

Communities in control: Real people, real power Improving local accountability consultation

Head of Service: Tim Capper, Heads of Democratic Services
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Recommendation: that the Committee advises full Council on what response it feels the Council should make on the questions which relate to Overview and Scrutiny within the Government's Communities in control: Real people, real power – Improving local accountability Consultation.

BACKGROUND

This is the first in a series of Communities in Control (Real people, real power) consultations flowing from the recent white paper (July 2008). The consultation also covers implementation of the overview and scrutiny provisions in the Local Government and Public Involvement in Health Act 2007. It seeks views on how to develop overview and scrutiny powers; to hold local officers to account and how to facilitate the work of councillors.

This consultation is about passing power into the hands of local communities. It is part of the Government's wider agenda to modernise the democratic system and to strengthen participatory democracy, by passing more power to people through every practical means. It sets out a range of policies to achieve this, aimed at improving local accountability via

Chapter 2: Developing and strengthening overview and scrutiny

- Through implementing the provisions of the 2007 Act – enhancing councils' scrutiny powers in relation to scrutiny of Local Area Agreement partners and their delivery of LAA improvement targets,
- Overview and Scrutiny committees requiring information from partner authorities,
- Publication of scrutiny reports, recommendations and responses,
- The establishment of joint county and district Overview and Scrutiny committees and enhancement of their powers,
- Raising the visibility of, and to strengthen, the scrutiny function as laid out

the Communities in Control White Paper,

- Scrutiny in small district councils operating a streamlined committee system.

Chapter 3: Increasing the visibility and accountability of local public officers

- So that they are all open to public scrutiny and questioning from local communities through chairs and chief executives of local public bodies attending regular public hearings,
- A new right for local people to petition to hold officers to account.

Chapter 4: Facilitating the work of councillors

By modernising the way they do business to enable them to use information and communications technology to participate in meetings and vote remotely.

It is understood that further consultation papers will be published over the coming months on:

1. making and enforcement of bylaws
2. revised Code of Conduct for members
3. mayors
4. time off entitlements, extending the right to time off for public duties
5. Code of Recommended Practice on Local Government Publicity

FINANCIAL IMPLICATIONS

None at this stage. However, the Committee should be aware that the agenda on which the Government is now consulting has a strong reactive element which could result in additional pressures on the staffing and financial resources of the Council and its partners, over time. The Government is making no additional funding available to local authorities in this regard.

CONCLUSION

The consultation gives the opportunity to influence future guidance and legislation. The Government will take account of the responses received before introducing primary and secondary legislation on the particular topics discussed in this paper.

Responses to the consultation must be received by 30 October 2008. Full council is due to consider the consultation paper at its meeting on 21 October 2008. The Committee is requested to advise full council what response it feels the council should make to the consultation on the questions which relate to

Overview and Scrutiny (Questions 1 to 8). A draft response is provided at Appendix "A" for the committee's consideration.

List of Appendices

- (A) Suggested response to the Consultation
- (B) Department for Communities and Local Government August 2008 –
Communities in control: Real people, real power – Improving local
accountability Consultation
- (C) Empowerment White Paper "Communities in Control" July 2008

List of Background Documents:

None

Local Accountability Consultation
Communities and Local Government
Zone 5/A2
Eland House
Bressenden Place
London SW1E 5DU

17 October 2008

Dear Sir/Madam

'Communities in control: Real people, real power. Improving local accountability'.

I am responding on behalf of Copeland Council to the questions raised in the DCLG consultation 'Communities in control: Real people, real power. Improving local accountability'.

The Council's views are:

Question 1: Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partner authorities?

Response:

The ability for a District Council in a two tier area to require information from partner authorities is essential.

This is because Local Area Agreements require local authorities to pursue a number of broad targets, some of which could have significant local implications in a district and many of which they cannot achieve alone but only through the joint action of a range of agencies.

To ensure that there is not a democratic deficit in those Districts, information from Partner Authorities on how they propose to assist in meeting those targets and how they are performing against the targets will enable the scrutiny committee to better understand how its own local authority is managing and directing its resources.

In Cumbria, a two-tier area, we are setting up a joint scrutiny committee (covering all the authorities) for the Local Area Agreement and appropriate support. One of the roles of this committee will be to avoid duplication and "information overload" on the partner authorities.

Under paragraph 2.20 it would be helpful to include a reasonable time limit for a response to enable an Overview and Scrutiny Committee to consider the response at their next meeting. This could be a holding response which seeks the agreement of the Scrutiny Committee to a timetable for the response.

The partners listed in Annex B of the Consultation, being those organisations required to co-operate with Scrutiny Committees, does not include, for example, any government departments, nor registered social landlords, nor other public bodies whose work may well be of relevance to a subject under scrutiny.

There is no indication in the Consultation as to what Scrutiny Committees may do if a partner organisation refuses to provide the information requested, and without any means of redress, this proposal seems to lack strength.

Question 2: Do you agree with the proposal to apply the provisions in relation to exempt and confidential information without modification to local authority executives?

Response:

Yes. However, Overview and Scrutiny committees work best when as much of its reports as possible are published in the public domain.

When local authorities apply the confidential and exempt information rules to determine whether to allow public access to meetings and reports, they are required to apply a public interest test before excluding access to exempt information. Is it intended that this test will also be required under this section?

Question 3: Do you agree with the proposed approach towards joint overview and scrutiny committees? Are there specific issues that should be considered as part of the approach?

Response:

Joint Committees have a number of benefits particularly in sharing resources to achieve a common aim.

As mentioned above, one is to be set up in Cumbria to look specifically at the Local Area Agreement. The Cumbria Health and Well Being Committee works well on an agreed protocol for how to deal with locality health issues. A similar protocol for Joint Committees would be important in making them open and transparent and ensuring that all partners understand what is required of them.

