officers makes it much harder for councillors to intervene on their constituents behalf and to undertake their ‘community leadership’ role. All councillors should have equal rights to information from officers.

A clear split between executive and scrutiny

30. *Modern Local Government: In Touch With The People* stated that the new arrangements rely on total separation between the executive and scrutiny:

“Each role [executive and scrutiny] can only be fully effective when it is separated from the other.”⁵⁶

31. We have received evidence that the new arrangements are actually working best where the split between executive and scrutiny is blurred and that non-executive councillors are more satisfied when scrutiny is used to inform the decision-making process. The Liberal Democrat Group on the Local Government Association reported:

“The authorities that are succeeding in making scrutiny effective and that have members who are satisfied with the process are often those that blur the cabinet/scrutiny split in a way that the Government did not intend. Consensus is reached and options worked through by party groups before formal proposals are made. This involves all members, keeps them engaged in the process and ensures that the whole decision-making process does not grind to a halt through call-ins.”

Overview and scrutiny

32. Under the new arrangements all councils are required to have overview and scrutiny committees⁵⁷ which have:

“A duty to question and evaluate the impact of the decisions and actions of the executive.”⁵⁸

Effectiveness

33. There do not yet seem to be many examples of overview and scrutiny committees making a significant difference to the quality of services that councils provide to their local communities. The DTLR provided one example of a council changing its decision as a result of the recommendations of an overview and scrutiny committee (reversing the decision to close a residential unit within a special school) and twelve other examples of “in depth policy review and

⁵⁵ LGA35

⁵⁶ Paragraph 3.12, *Modern Local Government: In Touch With the People*

⁵⁷ The Secretary of State advises that all but the smallest local authorities should have more than one overview and scrutiny committee, Paragraph 3.20, Replacement Chapter 3, *New Council Constitutions Guidance Pack*, DETR, March 2001

⁵⁸ Paragraph 3.13, *Local Leadership: Local Choice*

development” by such committees. On the basis of this evidence and the evidence that we have received from councils and local authorities, we are concerned that overview and scrutiny committees have so far had a marginal effect:

“It works at the edges sometimes, but generally not to the central decision.”⁵⁹

The memorandum from the Labour Group on Essex County Council set out concerns about both the cost and the effectiveness of overview and scrutiny so far:

“Our experience over the last few months makes us conclude that the call-in procedure is failing in its primary role of holding the executive to account. This has clear democratic deficit implications but also financial ones. For example the cost of call-ins at Essex has been considerable, with little outcome to show for that financial expenditure.”⁶⁰

Until the public can see more clearly how overview and scrutiny has made a significant difference, it cannot be considered to be successful.

34. One of the reasons for the perceived lack of effectiveness of overview and scrutiny so far is the fact that the executive is not obliged take notice of the recommendations of an overview and scrutiny committee.⁶¹ More could also be done in the short term to ensure that overview and scrutiny committee members are aware of the powers that they have—levels of awareness are currently low. We heard from Dr Rachel Ashworth of Cardiff Business School:

“Research suggests that many members remain uncertain as to the precise definition and purpose of the scrutiny role. Furthermore in many authorities there was a confused response simply in terms of the number of scrutiny committees in operation ... Responses to date [to a survey of councillors in England and Wales] suggest that the power to instigate council debates and request responses from the executive to investigations / reports are still not being operationalised even in authorities where scrutiny operations are well-established. This is a concern as these two powers are key to the impact and effectiveness of scrutiny investigations.”⁶²

The Local Government Association should sponsor a clear, practical guide for all councillors setting out the powers available to overview and scrutiny committees, in particular the power to instigate council debates and request responses from the executive.

