



# ***Local Authorities (Overview and Scrutiny) Bill 2009-10: Committee Stage Report***

**[Bill 16 of 2009-10]**

**RESEARCH PAPER 10/24** 8 March 2010

This is a report on the House of Commons Committee Stage of the *Local Authorities (Overview and Scrutiny) Bill*. It complements Research Paper 10/09 which was prepared for the Commons Second Reading.

The Bill is a Private Member's Bill. It was introduced by David Chaytor on 16 December 2009 and had an unopposed Second Reading on 5 February 2010. The Bill was not amended in Committee and is due to have its Report stage on 12 March 2010.

Currently, local government overview and scrutiny committees have limited formal scrutiny powers in relation to partner organisations. The Bill strengthens these powers and broadens them to potentially cover a greater range of external authorities. The Bill provides for executive members to sit on committees involved in scrutiny of external bodies. The Bill also makes provision for the resourcing of overview and scrutiny. The provisions are based on proposals in the 2009 Department for Communities and Local Government Green Paper, *Strengthening Local Democracy*. The Government supports the Bill.

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## Research Paper 10/24

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## Summary

The *Local Authorities (Overview and Scrutiny) Bill 2009-10* is a Private Member's Bill introduced by David Chaytor. The Bill extends the power of local government overview and scrutiny committees when they are scrutinising certain activities of external authorities. The activities subject to these new scrutiny powers would be those defined as matters of local concern in connection with the provision of public services. Currently, overview and scrutiny committees rely on voluntary co-operation from partner organisations when considering matters outside specific Local Area Agreement targets. Membership of committees dealing with external matters could include members of the council's executive. The Bill also makes provision for the resourcing of overview and scrutiny.

The Bill is based on proposals in the Department for Communities and Local Government's July 2009 Green Paper, *Strengthening Local Democracy*, and has Government support.

The Bill had its Second Reading on 5 February 2010. During the debate Justine Greening, speaking for the Conservatives, asked for clarification of which bodies would be made subject to such powers. Concerns were raised about provisions to allow executive members to sit on scrutiny committees. It was also noted that no regulations had yet been brought forward under existing legislation to allow for joint overview and scrutiny committees to be established.

The Public Bill Committee met on 3 March 2010. No amendments were made.

During the Committee stage the Local Government Minister, Barbara Follett, was asked to give some indication of the bodies that would be made subject to the new scrutiny powers. She said that at first regulations would be brought forward to bring Local Area Agreement partners under the legislation in order to extend the current scrutiny arrangements for them to areas outside particular partnership agreement targets. The regulations would also provide that the new powers would also apply initially to two new sectors: energy and transport providers. The Minister said that these regulations would be subject to consultation and would be considered under the affirmative procedure by Parliament.

Concerns were raised about the provisions to allow executive members to sit on overview and scrutiny committees. There was also some debate on whether the definition of a matter of local concern in the Bill was adequate, and on the potential burden on local service providers of the new scrutiny powers.

The Report stage is scheduled to take place on 12 March 2010.

## 1 Introduction

The *Local Authorities (Overview and Scrutiny) Bill* is a Private Member's Bill and was introduced by David Chaytor on 16 December 2009 as Bill 16 of 2009-10. The Bill received an unopposed Second Reading in the House of Commons on 5 February 2010.

Detailed information on the provisions in the Bill and the background to them can be found in the Library Research Paper prepared for the Second Reading Debate: Research Paper 10/09, [Local Authorities \(Overview and Scrutiny\) Bill \[Bill 16 of 2009-10\]](#).

The Bill is based on proposals made in the Department for Communities and Local Government's July 2009 Green Paper, *Strengthening Local Democracy*. The Government has issued a [press notice](#) in support of the Bill. The Department for Communities and Local Government have published [Explanatory Notes](#) to the Bill, and an [Impact Assessment](#).

Links to all stages of the Bills progress and to Bill documents can be found through the [Local Authorities \(Overview and Scrutiny\) Bill](#) page on the Parliamentary website.

This Research Paper summarises the [Second Reading Debate](#) on the Bill, before setting out the main areas of discussion during the [Committee stage](#). The Bill was not amended in Committee.