We would, however, anticipate that in a region as diverse as Cumbria that there will be occasions where there are localised issues where scrutiny may well be carried out at a local level by District Council Scrutiny committees, co-ordinating with the joint committee.

For these circumstances it would be helpful to have a general discretionary power to set up committees and sub committees that can go wider than just the Local Area Agreement targets. It would also enable authorities to undertake a joint project and establish a joint Overview and Scrutiny Committee, or Sub-Committee, to monitor and review that project, and as a vehicle for wider community involvement.

It is essential that the membership of a Joint Committee is not dominated one authority.

The response of within two months in 2.26 should also be for partners as well as for the local authority as some recommendations may well be best dealt with by the partner rather than the local authority.

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

Response:

There may be an occasion as happened here recently on a health matter where the Joint Committee looked at an issue and made some recommendations that generally dealt with the issue. They did not pick up the specific local issues which were causing great concern to a large number of members of the public. The District's recommendations did address these and have made the partner authority reconsider its plans. This would not have happened if they had followed the Joint Committee's approach.

In light of this the requirement to respond "will only apply in relation to matters on which a joint overview and Scrutiny committee in the relevant responsible authority area has not already considered and reported" is too prescriptive.

There also need to be some flexibility when an issue surfaces, which may have been overlooked in a previous scrutiny, is a very local issue or which has only just come to light.

Question 5: Not applicable.

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

Response:

The powers that will be given to the committee will need to clearly defined.

A voluntary approach is the best way forward which allows local circumstances to be taken into account. It may also be helpful to make provision for joint task and finish groups, when a scrutiny committee of each authority agrees the need. This allows the flexibility of more ad hoc joint working responding to need and has already been used in Cumbria informally.

Question 7: Not applicable.

Question 8: Do you agree that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee? What practical issues might arise?

Response:

No. In a small authority with only one Scrutiny Officer achieving the committee's work plan each year is a hard enough task. The Centre of Public Scrutiny research has highlighted that capacity is one of the biggest hurdles to effective Scrutiny.

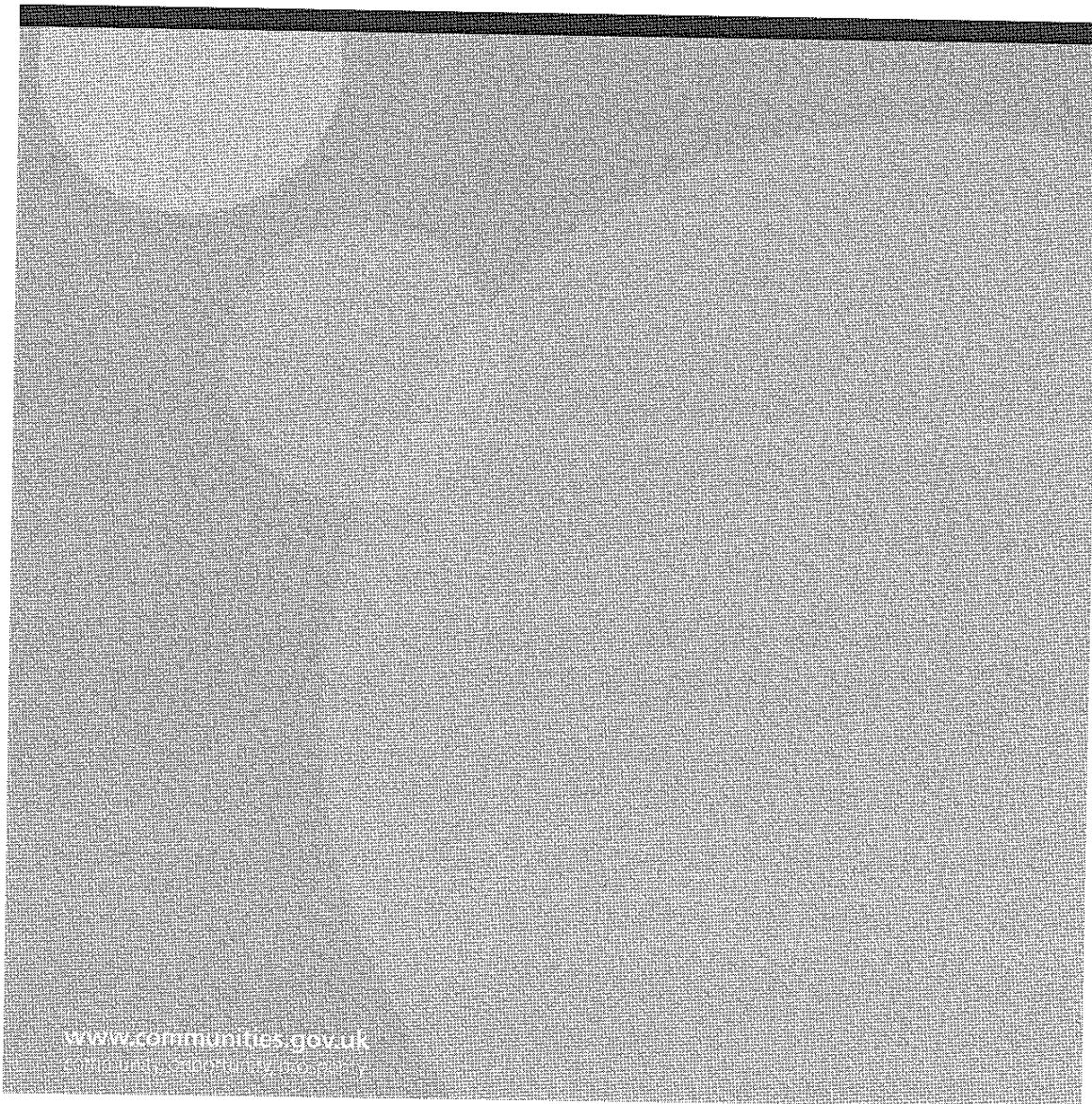
The work load will be added to through Councillor Calls for Action. To add petition appeals will be too much.

