

EFFECTIVE OVERVIEW AND SCRUTINY

INFORMATION

1. The legal framework for scrutiny [Module 1]

This information sheet sets out what is required by law for overview and scrutiny arrangements in England. More detailed legal advice would be available from the council's legal staff.

If councillors believe their legal rights are not being met, or there has been a specific breach, the first step is to discuss this with the council's Monitoring Officer (a senior member of staff, often the Chief Executive or Head of Legal Services) who has a legal duty to ensure the council conforms to the law.

The main legal requirements

The Local Government Act 2000 includes requirements for the organisation of scrutiny and these are set out in Part 2, Section 21 of the Act. For England only, this has been amended by the Health and Social Care Act 2001, which sets out the health scrutiny role. The Local Government Act 2003 allows authorities to grant voting rights to co-optees on scrutiny committees who are not councillors.

These requirements allow a great deal of scope to tailor scrutiny arrangements according to local choice.

The legal requirements are:

The council must have one or more overview and scrutiny committees. All executive functions must be covered by an overview and scrutiny committee. Overview and scrutiny bodies must have the right to report both to the executive and the full council. Individual members of the body must be able to put items on the agenda.

The membership of overview and scrutiny bodies must be balanced politically according to the requirements for committees set out in the Local Government and Housing Act 1989. The meetings must be held in public and subject to the access to information requirements for council committees.

The requirements for proportionality for these and other committees are set out in Sections 15-17 of the Local Government and Housing Act 1989. Committees must be politically proportional unless this is waived by a Council vote where no-one votes against. An alternative option is that the 'parent' overview and scrutiny is proportional, but if no-one is opposed, can agree to waive proportionality for sub-committees and panels, or time-limited project groups. The decision to do this would have to be taken annually.

However, if sub-groups were only carrying out consultation and investigation and any formal reporting and recommendations were made by the committee, they could operate informally.

Overview and scrutiny bodies must not include members of the council's executive. They can co-opt members from outside the council. There is a requirement that church schools and parent governors are represented on the overview and scrutiny body responsible for education, and should have voting rights in relation to decisions about education. In other cases, co-opted members will either be non-voting, or if the council introduces a co-option scheme under the Local Government Act 2003, they can be voting members.

Scrutiny bodies can require the attendance of executive members and staff. They can invite others to attend but cannot compel them. The Housing and Social Care Act 2001 includes provision for representatives of local NHS bodies to be required to attend and provide information to council scrutiny bodies.

The powers of overview and scrutiny bodies will be set out in the council's constitution. The powers must include:

- review of executive decisions and actions
- review of other decisions
- reporting on issues affecting the council area and inhabitants
- call-in and review of executive decisions which have not been implemented.

They may conduct best value reviews – this is a local choice.

The issue of whipping by political parties is of relevance to effective scrutiny. If scrutiny is simply controlled by the majority party to prevent any challenge to the executive, it will not be successful in holding the executive to account. The guidance states '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.'

This does not mean that whipping within scrutiny decisions is illegal however, and there is little that council staff, for example the Monitoring Officer, can do about it.

Statutory guidance recommends that where there is a majority political group, local authorities might consider it appropriate to have some, or all, overview and scrutiny committees chaired by members outside the majority group, or by church or parent governor representatives.

The statutory guidance

Councils must 'have regard to' the statutory guidance, which provides information on the scrutiny role. The guidance documents discuss scrutiny in greater detail and provide information on what should be in the council's constitution. They discuss how call-in arrangements can be set out in the local constitution. They also provide advice on the creation of a work plan for scrutiny, the issue of staff support and the role of party political whipping.

Scrutiny of health

Councils in England have specific rights to scrutinise health issues including the NHS. There are regulations and guidance which develop the role of scrutiny in relation to health and National Health Services, issued under the Health and Social Care Act 2001, by the Secretary of State for Health.

This information comes from *Scrutiny Solutions*, by Jo Dungey, an LGIU publication. See Resource Guide