## 2 Second Reading debate

The Bill received an unopposed [Second Reading](#) on 5 February 2010. **David Chaytor** opened the debate with the following comments:

My Bill will strengthen the scrutiny powers already available to local authorities, and extend the range of public service providers that can be subject to the scrutiny process. It is designed to improve accountability in order to improve outcomes and thereby drive up the standards of local public services.<sup>1</sup>

After setting out the development of scrutiny powers since the *Local Government Act 2000* had created the overview and scrutiny function for non-executive councillors, Mr Chaytor stated that:

The Bill takes forward proposals in last year's local government Green Paper, "Strengthening local democracy," on which there was a substantial public consultation in the last few months of 2009. It extends councils' scrutiny powers to the next logical stage. It will enable scrutiny powers to cover a wide range of external bodies from the public and private sector. It will be a matter for future debate and for the Government as to which bodies are designated in the regulations. It will designate bodies that carry out activities which impact heavily on the day-to-day lives of local people.

The Bill enables more effective scrutiny of local public services. It does so by establishing a framework for broadening their scrutiny powers and extending them to cover a wider range of organisation. That means that in future, when undertaking their scrutiny function, councils will be less reliant on the voluntary co-operation of external organisations. Under the new regime the external bodies subject to scrutiny may be required by a local authority's overview and scrutiny committee to provide information to the committee and to attend scrutiny meetings to answer questions. Both measures will help council scrutiny committees to be fully and properly informed. The external

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<sup>1</sup> HC Deb 5 February 2010 c517

bodies will be required to respond to the scrutiny committee's reports and to have regard to the recommendations.

The framework established by my Bill provides that bodies subject to the regime will be specified in future regulations, so decisions will be a matter for the Government...but the Bill enables the maximum reach and scope. I hope that the Government will be ambitious and imaginative in deciding which organisations will be specified in the regulations.<sup>2</sup>

Mr Chaytor explained that the Bill includes provisions “to minimise burdens, duplication and effort, and to maximise the efficiency, effectiveness and benefits of constructive scrutiny”.<sup>3</sup> The Bill also includes a provision on the resourcing of overview and scrutiny, which Mr Chaytor stated, would “ensure that the scrutiny officer is sufficiently resourced”.<sup>4</sup>

**Justine Greening**, speaking for the Conservatives, noted a concern that the legislation had been introduced as a Private Member's Bill when it appeared, “...to all intents and purposes to be a Government Bill”.<sup>5</sup> Ms Greening said that although the Opposition supported the Bill's intention to increase scrutiny powers, there were some concerns about how the Bill, as currently drafted, would work in practice. Her main questions were as follows:

- Which persons or authorities, and which activities they perform, would be subject to the enhanced scrutiny powers?<sup>6</sup>
- What might be ‘reasonable’ information for an overview and scrutiny committee to require from an external body, and how the figures in the Impact Assessment were reached?<sup>7</sup>
- Whether allowing executive council members to sit on scrutiny committees might undermine the overall structure of accountability?<sup>8</sup>
- Whether the cost to local authorities of the commitment to provide officers with such staff, accommodation, and other resources as determined by the officer, would be met out of existing budgets?<sup>9</sup>
- When provisions in existing legislation (namely, the *Local Government and Public Involvement in Health Act 2007* and the *Local Democracy, Economic Development and Construction Act 2009*) which give the Secretary of State the power to make regulations to create joint overview and scrutiny committees will be brought to Parliament?<sup>10</sup>

**Nick Raynsford**, former local government minister and chairman of the Centre for Public Scrutiny,<sup>11</sup> welcomed the Bill but stated that there were two elements he had reservations about. The first of these was the exclusion of district councils in two-tier areas from the provisions in Part 1 of the Bill. He suggested that rather than legislate to exclude them, protocol arrangements could be drawn up to avoid unnecessary duplication in two-tier areas. Secondly, he also raised the provision to allow executive council members to sit on scrutiny committees concerned with external organisations. He argued that:

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<sup>2</sup> *Ibid*, c522

<sup>3</sup> *Ibid*, c523

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*, c524

<sup>6</sup> *Ibid*, cc525-6

<sup>7</sup> *Ibid*, c526

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*, cc526-527

<sup>10</sup> *Ibid*, c527

<sup>11</sup> A non-pecuniary post.