The only way for a small authority to cope would be to increase officer resources however the authority will already be challenged to maintain resources for priority services and this will increasingly be the case following the Comprehensive Spending Review 2007.

There is also a concern as to where the additional elected member capacity to do all this extra Overview and Scrutiny work will come from.

Furthermore Overview and Scrutiny has no powers to force the Executive or full council to make a decision it only makes recommendations. This could result in a lengthy period of considering a petition with a result that could also frustrate the petitioner.

Communities in control:
Real people, real power
Improving local accountability
Consultation





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August 2008
Department for Communities and Local Government

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Chapter 1

The consultation and how to respond

Communities in Control consultation papers

- 1.1 The White Paper, *Communities in Control; Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This is part of the Government's wider agenda to modernise our democratic system, to strengthen participatory democracy and through the *Communities in Control* White Paper to deliver genuine empowerment to local people and local communities – passing more power to more people through every practical means. Central to this is a vibrant local democracy, at the heart of which are councils – providing strategic leadership delivering services and empowering communities.
- 1.3 We now need to consult further about a number of policy commitments. These consultations will cover both the 2008 *Communities in Control* White paper and work still in the pipeline from the earlier White Paper and the 2007 Local Government and Public Involvement in Health Act which provides the legislative framework for the implementation of that earlier White Paper.
- 1.4 We are thus planning a series of *Communities in Control* consultation papers over the coming months including:
 - **This paper on improving local accountability** – covering developing and strengthening overview and scrutiny, new powers to hold local officers to account and facilitating the work of councillors.
 - **A consultation paper on the making and enforcement of byelaws** – to be issued in August 2008 – on the content of regulations to devolve the making of byelaws to councils and improving their enforcement through the introduction of fixed penalty notices.
 - **A consultation on a revised code of conduct for members**, to be launched in mid September 2008 about reviewing the model code of conduct for members with a view to making any revised code in time for introduction following the 2009 local elections.

- **A consultation paper on mayors**, to be issued mid September 2008, inviting views about on-line petitioning for mayors and reducing the threshold for a petition to trigger a mayoral referendum to below five per cent of local electors.
- **A consultation paper on time off entitlements** – to be issued at the end of September 2008 on extending the right to time off for public duties to people serving in a wider range of roles and encouraging people to take on roles in independent, voluntary or community sector organisations, with a view to implementation by secondary legislation in April 2009.
- **A review of the code of recommended practice on local government publicity**, to be launched at the end of September 2008, looking at whether the code should be revised and updated and whether it should be a statutory code or guidance.

About this consultation paper

- 1.5 The focus of this first consultation paper in the series is on certain tools for enabling local people to participate in decisions which affect their day to day lives; to hold to account those who exercise power in their locality; and to facilitate the work of those democratically elected to represent their communities.
- 1.6 Specifically, we are seeking views on:
- **Developing and strengthening overview and scrutiny** through:
 - **implementing the provisions of the 2007 Act**, designed to enhance councils' scrutiny powers in relation to scrutiny of Local Area Agreement partners and their delivery of LAA improvement targets; in particular, the powers to make regulations in respect of:
 - ♦ overview and scrutiny committees requiring information from partner authorities
 - ♦ the publication of scrutiny reports, recommendations and responses
 - ♦ the establishment of joint county and district overview and scrutiny committees
 - ♦ enhancing the powers of district overview and scrutiny committees
 - ♦ scrutiny in small district councils operating a streamlined committee system.
 - how best to take forward the **commitments and proposals in the *Communities in Control White Paper*** to raise the visibility of, and to strengthen, the scrutiny function

- **increasing the visibility and accountability of local public officers** so that they are all open to public scrutiny and questioning from local communities through
 - chairs and chief executives of local public bodies attending regular public hearings
 - a new right for local people to petition to hold officers to account.
- **facilitating the work of councillors** by modernising the way they do business to enable them to use information and communications technology to participate in meetings and vote remotely.

Who we are consulting

- 1.7 This is a public consultation and it is open to anyone to respond to the questions which are summarised at Annex A. We would particularly welcome responses from local authorities, overview and scrutiny members and officers, national representative bodies, trade unions and local government partners.

How to respond

- 1.8 Your response must be received by **30 October 2008** and may be sent by email or by post to:

Local Accountability Consultation
Communities and Local Government
Zone 5/A2
Eland House
Bressenden Place
London
SW1E 5DU

email: localaccountability@communities.gsi.gov.uk

- 1.9 It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.10 We will analyse the responses to the consultation and produce a summary of them within three months of the close of the consultation. This summary will be published on the Department's web site at www.communities.gov.uk

- 1.11 The Government will take account of the responses received to this consultation before introducing primary and secondary legislation on the particular topics discussed in this paper.

Publication of responses – confidentiality and data protection

- 1.12 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), and the Environmental Information Regulations 2004.
- 1.13 You should be aware that under the FOIA there is a statutory Code of Practice with which public authorities must comply, and which deals, among other things, with obligations of confidence. In view of this statutory Code, should you want any of the information that you provide in response to this consultation to be treated as confidential, it would be helpful if you could also explain to us why you regard the information you are providing is confidential.
- 1.14 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.15 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.16 The UK Government has adopted a code of practice on consultations. The criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process are included in Annex C.

Additional copies

- 1.17 You may make copies of this document without seeking permission. Printed and alternative format (eg Braille or audio) copies of this consultation paper can also be obtained from the contact details at paragraph 1.8 above. An electronic version of this document can be found in the consultation section of the Department's website at: www.communities.gov.uk.