35. It is clear from our evidence that whilst there are national bodies representing the local government movement, councillors, chief executives and treasurers (amongst others), there is no national voice representing overview and scrutiny councillors and their officers. The Government is reviewing the effectiveness of all the bodies that provide support for ‘capacity building’ in local government.⁶³ **We recommend that the Government’s review of bodies providing support for ‘capacity building’ should also make recommendations for the establishment of a national voice to represent overview and scrutiny and ensure that good practice is disseminated through emerging regional networks.**

⁵⁹ Q227

⁶⁰ LGA35

⁶¹ Q223

⁶² LGA02(a)

⁶³ Paragraph 5.5, *Strong Local Leadership: Quality Public Services*

The role of political parties in overview and scrutiny

36. The Government's guidance recommends that overview and scrutiny should not be subject to the party whip:

*"Overview and scrutiny committees are to hold decision-makers to account. To do so effectively require a change in the way members have traditionally questioned. Although this is a matter for political parties to consider, both locally and nationally, the Secretary of State believes whipping is incompatible with overview and scrutiny and recommends that whipping should not take place."*⁶⁴

37. Many authorities have found that overview and scrutiny is being used for party political purposes, even where formal whipping does not take place.⁶⁵ The reasons for this include:

- informal mechanisms used by the majority group to ensure that group members (who have the majority on overview and scrutiny committees) do not challenge the executive;⁶⁶ and
- overview and scrutiny committees are one of the few places where party political debates can take place and controversial issues can be debated in public⁶⁷ (in many councils, the opposition cannot speak at executive meetings).⁶⁸

Creating more opportunities for meaningful, party political debate either at executive meetings (as we heard happens in East Sussex County Council)⁶⁹ or at full council might reduce the need for overview and scrutiny committees to be used for such purposes and we have (above) recommended that the Government allows full council to call-in and debate significant decisions. **We recommend that all councils should ensure that a proportion of their overview and scrutiny committees are chaired by an opposition member.**⁷⁰

Officers and financial support for overview and scrutiny

38. Local authority officers have always been responsible to all councillors and under the new system are expected to give impartial advice to both cabinets and the executive.⁷¹ UNISON reported a concern that executives' requirements for advice could lead to the "politicisation" of chief officers' roles.⁷² The Society of Local Authority Chief Executives agreed that there is currently a problem in trying to ensure that officers give impartial advice to overview and scrutiny committees without placing their careers in jeopardy.⁷³ Councillor Brant told us:

"The same officers who act as executive directors come to the committee to explain decisions and there is, inevitably—it is human nature—a degree of defensiveness about their decisions, because very often they have been responsible for proposing them to the

⁶⁴ Paragraph 3.44, Replacement Chapter 3, *New Council Constitutions Guidance Pack*, DETR, March 2001

⁶⁵ LGA12

⁶⁶ LGA12 and LGA35

⁶⁷ Q236

⁶⁸ LGA12

⁶⁹ Q335

⁷⁰ Government guidance currently states, "Where there is a majority group, local authorities might consider it appropriate to have all or some of those committees chaired by members outside the majority group." Paragraph 3.30, Replacement Chapter 3, *New Council Constitutions Guidance Pack*, DETR, March 2001

⁷¹ Q457 and 460

⁷² LGA41

⁷³ Q461

executive member in the first place, so perhaps they are not the most obvious person to provide an independent, fresh light."⁷⁴

Councils have not yet done enough to ensure the independence of officers advising overview and scrutiny committees. We recommend that councils should develop robust arrangements to protect the independence of those officers and should explore introducing separate reporting structures for them.

39. We heard how important it is that overview and scrutiny committees also receive independent advice from outside the council, when carrying out their inquiries.⁷⁵ One impediment to this is a lack of financial resources. Dr Rachel Ashworth reported:

*"Research findings suggest that the level of resources allocated to support scrutiny operations is minimal in most, if not all local authorities. This, in my view, currently represents a further impediment to the effectiveness of local scrutiny."*⁷⁶

Smaller authorities find operating overview and scrutiny a particular additional financial burden and we have heard concerns that resourcing overview and scrutiny means taking funds away from front-line services. The memorandum from SOLACE stated:

*"Many district councils noted that they are responding to all the same requirements as larger unitary authorities but with far smaller resources, particularly in respect of employee numbers and range of posts not already deployed in service delivery. Responding to best value and other monitoring agendas has in some cases necessitated expenditure on posts which has been found from previously service directed budgets."*⁷⁷

The Government has acknowledged that the operation of an effective overview and scrutiny function is expensive. In the regions, the Government has recently made available a £15 million 'Chambers Fund' to enable Regional Chambers "to enhance their scrutiny role" and to "strengthen regional accountability."⁷⁸ The new Local Government Bill also includes provision for payment to Parish Councils for the cost of work relating to Best Value.⁷⁹ **The Government should take account of the additional internal and external costs of operating overview and scrutiny arrangements in the new revenue funding arrangements for local government.**

Overview and scrutiny committees in context

40. The introduction of overview and scrutiny by elected members was not accompanied by a reduction in any of the other performance review regimes applying to local authorities, indeed it came only a year after the introduction of Best Value.⁸⁰ *Strong Local Leadership: Quality Public Services* acknowledged that external inspection has increased and reported the findings of the recent Public Services Productivity Panel review that inspections need to be better co-ordinated and re-focused. The White Paper stated that "in 18 months time the Government will assess progress towards delivering the new inspection regime and consider more fundamental

⁷⁴ Q334

⁷⁵ Q101

⁷⁶ LGA02(a)

⁷⁷ LGA14

⁷⁸ LGA02(a)

⁷⁹ Clause 45, *Draft Local Government Bill*, Office of the Deputy Prime Minister, 2002

⁸⁰ Local Government Bill, 1999

institutional change to drive the process further should this prove necessary.⁸¹ **We are concerned that local authorities are now subject to too much scrutiny by too many external organisations and call on the Government to ensure that inspection has been consolidated and reduced well in advance of June 2003.**

Encouraging people to become councillors

41. The Government hoped that the new arrangements would encourage people to stand as councillors. *Modern Local Government: In Touch With The People* stated:

*“A council’s structures must not discourage people from seeking to become involved with their council, in particular as councillors.”*⁸²

42. The recent survey by the Improvement and Development Agency suggested that a new generation of people has not yet been attracted to become councillors. Instead it found that “The pool of people willing to serve as elected members is diminishing in terms of their demographic representation of society.”⁸³ We were told by a number of witnesses that councillors are citing the new executive and scrutiny arrangements as their reason for not standing for office again.⁸⁴ The memorandum from SOLACE stated:

*“This new model does not seem to be raising the interest of the public in local government and there is still no evidence that this is increasing the desire for members of the public to come forward and become local councillors. Indeed if anything, there may be a trend to demotivate back-bench councillors who we may find are difficult to replace.”*⁸⁵

43. The Government wanted the new arrangements to reduce the amount of time that councillors spent in meetings.⁸⁶ In practice, not only has the workload of executive councillors increased so that it is the equivalent of full-time employment,⁸⁷ but non-executive councillors report that they are attending more meetings.⁸⁸ We were particularly concerned by evidence that the time commitment required from councillors makes it impossible for someone in full-time employment to become a councillor and that this will lead to a dilution in the quality and range of professional expertise amongst those who become councillors. Councillor Kemp told us:

*“I think, the way local government is structured, that it is very difficult for an employed person to be a member of any big council, because all our back-bench councillors, whatever term you use, front-line councillors, it is a minimum commitment of something like a day and a half a week, often at awkward times, and most employers do not like that.”*⁸⁹

⁸¹ Paragraphs 3.39 and 3.42, *Strong Local Leadership: Quality Public Services*, Department for Transport, Local Government and the Regions, December 2001, CM5327

⁸² Paragraph 3.2, *Modern Local Government: In Touch With the People*

⁸³ LGA23

⁸⁴ Q399 and Q259

⁸⁵ LGA14

⁸⁶ Paragraph 1.15, *Modern Local Government: In Touch With the People*

⁸⁷ LGA33

⁸⁸ Q335 and 337

⁸⁹ Q66

The Act has not met its objective of freeing up councillors to spend less time in meetings and more time with their constituents. The Government should give councils the flexibility to modify current arrangements to allow greater diversity and experience amongst those who become councillors.

