



*Local Government Association*

# local leadership, local choice

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LGA response to the draft

Local Government (Organisation and Standards) Bill

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## Foreword

This paper sets out the Local Government Association's formal response to *Local Leadership, Local Choice* containing the draft Local Government (Organisation and Standards) Bill.

The response was approved at the LGA's Policy and Strategy Committee on 27 May.

Because of the importance we attached to the issues covered by the draft bill (local authority political management arrangements and the new ethical framework) and because we wanted to contribute to the success of the consultation process, the LGA initiated a hearing (or inquiry) into the draft bill.

The hearing invited submissions from all local authorities and over 100 partner organisations. The hearing process has informed this response - but the report of the hearing is published separately.

The LGA will be pursuing the points raised in this response with Government through the Central/Local Partnership machinery and will be seeking a full role in the further development of the bill and subsequent regulations and guidance.

May 1999

## Summary

- The LGA welcomes the government's initiative in publishing draft bills and the opportunity to comment on the draft Local Government (Organisation and Standards) Bill.
- The draft bill provides an overall framework with many of the details subject to regulation and guidance. The LGA looks forward to working closely with government, as an equal partner, on the development of the regulations – in the way envisaged in the *Modernising Government* White Paper.
- It is important that the objectives of change are not lost in the discussion about structures. We propose a set of principles against which the legislation and effectiveness of the models can be assessed.
- The community leadership and political leadership agendas are inextricably linked. The draft bill should therefore be expanded to include the proposed new duty (and accompanying powers) for local authorities to promote the economic, social and environmental well-being of their areas.
- The introduction of a separate executive offers the potential to improve existing arrangements but may not suite the wide variety of different local authority types and circumstances. A model based on an "improved committee system" may better secure the objectives of change in some cases.
- The new political leadership arrangements will only work effectively if they are locally owned. The temptation for national prescription in the draft bill and regulations should be avoided. Maximum discretion should be retained at a local level in line with Article 6 of the European Charter of Local Self-Government.
- The LGA supports the thrust of the proposals for a new ethical framework which enhances local government's reputation in terms of probity and accountability.
- The process for handling complaints of misconduct should command respect and provide for as rapid a resolution of complaints as is consistent with thoroughness and natural justice. Further consideration should be given to the role of local standards committees in the operation of the new ethical framework.
- The draft bill implies a huge cultural change agenda for local authorities. The statutory framework and local constitutions must provide flexibility for changes to be made as lessons are learned.

# Introduction

1. The Local Government Association represents every principal local authority in England and Wales including all 238 shire district councils, 36 metropolitan district councils, 34 county councils, 47 English shire unitary authorities, 33 London boroughs (including the City) and 22 Welsh unitary authorities. In addition, the LGA represents fire authorities and passenger transport authorities. As such, the LGA provides the national voice for local communities in England and Wales; its members represent over 50 million people, employ more than two million staff and spend over £65 billion on local services. This response has been prepared in consultation with the Improvement and Development Agency and Employers Organisation and takes into account their comments.

2. We welcome the opportunity to comment on the draft Local Government (Organisation and Standards) Bill. We commend the government for its initiative in publishing draft bills and we hope that this consultation process will lead to a greater consensus on the proposals and for better legislation.

3. The LGA has sought to play a full and constructive part in the consultation process and to stimulate debate at a national level and in localities. An important part of our work has been the hearing (or inquiry) into the bill chaired by our President, Lord Hunt. The Hearing has invited evidence from all local authorities and over 100 professional and representative organisations involved in local government. The work of the hearing has informed this response. A copy of the report of the hearing is published separately.

4. Whilst therefore we welcome consultation on the draft bill – and hope that this is a precedent that will be followed on other issues – it must be noted that the bill

provides little more than an overall framework and that many of the detailed issues that will determine how the proposals on political management and the new ethical framework might work in practice are to be the subject of subsequent regulation by the secretary of state. We have therefore restricted our observations in this response to some of the general issues arising from consultation with our member authorities.

5. However, we do believe that it is now important that central and local government work closely together in developing the regulations and guidelines that will underpin the bill's broad framework and that which will have a significant impact on the way the legislation will work in practice. The LGA wants to work constructively with government as an "equal partner" on these issues - in the way envisaged in the *Modernising Government White Paper*. We very much see this initial response as the commencement of an on-going dialogue on the proposals. An early signal of the government's commitment to proceeding in this way, with a timetable for discussions, will help ensure that the momentum for change in authorities is not disrupted.