Chapter 2

Developing and strengthening overview and scrutiny

What is overview and scrutiny?

- 2.1 Local government overview and scrutiny is a tool by which a community, through its local democratically elected representatives, can address any issue relating to the wellbeing of that community with the aims of:
- highlighting past or proposed decisions by those responsible for the issues, so that the community is better able to judge the decision takers (eg through the ballot box)
 - making recommendations to decision takers so as to influence their future actions, in particular to tackle past shortcomings, to secure public service improvements, or to obtain better outcomes for the community.
- 2.2 Overview and scrutiny therefore includes but is not limited to examining decisions taken by the council executive, and those which the executive proposes to take in the future. Overview and scrutiny involves examining:
- past actions and decisions of both the council's executive and of the authority – holding decision takers publicly to account, and influencing council decisions and policies by recommending or persuading the executive to change its mind
 - proposed future actions and decisions (policy development), providing input and influencing decisions on future activities
 - issues of importance to the community; stimulating public engagement and influencing outcomes, the responsibility for which might lie with the council, its partners or local stakeholders more generally.
- 2.3 In practice, such an examination might involve an overview and scrutiny committee holding hearings of the cabinet member and council officers responsible for a particular decision as well as seeking views from the public and other stakeholders, leading to a report and recommendations to the authority's executive. Equally, it may involve an overview and scrutiny committee reviewing a council policy – using a working group to collect evidence to enable members to be aware of the broader issues, seeking the views of local residents, business and various other stakeholders, again leading to a report and recommendations to the executive.

- 2.4 So overview and scrutiny can be a powerful tool for empowering communities and enabling local people through their councillors to participate in decisions which affect their day to day lives. Its statutory framework was established by Part II of the Local Government Act 2000. Central to its operation are councils' overview and scrutiny committees which the 2000 Act required all councils operating executive arrangements to appoint. The 2000 Act and associated regulations also required those small district councils operating a streamlined committee system ("alternative arrangements") to appoint one or more similar committees.
- 2.5 Following the 2000 Act the practice of overview and scrutiny has developed across local government. The Health and Social Care Act 2001 extended the statutory framework providing a statutory basis for councils to scrutinise local health services. The framework was further extended by the Police and Justice Act 2006, which brought bodies preparing a crime and disorder reduction strategy within councils' scrutiny arrangements.
- 2.6 Within this extended framework a number of councils adopted imaginative and wide ranging approaches to overview and scrutiny. More generally, councils across the country were strengthening the effectiveness of their scrutiny arrangements, so that by 2006 a survey¹ showed that over 80 per cent of recommendations from overview and scrutiny had been accepted by the council's executive or policy committee.
- 2.7 However, as the White Paper *Strong and prosperous communities*² recognised in 2006, while overview and scrutiny committees are good at reviewing service outcomes and involving external stakeholders, they are weak at reconciling community opinion or providing a forum for community debate.
- 2.8 In the Local Government and Public Involvement in Health Act 2007 we legislated to enhance the ability of councillors through overview and scrutiny to champion the interests of local people across a range of local issues. This included providing a new responsibility for overview and scrutiny committees to consider Councillor Calls for Action (CCfA) on issues of local concern. Our 2008 White Paper *Communities in Control: Real people, real power* has now committed us to raise the visibility of the scrutiny function and to further enhance its effectiveness.

¹ The 2006 survey of overview and scrutiny in local government; the Centre for Public Scrutiny; 2007

² Strong and prosperous communities; The Local Government White Paper; Communities and Local Government; 2006

Implementing the Local Government and Public Involvement in Health Act 2007 provisions

- 2.9 We are now proposing to implement the 2007 Act provisions, which are designed to enhance councils' scrutiny powers in the context of Local Area Agreements (LAAs). There is already a duty on the LAA's lead council (ie the responsible local authority for the LAA, namely the unitary council, London borough council, or in the case of two tier areas the county council) to publish a memorandum relating to their LAA, setting out to local people how partners are going to tackle and measure progress against their LAA. Guidance on Local Strategic Partnerships, including governance, engagement arrangements and implementing LAAs following the 2007 Act is set out in *Creating Strong and Prosperous Communities: Statutory Guidance*.
- 2.10 This consultation focuses on those powers to make regulations in relation to the scrutiny by council overview and scrutiny committees of LAA partners and their delivery of LAA improvement targets. In particular on the power to make regulations in respect of:
- overview and scrutiny committees' requiring information from partner authorities
 - publication of scrutiny reports, recommendations and responses
 - establishment of joint county and district overview and scrutiny committees
 - enhancing the powers of district overview and scrutiny committees
 - scrutiny in small district councils operating a streamlined committee system.
- 2.11 We set out the specific approach we are proposing to adopt to implement each of those new provisions. In each case, implementation will involve not only bringing the relevant provisions of the 2007 Act into force, but also making regulations and publishing guidance as appropriate.
- 2.12 Our intention is to achieve an appropriate balance between providing a sufficiently robust regulation based framework so that councils have the powers they need, and equally ensuring that councils, their overview and scrutiny committees, and local partners have that local flexibility necessary both to allow for innovation and for overview and scrutiny effectively to serve and empower local communities. We are also proposing that wherever possible guidance should take the form of sector led best practice guidance. We intend to develop this with the Local Government Association, stakeholders, and practitioners.
- 2.13 Consistent with this approach, our proposals for implementing each of the new provisions are set out below.