44. The role of area committees remains ill defined in many councils with a common perception that they are in many cases little more than talking shops.⁹⁰ The Minister, in his evidence, expressed the Government's support for the devolution of some decision-making to area committees⁹¹ but there is little evidence as yet that councils are delegating any significant executive functions to them.⁹² **Area committees with appropriately delegated functions are clearly one way of empowering 'frontline councillors.'**

45. Some councils have reflected the new roles in the allowances that they pay to councillors.⁹³ This has led to differences in the level of allowances received between executive and non-executive members—in Gateshead they receive £20,000 and £8,000 per annum respectively.⁹⁴ **We are concerned that higher allowances for executive councillors increase the powers of patronage of council leaders.** The issue of councillors' remuneration remains a thorny and difficult issue for many councils. **We recommend that the Government investigates the possibility of a national scheme for councillors' allowances.** The 2000 Act included provisions for pensions to be paid to executive members and chairmen of overview and scrutiny committee. We received evidence from the National Association of Councillors that "this is divisive and devalues the perceived role of non-cabinet [councillors] and community champions in the newly established council structure. It is also contrary to equal opportunity principles in view of the under-representation of ethnic minorities and women in senior council positions."⁹⁵ **We recommend that local authorities should be given discretion over the payment of pensions to all councillors.**

46. Most importantly, there is a need for greater involvement in decision-making by those councillors who are not in the executive and greater control over local matters by councils as a whole. Otherwise, as we heard:

"If people do not have self-esteem in what they are doing and they feel they are being side-stepped within their organisation, then they will not stand next time, I think that there is a serious possibility that people will feel that, "You cannot make any difference so why bother standing. It is only hassle."⁹⁶

Consulting local communities about governance arrangements

47. The Government wanted local people to be given choice about the type of leadership their council has. *Local Leadership: Local Choice* states:

"Every council is therefore to be required to consult its local community ... about how that community is to be governed and what form of local government will be best suited to give it the leadership it needs to prosper and to provide its people with a good quality of life."⁹⁷

⁹⁰ Qq253-254

⁹¹ Qq528-529

⁹² LGA26

⁹³ Q408

⁹⁴ Q409-410

⁹⁵ LGA40

⁹⁶ Q327

⁹⁷ Paragraph 2.2, *Local Leadership: Local Choice*

48. Under the Act, larger local authorities were required to consult their communities about which of three executive arrangements they preferred:

- (i) leader and cabinet;
- (ii) elected mayor and cabinet; or
- (iii) elected mayor and council manager.

Smaller local authorities (district councils with populations of less than 85,000) were given the opportunity to consult on “alternative arrangements” (a revised committee system). Local authorities’ proposals for the new executive arrangements, shown in DTLR’s memorandum, were overwhelmingly dominated by the leader and cabinet model.

<i>Form of arrangement proposed / implemented</i>	
Leader and cabinet	317
Mayor and cabinet	8
Mayor and council manager	1
Alternative arrangements	59

Neither of the mayoral models has proved particularly popular with voters so far. Of the 23 local authorities that had held referenda on the mayor and cabinet model when we took evidence, only eight voted in favour.⁹⁸

49. In Brighton and Hove, the council consulted on a new mayor and cabinet system with a fallback position of ‘alternative arrangements’ (a revised committee system). The local population chose the revised committee system. The Minister told us that “Parliament decided that in general the alternative arrangements model would not be appropriate for authorities larger than 85,000”⁹⁹ but that it was “legally possible” for other authorities to propose ‘alternative arrangements’ as the fallback position in a mayoral referendum.¹⁰⁰ Departmental officials have since written to clarify that once a council has adopted its new constitution it will only be able to put to its electorate the options of one of the mayoral models or the new executive arrangements.¹⁰¹ **We have recommended that all councils should be given the freedom to develop constitutions that respond to local needs. The alternative arrangements adopted in Brighton and Hove should be made available to all councils.**