...there is a slippery slope and an erosion of the separation of powers between scrutiny and executive. If that is damaged, it could have serious consequences for the integrity of the scrutiny function. It could well also create a difficult relationship between executive members and people in outside bodies if the latter were talking to them as partners one day and subject to scrutiny by them the next. The partners themselves would not have the option of scrutinising the working of the executive. It is unfair to outside bodies that need to work in partnership with executive members of local authorities to be subject to scrutiny by them as well.<sup>12</sup>

**Matthew Taylor**, speaking for the Liberal Democrats, began by stating that he welcomed the Bill and agreed with the comments made by Mr Raynsford. His main concern was that:

The fundamental question is which bodies are to be scrutinised and it [the Bill] does not specify that....It is a real shame that we have not been given the information for today's debate, and I hope that it can be brought to us in Committee.<sup>13</sup>

**Ian Austin**, speaking for the Government, confirmed that the Bill had Government support.<sup>14</sup> On questions of cost, he stated that the Government did not consider that Part 1 of the Bill, which covers the extension of scrutiny powers, to have any major financial implications for local authorities. Any additional costs arising from Part 1 would arise from additional compliance costs on external bodies undergoing scrutiny. Details were available in the Government's Impact Assessment.<sup>15</sup>

Closing the debate, **David Chaytor** addressed the question as to which bodies might be designated by the regulations:

A large number of bodies and agencies were mentioned during the debate, and there would not necessarily be consensus at this stage that all of them should be included in the list of designated bodies. That provides the best case for leaving this matter to be set out in regulations. I accept fully, however, that that would place the matter completely in the hands of this Government or a future Government. I hope, therefore, that the Minister will take on board the suggestion by the hon. Member for Putney (Justine Greening) that a draft list be published in advance of the regulations. That would provide time for further debate and consultation, and for the building of consensus.<sup>16</sup>

On membership of overview and scrutiny committees, he said that first of all, Parliament did not have an absolute separation of powers itself. Secondly he argued that many local authorities were now revising the original model of scrutiny panels to create working parties or "task and finish" groups. Executive members might be able to bring expertise to such a group. He accepted that the matter needed to be further explored. Lastly, on the exclusion of district councils from the provisions, he stated that there was already ample scope for smaller district authorities to work co-operatively with their county councils and set up joint scrutiny structures.

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<sup>12</sup> *Ibid*, c529

<sup>13</sup> *Ibid*, c530

<sup>14</sup> *Ibid*, c531

<sup>15</sup> Department for Communities and Local Government, [Local Authorities \(Overview and Scrutiny\) Bill 2009-10: Impact Assessment](#), February 2010

<sup>16</sup> *Ibid*, c534

### 3 Comment from external organisations

The Local Government Association (LGA) published a briefing for the Second Reading debate on the Bill.<sup>17</sup> Their “key messages” were:

We are pleased that the Bill proposes to **strengthen the powers of scrutiny available to councils** to investigate issues of concern to their residents and communities, and require a response.

We are concerned that many aspects of the new powers are to be produced in regulations, not as primary legislation. We believe that essential elements of the bill need to be **subject to full parliamentary scrutiny**.

In particular, we will be seeking clarity on:

- The list of agencies which will be subject to scrutiny
- The extent to which private providers, such as utilities and transport providers, will be required to respond to the scrutiny
- That services to which the Bill applies should be required to respond within a stated deadline
- The timetable to produce regulations required for the powers to take effect
- That public services have a clear duty to respond to recommendations in a substantial way
- The inclusion of district councils in two-tier areas in exercising the new powers.<sup>18</sup>

The Centre for Public Scrutiny (CfPS) have published a short comment on the Bill on their website. They stated that:

While we welcome the broad thrust of the Bill, which makes proposals for which we have been calling for some time, particularly the provision for scrutiny officers to receive the resources they believe that they need, we have two areas of concern. These are that district councils are again excluded from the new powers and the proposal to include executive members on scrutiny committees looking at external bodies.<sup>19</sup>

The CfPS has an online discussion forum on the Bill which includes comments from those working in local authorities.<sup>20</sup>

### 4 Committee stage

The **Committee stage** on the Bill took place on one day, 3 March 2010. Nick Raynsford is taking the Bill through its remaining stages in the House of Commons.

No amendments were made to the Bill, which is scheduled to have its Report stage on 12 March 2010.