Requiring information from partner authorities

- 2.14 This provision is about the information (other than information about policing or local health services for which separate provision is made³) which the partners in a LAA should make available to overview and scrutiny committees of that LAA's lead council. The partners are the partner authorities of the lead council for the LAA concerned. A full list of possible partner authorities is at Annex B. The provision also covers the information which in a two-tier area, the county council or partners (other than a police authority or chief constable) – described in the legislation as 'associated authorities' – should make available to a district council overview and scrutiny committee in relation to that LAA.
- 2.15 We propose that in the context of an agreed LAA, guidance should reflect our expectation that a partner will make available to the lead council's overview and scrutiny committee such information as it may request for the purposes both of examining progress on any LAA target with which the partner is concerned and of undertaking studies of local issues connected to such a LAA target. We also expect that wherever practicable partners should provide such overview and scrutiny committees with other information they might have which the committee has requested as facilitating its work more generally. Committees should ensure that any requests for information are well focused and thought through. Equally they should take care not to unduly burden partners and to avoid duplication and any unnecessary requests.
- 2.16 Similarly, we propose that in a two-tier area the lead council or any partner in an LAA should make available to a district council overview and scrutiny committee information relevant to a target connected to that council's area and functions, including its legitimate concerns about the well being of that area. It will be particularly important that requests from district councils in a two-tier area are co-ordinated and duplication is avoided.
- 2.17 With this proposed approach to guidance we envisage only limited regulations on these matters. Regulations may set out information that must be disclosed and that which may not be disclosed by partner and associated authorities to overview and scrutiny committees.
- 2.18 We propose therefore that partner authorities must provide information where that information:
- is information in relation to any target which relates to that partner
 - relates to an agenda item of the overview and scrutiny committee concerned
 - has been requested by that overview and scrutiny committee.

³ The Police and Justice Act 2006, and the National Health Service Act 2006 respectively.

- 2.19 We also propose to set out the types of information that, and the circumstances in which information, may be withheld by partners. Such information would include personal data covered by the Data Protection Act 1998 and information subject to commercial confidentiality and we intend that these provisions would apply equally to requests from any overview and scrutiny committee to partner or associated authorities. Equally, partner authorities would not be required to provide information where the information requested is already publicly available.
- 2.20 Finally, in the spirit of striking a balance between regulation and allowing local flexibility, we do not propose to specify in regulations any time limits for responses by partner or associated authorities or the format of any such response (whether in writing or attendance at a meeting). We consider that these are detailed arrangements which will necessarily depend on the particular circumstances of individual requests.

Consultation Question 1: Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partner authorities?

Publication of scrutiny reports, recommendations and responses

- 2.21 This provision is about the arrangements for publication of scrutiny reports, recommendations and responses. The 2007 Act strengthened the existing powers of overview and scrutiny committees by enabling them to require a response from the local authority or the local authority's executive to a scrutiny report or recommendations.
- 2.22 The provision also enhanced the transparency of the conduct of overview and scrutiny work by providing that where committees publish their report or recommendations, the authority or executive must also publish their response. Equally, where a committee has provided a copy of its report or recommendations to a council member or partner, the executive or authority must also provide a copy of their response.
- 2.23 An overview and scrutiny committee or a local authority, in publishing these documents, or providing copies of these documents to local authority members or partners, will be required to act in accordance with the new section 21D of the Local Government Act 2000 (as will be inserted by the 2007 Act). This section details circumstances in which confidential information and any relevant exempt information must or may be excluded. This provision will extend to the overview and scrutiny committee and local authority only, and we propose to make regulations to extend these provisions without modification to local authority executives where they also publish or provide copies of such documents.

Consultation Question 2: Do you agree with the proposal to apply the provisions in relation to exempt and confidential information without modification to local authority executives?

Establishment of joint county and district overview and scrutiny committees

- 2.24 This provision is about the establishment of joint overview and scrutiny committees in areas with both county and district councils so that they may work together collaboratively to make reports and recommendations about the attainment of local improvement targets specified in the LAA for the area. A joint overview and scrutiny committee may be established by the county council and one or more of the district councils within the county area. This will provide a framework through which the county and district councils can co-ordinate their efforts with relevant partners on the scrutiny of LAA targets.
- 2.25 We propose that joint committees should have broadly the same powers held by overview and scrutiny committees in responsible local authorities so that they may for example, appoint sub-committees and co-opt members⁴. We also propose making similar provision for joint committees in respect of partners. In doing so we want to ensure that partners are not placed under unreasonable burdens for example, by handling similar requests for information from a joint overview and scrutiny committee and one or more local authority overview and scrutiny committees in the area. On issues of common interest across the area we would expect the joint committee (where one exists) to make requests for information from partners and propose to specify this in the regulation framework. Where a joint committee does not exist, we will expect the arrangements set out in paragraphs 2.14 – 2.20 above to apply.
- 2.26 We also propose that joint committees may make reports and recommendations to those local authorities or local authority executives for which the joint overview and scrutiny committee has been established. Where a joint committee makes a report to such a local authority or local authority executive we propose that they will be required to respond within two months.

Consultation Question 3: Do you agree with the proposed approach towards joint overview and scrutiny committees? Are there specific issues that should be considered as part of the approach?

⁴ Due to their nature the 2007 Act did not provide for joint overview and scrutiny committees to be given the power to 'call in' members of the authority or of the executive, or officers of the authority, nor to refer decisions that have not been implemented back to the executive.

Enhancing the powers of district overview and scrutiny committees

2.27 District scrutiny committees in two-tier areas are also given strengthened powers by the 2007 Act. To enable them to play an active role in scrutinising the delivery of LAA targets connected to the district council's area, we propose to make regulations in relation to these powers, broadly mirroring those that will be available to lead councils. Within this remit we propose that:

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

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

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

Scrutiny in small district councils operating a streamlined committee system

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

Consultation Question 5: Do you agree with the proposal to apply these new powers in councils operating alternative arrangements? Are there any specific implications that should be taken into account in doing so?