50. Overall, turnout in consultation exercises suggests that, unsurprisingly, local communities are not particularly interested in the political management arrangements of their local authority and are more interested in the services they receive. In Liverpool, for example,

“The response to the [consultation] exercise about local governance in Liverpool which went to every household elicited a rate of return of about 1%. This compares to the response rate of 26% when we consulted on the same basis about the future of the refuse collection service.”¹⁰²

⁹⁸ LGA22

⁹⁹ Q558

¹⁰⁰ Q561

¹⁰¹ LGA22(c)

¹⁰² LGA21

The memorandum from the Leader and Deputy Leader of Somerset County Council added:

“The view of this council is that people are more concerned with things that touch their every day lives, such as their children’s schooling or their elderly relatives care and are not at all interested in the structure of local government. This structure seems to have led to a worse understanding of the process, rather than a better one.”¹⁰³

Turnout in consultations so far suggests that local people are less interested in a council’s internal management arrangements than the quality of its services. The Government’s objectives of increasing local interest in and the accountability of local government has not yet been met by the introduction of new political management structures.

Conclusion

51. A great deal of time, money and effort has gone into changing the political management arrangements of local authorities with apparently little change to the overall quality and credibility of local government. The Government’s stated intention at the time of the Act—to restore the self-confidence of local government—has been lost in the focus on internal change.

List of conclusions

- (a) **The Government should recognise that if there are problems with the legislation, it is likely that they would be identified most quickly by councillors who are operating under the new arrangements (paragraph 8).**
- (b) **The Government and Local Government Association should emphasise their expectation that councils will use the well-being power and give simple, practical advice as to how and take steps to monitor its use (paragraph 10).**
- (c) **The evidence we have received is that local government is so distracted that it is not using the well-being power, and that as a result the transformation of previously inward looking local authorities into outward looking, responsive councils is unlikely to take place (paragraph 11).**
- (d) **We recommend that the volume of regulations and guidance which accompanies the 2000 Act should be dramatically reduced (paragraph 12).**
- (e) **The Government should give local authorities the freedom to develop constitutions that respond to local needs and should consider both amendments to regulations and guidance and primary legislation (paragraph 15).**
- (f) **The Government should give further thought as to how Local Strategic Partnerships fit with the executive structure of local authorities (paragraph 16).**
- (g) **If Local Strategic Partnerships are to become a way in which people can take decisions without standing for election, this would undermine the role of democratically elected councillors and create further concerns about how LSPs can be held accountable (paragraph 17).**
- (h) **Government policy on issues of interest and personal conduct should be consistent across the public sector, for example across local councils and Local Strategic Partnerships (paragraph 18).**
- (i) **Councils should give emphasis to high quality pre, rather than post, decision scrutiny of controversial matters (paragraph 21).**
- (j) **Each council should be able to define the characteristics of what is a controversial, i.e. key decision, based on the specific needs of its local area. It is not practical for central government to specify the tests for a key decision (paragraph 24).**
- (k) **We are very concerned by reports of lower levels of public awareness and reduced local media interest in the new structures, especially as increasing accountability and transparency was one of the main objectives of the Act (paragraph 25).**
- (l) **We recommend that full council should be given the power to call-in, delay and if needs be, reject controversial executive decisions (paragraph 27).**