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<sup>17</sup> LGA, *Local Government (Overview and Scrutiny) Bill: House of Commons Second Reading Briefing*, 4 February 2010 (last viewed 8 March 2010)

<sup>18</sup> *Ibid*

<sup>19</sup> Centre for Public Scrutiny, *Local Government (Overview and Scrutiny Bill)*, 25 February 2010 (last viewed 8 March 2010)

<sup>20</sup> Centre for Public Scrutiny, *Scrutiny Exchange Forum on the Local Authorities (Overview and Scrutiny) Bill*, (last viewed 8 March 2010)



#### 4.1 Matters to which the Bill applies

**Clause 1** of the Bill describes the matters to which the Bill applies. **Nick Raynsford** stated that:

On Second Reading, hon. Members raised concerns about the broad scope of the regulation-making power and sought further details about the types of body that will be subject to the enhanced regime. Decisions on which bodies will be specified as being subject to the regime are ultimately for the Government to take, and I hope that the Minister will be able to give us an indication of the Government's thinking on that issue today. In any case, subsection (6) provides that regulations designating bodies as subject to part 1 of the Bill will be subject to the affirmative procedure, so Parliament will have the opportunity to consider and debate designation of particular bodies.<sup>21</sup>

**Barbara Follett**, the Parliamentary Under Secretary of State, explained that:

The bodies that we seek to designate in the first instance are local area agreement partner bodies... That will remove the current limitation on the scrutiny activities related to LAA matters only, and recognise that the local contribution activities of partner bodies, such as Jobcentre Plus and the fire and rescue authorities, cut across the full range of local issues that arise and are not limited to the delivery priorities in LAA areas.

We also intend, initially, to extend the enhanced scrutiny regime to two new sectors by designating energy – gas and electricity – and transport providers, such as train, tram and bus operators, as being subject to the regime. I am pleased to confirm that the Government will consult widely before making such regulations. The Bill ensures parliamentary scrutiny of a decision to designate any particular body or person. Hon. Members will have the opportunity to scrutinise and debate draft regulations laid before Parliament.<sup>22</sup>

**Jacqui Lait**, speaking for the Conservatives, drew attention to the short notice given for the Committee stage, stating that there had not been sufficient time to table amendments. Therefore the Conservatives would almost certainly be tabling amendments on Report. She questioned the burdens that the Bill may place on charities and small and medium-sized businesses that would in partnership with local authorities.<sup>23</sup>

An amendment to the clause had been tabled by **Alison Seabeck** to replace the word “greater” with the word “different” in clause 1 (2). The amendment was not selected but Ms Seabeck explained the purpose of her amendment during the debate. The clause as drafted defines a matter of local concern in relation to a local authority only if “it affects the authority's area or the inhabitants of that area to a greater degree than it affects the areas of other local authorities or the inhabitants of other such areas”. She pointed out that the number of people affected was not the only relevant consideration in deciding whether a matter of local concern; the service being delivered itself might be of local concern.<sup>24</sup> In response, Mr Raynsford said that there was a fine balance between ensuring that an unreasonable burden was not placed on external bodies and allowing scrutiny of things that mattered to local people. He would take further advice on the issue ahead of Report.

The Committee divided on the motion that **clause 1** stand part of the Bill. This was the only division during the Committee. The Committee divided with 9 in favour and 3 against.

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<sup>21</sup> PBC Deb 3 March 2010 c4

<sup>22</sup> *Ibid*, cc10-11

<sup>23</sup> *Ibid*, c6

<sup>24</sup> *Ibid*, c7

**Jacqui Lait** had asked her colleagues to vote against the clause to register their objection to the Bill's flaws and to the speed of the proceedings on the Bill.<sup>25</sup>

#### 4.2 Power to require information

There was some debate on provisions in **clause 3** which gives overview and scrutiny committees the power to require a designated person or authority to provide certain information in relation to their functions. **Brian Binley** sought some clarification of the burdens this might place on businesses and service providers.<sup>26</sup> **Barbara Follett** said that the Government recognised the need for proportionality. She pointed to the regulation-making powers in clauses 2-4 which would be used to ensure that "there were certain safeguards and procedures in place to make sure that the exercise of powers by councils does not impose a disproportionate burden on the bodies subject to scrutiny".<sup>27</sup> She also emphasised that the duty to attend would only apply to designated bodies.