Taking forward the 2008 White Paper commitments

- 2.30 The *Communities in Control* White Paper sets out proposals to enhance the power of citizens and make public institutions more accountable. It recognises that the current overview and scrutiny arrangements provide a number of ways in which local people can become involved in holding local decision-makers to account, and seeks to raise the visibility of these current arrangements. The new duty to promote democracy will help to make overview and scrutiny more visible and accessible by encouraging councils to be more innovative about the way they promote local participation.
- 2.31 In raising the profile of the overview and scrutiny function in local authorities, we want to ensure that scrutiny committees have the necessary capacity and powers to respond to the greater public interest. Building on the 2007 Act provisions, we intend to further strengthen the scrutiny function by extending the power to require information from partner authorities to matters outside LAA targets.
- 2.32 We also propose to introduce a power for county and district councils to combine their respective scrutiny resources in 'area scrutiny committees' where they wish to do so. Such area committees would operate within the county area, combining existing district and county resource in a powerful partnership.
- 2.33 Finally, we intend to require some dedicated scrutiny resource in county, unitary and London borough councils across England. This will ensure that every area in England is covered by dedicated scrutiny resource to support the overview and scrutiny function in local government. One way this may be achieved is through making similar provision to that for monitoring officers and their resources as set out in the Local Government and Housing Act 1989.
- 2.34 The white paper also proposed a new duty on local authorities to respond to all petitions, including electronic petitions, relating to local authority functions or other public services where the local authority shares delivery responsibilities. The *Local Petitions and Calls for Action Consultation: Government Response*, sets out more detail.⁵
- 2.35 We want to ensure that local authorities take petitions seriously, and will ensure that petitioners can appeal if they are not satisfied with their response. If the appeals body judges that a local authority's response was not adequate they could trigger a debate of the full council. Overview and scrutiny committees are independent of the Executive and will be responsible for considering Councillor Calls for Action. They are therefore well-placed to consider appeals when petitioners are not satisfied with the local authority response. We therefore propose that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee.

⁵ www.communities.gov.uk/publications/communities/petitioncallsgovernmentresponse

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

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

Consultation Question 8: Do you agree that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee? What practical issues might arise?

Chapter 3

Increasing the visibility and accountability of local public officers

Holding local public officers to account

- 3.1 The ability to hold to account those who hold power locally is central to any real empowerment of local communities. It is for this reason that the *Communities in Control* White Paper is proposing to raise the visibility of local public officers so that they are all open to public scrutiny and questioning from local communities through:
- chairs and chief executives of local public bodies attending regular public hearings
 - a new right for people served by local service providers and agencies to petition to hold local officers to account.
- 3.2 Without cutting across established lines of accountability, including the democratic accountability of councillors to local electors through the ballot box, local people would be more empowered if they have direct means of being able to influence local decisions, and a means by which local decision takers can explain their decisions to the local communities affected by them. It is against this background that we are consulting on how to put in practice a scheme that will allow people to petition to hold local public officers to account. This will be one element of our proposals to develop local petitions (see paragraphs 2.34 and 2.35); we recognise that this may result in additional costs for councils to be taken into account through the usual new burdens process.

Attendance at regular public hearings

- 3.3 The *Communities in Control* White Paper seeks to bring consistency across the range of local public services by proposing that a key part of the role of a chair or chief executive of a local public body should be that they attend a regular public hearing to explain their actions and decisions and to listen to the views and concerns of local people.

- 3.4 A public hearing in this context may mean a public meeting or forum where local people are able to receive information about the recent work of the local public body and have the opportunity to ask questions or raise issues of importance. The expectation is that these meetings should take place every three or four months and that they should be held in places easily accessible to the general public, for example, at a local leisure centre or community hall as opposed to the offices of the body in question.
- 3.5 The requirement to attend such meetings should be reflected in the job descriptions of the chair or the chief executive, and in recognition that a number of public bodies already have similar provision or requirements, such as local health bodies for example, we propose that it should be for those responsible for such job descriptions to determine the precise arrangements by which the chair or chief executive will attend regular meetings.

Consultation Question 9: Do you agree with this approach that those responsible for the job descriptions should determine the precise arrangements by which the chair or chief executive will attend regular public meetings?

Petitions to hold local public officers to account

- 3.6 The White Paper also proposes a new right for people to petition to hold local officers to account whereby if enough people served by a local service or agency sign a local petition, then senior officers working for that local public body should be required to attend a public meeting. In developing any scheme for petitioning to hold local officers to account, our intention is to achieve an appropriate balance between providing a sufficiently robust legal framework while retaining that flexibility necessary to allow for local circumstances across the range of local public bodies.
- 3.7 We are therefore proposing that in each LAA area, the lead council with its strategic partners, including local service providers and agencies, should be required to agree and publish locally a scheme for petitions to hold local officers to account. In agreeing such a scheme, the council and its partners will wish to have regard to any other local petition arrangements within the area. In particular we would expect any scheme to complement, or form part of the council's scheme for responding to petitions more generally.
- 3.8 As a minimum, we would expect such a scheme to set out:
- the officers (or category of officers) to whom the scheme would apply locally
 - any relevant petition criteria, such as agreed thresholds, who may sign a petition, the format a petition must take

- the local service providers and agencies covered by the agreed scheme and how they will respond to petitions
- arrangements for the hearing.

3.9 It would be open for Government to specify certain minimum standards for the various elements of the scheme. Such minimum standards might include the timescale by which such schemes should be in place, specified local officers or categories of officers, and specified local service providers and agencies which must be covered by a scheme. For example, it is proposed that this power should apply to senior officers only – perhaps those who are members of the executive board or senior management team. One option for defining such officers in local government could be to specify that in addition to the chief executive, the scheme would apply to “statutory officers” and/or “non-statutory chief officers” as defined in the Local Government and Housing Act 1989⁶.

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

Consultation Question 10: Do you agree with our proposals to require the local authority with its strategic partners to agree a local scheme for petitions to hold officers to account? What practical issues might arise?