- (m) **This loss of information and contact with officers makes it much harder for councillors to intervene on their constituents behalf and to undertake their ‘community leadership’ role. All councillors should have equal rights to information from officers (paragraph 29).**
- (n) **Until the public can see more clearly how overview and scrutiny has made a significant difference, it cannot be considered to be successful (paragraph 33).**
- (o) **The Local Government Association should sponsor a clear, practical guide for all councillors setting out the powers available to overview and scrutiny committees, in particular the power to instigate council debates and request responses from the executive (paragraph 34).**
- (p) **We recommend that the Government’s review of bodies providing support for ‘capacity building’ should also make recommendations for the establishment of a national voice to represent overview and scrutiny and ensure that good practice is disseminated through emerging regional networks (paragraph 35).**
- (q) **We recommend that all councils should ensure that a proportion of their overview and scrutiny committees are chaired by an opposition member (paragraph 37).**
- (r) **Councils have not yet done enough to ensure the independence of officers advising overview and scrutiny committees. We recommend that councils should develop robust arrangements to protect the independence of those officers and should explore introducing separate reporting structures for them (paragraph 38).**
- (s) **The Government should take account of the additional internal and external costs of operating overview and scrutiny arrangements in the new revenue funding arrangements for local government (paragraph 39).**
- (t) **We are concerned that local authorities are now subject to too much scrutiny by too many external organisations and call on the Government to ensure that inspection has been consolidated and reduced well in advance of June 2003 (paragraph 40).**
- (u) **The Act has not met its objective of freeing up councillors to spend less time in meetings and more time with their constituents. The Government should give councils the flexibility to modify current arrangements to allow greater diversity and experience amongst those who become councillors (paragraph 43).**
- (v) **Area committees with appropriately delegated functions are clearly one way of empowering ‘frontline councillors’ (paragraph 44).**
- (w) **We are concerned that higher allowances for executive councillors increase the powers of patronage of council leaders (paragraph 45).**
- (x) **We recommend that the Government investigates the possibility of a national scheme for councillors’ allowances (paragraph 45).**
- (y) **We recommend that local authorities should be given discretion over the payment of pensions to all councillors (paragraph 45).**

- (z) We have recommended that all councils should be given the freedom to develop constitutions that respond to local needs. The alternative arrangements adopted in Brighton and Hove should be made available to all councils (paragraph 49).**
- (aa) Turnout in consultations so far suggests that local people are less interested in a council's internal management arrangements than the quality of its services. The Government's objectives of increasing local interest in and the accountability of local government has not yet been met by the introduction of new political management structures (paragraph 50).**

**PROCEEDINGS OF THE URBAN AFFAIRS SUB-COMMITTEE
RELATING TO THE REPORT**

TUESDAY 9 JULY 2002

Members Present:

Andrew Bennett, in the Chair

Sir Paul Beresford
Clive Betts
John Cummings
Gwyneth Dunwoody
Louise Ellman

Chris Grayling
Dr John Pugh
Christine Russell

The Sub-Committee deliberated.

Draft Report [*How the Local Government Act 2000 is Working*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 51 read and agreed to.

Resolved, That the Report be the Fifth Report of the Sub-Committee to the Committee.

Ordered, That the Chairman do make the Report to the Committee.

[Adjourned till Tuesday 9 July at a quarter to Four o'clock.]

**PROCEEDINGS OF THE COMMITTEE
RELATING TO THE REPORT**

WEDNESDAY 10 JULY 2002

Members Present:

Gwyneth Dunwoody, in the Chair

Andrew Bennett
Clive Betts
Mr Brian H Donohoe
Louise Ellman
Chris Grayling

Helen Jackson
Miss Anne McIntosh
Mr Bill O'Brien
Christine Russell
Mr Bill Wiggin

The Committee deliberated.

Report from the Urban Affairs Sub-committee [*How the Local Government Act 2000 is Working*], brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 and 51 read and agreed to.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.—(*The Chairman.*)

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select committee (reports)) be applied to the Report.

Ordered, That the Appendices to the Minutes of Evidence taken before the Urban Affairs Sub-Committee be reported to the House.

[Adjourned till Wednesday 17 July at Ten o'clock.]

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Mr Stewart Dobson 30

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