#### 4.3 District councils and joint overview and scrutiny committees

**Nick Raynsford** spoke on clause 6 which is an interpretation clause. He used the opportunity to discuss the exclusion of district councils in two tier areas from the powers in Part 1 of the Bill:

The one difficulty that will arise in the case of district councils in two-tier areas is the possible risk of duplication if more than one district were to initiate an inquiry on the same subject simultaneously. That would impose an unreasonable burden on local partners, so it is right that there should be a proper co-ordinated framework. On Second Reading, I expressed concern that the Bill appeared to convey the message that district councils in two-tier areas were excluded. That is not the intention; there should be a proper co-ordinated framework to ensure that issues affecting more than one area are the subject of joint scrutiny. There should not be the kind of duplication about which Opposition Members have rightly expressed concern.<sup>28</sup>

**Jacqui Lait** used the opportunity to ask when the regulations to allow joint committees under the *Local Democracy, Economic Development and Construction Act 2009* would be brought forward. She noted that:

We are considering this legislation against the background of an imminent general election, so if the Bill progresses but the regulations do not, the district councils will be left out.<sup>29</sup>

**Barbara Follett** stated that regulations to allow for joint overview and scrutiny committees to be established under the 2009 Act would be made a priority. She also said that the Government intends to work with experts in local government to produce best practice guidance on the operation of joint overview and scrutiny committees.<sup>30</sup>

#### 4.4 Membership of overview and scrutiny committees

**Clause 8** of the Bill amends section 21(9) of the *Local Government Act 2000* so that the Secretary of State is able to make regulations to allow overview and scrutiny committees to have executive councillors as members when the committee is not scrutinising matters relating to the executive.

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<sup>25</sup> *Ibid*, c14

<sup>26</sup> *Ibid*, c16

<sup>27</sup> *Ibid*, c18

<sup>28</sup> *Ibid*, c21

<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*, c22

**Nick Raynsford** expressed two concerns about the effects of this clause:

- that a local authority member may be a partner of a body one day, and scrutinising it the next; and
- that overview and scrutiny members could have their role usurped by executive members.

He did, however, note that there might be circumstances in which the expertise of an executive member might be of value to a scrutiny committee. He asked the Minister for assurance that there would be very careful drafting of the regulations to avoid these difficulties.<sup>31</sup>

**Jacqui Lait** raised similar concerns. She stated that she hoped it would be possible to come forward with a joint amendment on Report to deal with the issue. Her own suggestion was that the executive member could be a witness rather than a member of the overview and scrutiny committee. **David Drew** also argued that the committees needed to be independent and objective, and must be seen to be so: "It is not acceptable to have people from the executive on them".<sup>32</sup> **The Minister** stated that the Government did not intend to use the regulation making power to blur the relationship between the executive and overview and scrutiny but there may be circumstances in which the capacity to enable members of the executive to be present may improve scrutiny. She asked Mr Raynsford to work with the Government on a "way forward" to be introduced at Report.<sup>33</sup>

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<sup>31</sup> *Ibid*, c24

<sup>32</sup> *Ibid*, c26

<sup>33</sup> *Ibid*, c28

## **Appendix 1 – Members of the Public Bill Committee**

### ***Chair***

Joan Humble

### ***Members***

Brian Binley (*Northampton, South*) (Con)

Harry Cohen (*Leyton and Wanstead*) (Lab)

Jeremy Corbyn (*Islington, North*) (Lab)

David Curry (*Skipton and Ripon*) (Con)

David Drew (*Stroud*) (Lab/Co-op)

Barbara Follett (*Parliamentary Under-Secretary of State for Communities and Local Government*)

Julia Goldsworthy (*Falmouth and Camborne*) (LD)

Paul Goodman (*Wycombe*) (Con)

Dr. Brian Iddon (*Bolton, South-East*) (Lab)

Jacqui Lait (*Beckenham*) (Con)

Nick Raynsford (*Greenwich and Woolwich*) (Lab)

Alison Seabeck (*Plymouth, Devonport*) (Lab)

Robert Syms (*Poole*) (Con)

Neil Turner (*Wigan*) (Lab)

Malcolm Wicks (*Croydon, North*) (Lab)

Richard Younger-Ross (*Teignbridge*) (LD)

### ***Committee Clerk***

Sarah Davies