Consultation Question 11: Should the Government provide some minimum standards for local schemes to hold officers to account? What should they be? Which, if any, local service providers and agencies must, or must not be in any scheme?

⁶ “Statutory chief officers” as defined by section 2(6) of the Local Government and Housing Act 1989 are the chief education officer, the chief officer of a fire brigade maintained under the Fire Services Act 1947, the director of social services, and the officer having responsibility for the administration of the authority’s financial affairs. Similarly, “non statutory chief officer” is defined in section 2(7) as a) a person for whom the head of the authority’s paid service is directly responsible; b) a person who as respects all or most of the duties of his post is required to report directly or is directly accountable to the head of the authority’s paid service; and c) any person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the local authority themselves or any committee or sub-committee of the authority.

Which local public officers would be included?

- 3.11 We propose that it will be for a local authority and its partners, including local service providers and agencies to agree to which of them the scheme should apply, subject to any statutory minimum standards (eg any requirements about which local service providers and agencies must or must not be covered by a scheme). In doing so the council and its partners will wish to consider those local service providers and agencies whose decisions can have a significant effect on the day to day lives of local people and their communities.

Consultation Question 12: Do you agree that the scope of the scheme should be agreed locally subject to any statutory minimum standards and whether this would be an effective means of empowering communities?

Chapter 4

Facilitating the work of councillors

Remote attendance and voting by authority members

- 4.1 In an age where it is commonplace for people to contribute to a meeting without being physically present, for instance through teleconferencing, and where the internet allows common use of video conferencing and the almost instant sharing of documents, the Government believes it is right that these technologies are applied to help overcome the barriers of time, circumstance and distance that might discourage members from participating in meetings.
- 4.2 The report of the Councillors Commission *Representing the future*, included the recommendation that Government should introduce legislation in order to enable involvement in meetings including, but never limited to, voting, without the need to attend in person.
- 4.3 The *Government response to the Councillors Commission* report agreed with this recommendation. The Government wants to enable councillors to participate in council meetings and vote remotely and we will introduce legislation to support these activities in the forthcoming Community Empowerment, Housing and Economic Regeneration Bill.
- 4.4 Further, the local government White Paper *Communities in Control*, made it clear that any changes in attendance or voting procedure for the authority would have to be balanced with measures to preserve accountability and transparency, so that citizens can remain confident that they are being properly represented by their councillor.

Legislation and standing orders

- 4.5 We are proposing to legislate to allow authorities to modify their attendance and voting procedures as necessary to allow remote voting. We would envisage that, apart from certain members not being physically present, meetings and votes would continue essentially in the same manner as they did when members were physically present at meetings and votes. This would extend to the public having the same ability to witness proceedings.

- 4.6 It would be for the authorities themselves to decide how much or how little use they wished to make of remote attendance and voting and to consider matters of security and propriety. It is envisaged that in resolving to modify their attendance and voting procedures – most probably through an amendment to the authority's 'standing orders', the authority will in effect have to 'opt-in' to remote attendance and voting and, in doing so, will demonstrate that it has positively considered the effect and consequences of remote attendance.
- 4.7 The legislation would apply to county councils, district councils, London boroughs and parish councils and make certain basic requirements.
- 4.8 Firstly, that at least one member must be physically present at the meeting and that person must be in audio contact with any member attending remotely, with or without a video link. In addition members of the public physically present at the meeting must be able to witness what is happening, at least through audio contact. If the opportunity for the public to participate in the meeting is available, this must be provided for and remote attendees must be able to hear the contributions.
- 4.9 The legislation will contain safeguards to ensure that those attending remotely must be able to participate in and listen to the meeting when and as required. If they are unable to sustain communication, then they are not considered present. The legislation will allow authorities to establish procedures for what the protocols for the meeting would be if contact with a remote attendee were to be lost.
- 4.10 We do not consider that a local authority adopting remote attendance or voting measures would result in additional costs as it would involve the use of existing facilities in a more flexible way. Indeed, it may result in costs savings as travel expenses are cut.

Consultation Question 13: Do you agree with the proposed approach?

Annex A

List of consultation questions

Chapter 2: Developing and strengthening overview and scrutiny

Implementing the Local Government and Public Involvement in Health Act 2007 provisions

- Question 1 Do you agree with our proposed approach in relation to overview and scrutiny committees requiring information from partner authorities?
- Question 2 Do you agree with the proposal to apply the provisions in relation to exempt and confidential information without modification to local authority executives?
- Question 3 Do you agree with the proposed approach towards joint overview and scrutiny committees? Are there specific issues that should be considered as part of the approach?
- Question 4 Do you agree with the proposed approach to enable district scrutiny committees to review the delivery of LAA targets?
- Question 5 Do you agree with the proposal to apply these new powers in councils operating alternative arrangements? Are there any specific implications that should be taken into account in doing so?

Taking forward the 2008 White Paper commitments

- Question 6 What issues should be considered as part of any new power to establish area scrutiny committees?
- Question 7 How might the requirement for dedicated scrutiny resource be put into practice?
- Question 8 Do you agree that appeals about a local authority's response to a petition should be considered by the overview and scrutiny committee? What practical issues might arise?

Chapter 3: Increasing the visibility and accountability of local public officers

- Question 9 Do you agree with this approach that those responsible for the job descriptions should determine the precise arrangements by which the chair or chief executive will attend regular public meetings?
- Question 10 Do you agree with our proposals to require the local authority with its strategic partners to agree a local scheme for petitions to hold officers to account? What practical issues might arise?
- Question 11 Should the Government provide some minimum standards for local schemes to hold officers to account? What should they be? Which, if any, local service providers and agencies must, or must not be in any scheme?
- Question 12 Do you agree that the scope of the scheme should be agreed locally subject to any statutory minimum standards and whether this would be an effective means of empowering communities?

Chapter 4: Facilitating the work of councillors

- Question 13 Do you agree with the proposed approach?

Annex B

List of partner authorities as defined in the 2007 Act

The partner authorities required to co-operate with overview and scrutiny committees are:

- Arts Council of England
- Broads Authority
- District councils in two-tier areas
- English Sports Council
- Environment Agency
- Fire and Rescue Authorities
- Health and Safety Executive
- Historic Buildings and Monuments Commission
- Joint Waste Authorities
- Learning and Skills Council for England
- Local Probation Boards
- Metropolitan County Passenger Transport Authorities
- Museums, Libraries and Archives Council
- National Park Authorities
- Natural England
- NHS Trusts
- NHS Foundation Trusts
- Primary Care Trusts
- Regional Development Agencies
- Transport for London
- Waste Disposal Authorities
- Youth Offending Teams

Annex C

Consultation Code of Practice

- C.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- C.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The consultation criteria

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses
 - Ensure that your consultation is clear, concise and widely accessible
 - Give feedback regarding the responses received and how the consultation process influenced the policy
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- C.3 The full consultation code of practice may be viewed at:
www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

- C.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

Empowerment White Paper “Communities in Control” July 2008

White Paper Key Proposals

The duty to promote democracy - The document recognises councils' position as the “hub” of local democracy. The duty will draw on the best examples from councils and will encourage a range of actions which could include better information for residents, engaging young people, and giving practical support to councillors.

Petition Power will be strengthened - There will be a new duty for councils to respond to petitions and any petition signed by 5% of residents will be required to be debated in a full council meeting. Councils will also act as “community advocates” in responding to petitions that deal with issues outside of their direct control eg: GP surgery opening hours.

Powers of overview and scrutiny are to be updated and made more visible to the public. Local senior public officers (i.e.: not just council officers) may be required to face public scrutiny as the result of residents' petitions – this is to be consulted upon. Chief Executives and Chairs will face a regular public hearing with the intention that such public officers will become more visible locally.

Chapter Summaries

Chapter 1: The Case for Empowerment and the Duty to Promote Democracy

- The new duty to promote democracy will involve a list of possible methods of promotion drawn from council best practice and at this stage it does not appear that it will be prescriptive.
- This will include the duty to promote understanding of and participation in lay governance roles such as school governance.
- The Duty to Involve will also be extended to bodies including the Arts Council, JobCentre Plus and the Regional Development Agencies.
- Councils will be encouraged to promote and increase voting turnout through campaigning and recognition schemes (e.g.: “I’ve Voted” badges).
- An “Empowering the Frontline Taskforce” will run until 2010 and will work on ensuring that frontline council staff are able to respond to a more empowered public.

Chapter 2: Volunteering

- A Community Builders fund (previously Community Anchors) of £70million will be created. The Government will be looking for a national partner to distribute these funds.

- A match-funded Grassroots Grant announced for volunteering projects which have volunteer time as their main resource. These will be funded from a £80 million allocation from 2008-2011.
- Support for programmes developing leadership skills for local community leaders including through a new Empowerment Fund (of at least £7.5million) (subject to separate consultation).

Chapter 3: Access to Information

- Information needs to be available to the public at local and neighbourhood level.
- CLG will be working with the LGA to identify best practice in information dissemination.
- Neighbourhood Policing Teams will be held to account for achieving neighbourhood objectives through a new "Policing Pledge". The details of this will be set out in the Policing Green Paper.

Chapter 4: Having an Influence

- There will be a new duty for councils to respond to petitions.
- 5% of residents signing a petition will require a debate in full council.
- Councils will be required to respond to petitions on subjects outside of their direct sphere of influence eg: GP surgery opening hours.
- Residents will be able to appeal to the Secretary of State if their application to create a Parish Council is denied by a council.
- Improvements to the Community Payback scheme are being considered, and CLG will be working with the Ministry Of Justice, LGA and Association of Chief Police Officers to determine the best way of ensuring there is greater local influence on justice issues.

Chapter 5: Challenge

- Public sector officers to become more publicly visible.
- Chairs and Chief Executives to face a regular public hearing.
- The power of scrutiny overview and committees will be enhanced to allow them to require information from partners on a broader range of issues.
- The requirement for detailed scrutiny resource in county and unitary councils.
- A new right to require by petition that senior officers in local public services should attend a public hearing– this will go to consultation.

- A consultation will be opened into on-line petitioning for establishing an elected mayor, and also to look at lowering the percentage of residents required to trigger a referendum on having an elected mayor from 5% to 2, 3 or 4%. The amount of time allowed between referenda in the event of an unsuccessful bid for an elected mayor will fall from 10 years to 4 years.
- Elected mayors will be expected to chair LSPs and be the community crime and policing representative.
- More details on crime and local accountability are in the Policing Green Paper.

Chapter 6: Redress

- The CLG are conducting a concise review on issues of redress which will be published at the beginning of 2009 and will consider if and when financial compensation for residents might be relevant.

Chapter 7: Standing for Office

- The Government has published its response to the Councillors Commission Report which reinforces the central role of councillors in local democracy and importance of encouraging people to stand for office.
- The Government will relax the "Widdicombe rules", which prevent officers from standing for political office, for all except the most senior officers.
- Discretionary ward budgeting will be further encouraged.
- Councils will be given the power to modernise their business practices to include remote attendance and voting, balanced with measures to preserve accountability and transparency.

Chapter 8 – Asset Management

- A new Asset Transfers Unit will be set up to disseminate best practice and offer advice on the transfer of assets to community groups and the third sector.
- The CLG will be working with the LGA and the Audit Commission to determine how this should be managed and to identify methods of best practice currently operated by councils.
- A new Social Enterprise Unit will be set up to deliver CLG objectives in this field.