## **The objectives of the draft bill**

6. The debate about new political structures in local government has been dominated by discussion of directly elected mayors. This in part, no doubt, reflects the prime minister's perceived preference but may also reflect the difficulty in describing the application of the Westminster model to local government. We believe that this has been unhelpful. It has polarised opinions around a single model – and sidelined constructive debate about the objectives of change.

7. We believe that it would be more helpful to the progress of the modernisation

agenda to focus first on the objectives of change. We have therefore developed a set of “principles” which we believe reflect the shared objectives of government, local government and local people. These principles fulfil a number of helpful functions. They will:

- focus debate on the objectives of change. We think that this will be helpful in spreading ownership of the agenda more widely – as exemplified by the Best Value principles
- provide a “benchmark” against which provisions in the bill and the regulations can be examined
- provide a framework for developing a set of measures against which the operation of the new models can be assessed.

8. We would welcome the government’s support for the principles and its agreement to use them in the way we have identified.

# Principles

**Modernisation.** The modernisation process comprises a number of distinct themes:

- Community Leadership
- Best Value/Quality services
- Democratic Renewal
- High ethical standards.

These themes are inter-related and mutually reinforcing. Legislation is needed in some areas to progress these proposals and support local authorities in their modernisation process.

**Local choice.** Local people should be involved in the process of determining the form of political leadership structure which is most appropriate to their locality.

**Leadership.** Political leadership structures should facilitate clear and visible political leadership and direction within local authorities and by the authority in representing its area and its community.

**Accountability.** Political leadership structures should enhance local authorities' accountability and responsiveness to local communities. Local people should know who is taking decisions.

**Democratic renewal and involvement.** Structures should contribute to the democratic renewal of local communities and facilitate the involvement of local people in decisions that affect their lives.

**Openness and transparency.** Decision making processes should be open and transparent. Local people, non-executive members etc. should know where and when decisions are being taken and the reasons for them etc.

**Efficiency.** Structures should provide for more efficient and effective decision making processes leading to speedier, better, decisions taken in a less resource intensive way.

**Powerful roles.** Structures should provide powerful roles for **all** councillors, comprising:

- Scrutiny
  - ability to question/review executive decisions
  - ability to initiate and undertake in-depth reviews of specific areas of the council's activity
- Policy
  - ability to review and develop policy proposals
  - determining policy in council
- Representation
  - ability to represent local ward/division concerns through the structure and act as a 'champion' for their area



- ability to influence/input to executive decisions affecting their area
- playing a lead role in consultation in their ward/division.

**Local ownership.** Structures need to be locally owned if they are to work effectively. There is no one right structure.

**Trust.** Political leadership structures should deliver high standards of conduct and support the objective of increasing the trust held by local people in their authority.

9. New structures will only work effectively – and achieve their objectives – if they are owned locally. Maximum discretion should be retained locally to tailor models to local circumstances – in line with the provisions of Article 6 of the European Charter of Local Self-Government.

- facilitate strong visible and accountable leadership and
- facilitate the development of more rewarding roles for all councillors.

Alongside changes to decision-making processes, we also recognise the need for a modern ethical framework which enhances

local government’s reputation in terms of probity and accountability.

### **The case for change**

10. The deficiencies of the traditional committee system have been well documented and it is clear to us that a system developed 100 years ago to administer a range of individual services is not designed to support modern local government’s primary role of providing leadership and vision in local communities.

13. The LGA has encouraged member authorities to take a positive approach to this agenda. At the LGA’s annual conference in July last year, Sir Jeremy Beecham, Chair, LGA, called on all local authorities to take action on five key areas as evidence of local government’s intent to renew civic leadership and reinvigorate local democracy. The five areas were probity, best value, community leadership, democratic renewal and modernising political structures.

11. Many local authorities have recognised this. They have developed and modified the system to suit the changing role of local government and the needs of their localities. Audit Commission reports have provided a helpful stimulus and source of advice in this process. It would be wrong to base the arguments for change on the deficiencies of a system that largely no longer exists.

### **The momentum for change**

12. Nevertheless, the development of new political management arrangements does offer the potential to further:

14. In November last year we asked all local authorities about their progress in implementing change in the five key areas. The survey results demonstrate the extent of local government’s progress on the reform and improvement agenda:

- clarify decision-making processes
- enhance local accountability
- on political leadership, 81% of authorities have recently reviewed or have in progress,

plans to consider an executive/  
representational split

- 74% have already taken or have in progress steps to open up committees to the public
- On probity, 37% of authorities already have a standards committee in place or in progress with a further 44% planning this in the future
- 87% have a code of conduct for employees in place or in progress.

15. The findings on political leadership are mirrored by the early findings of a research survey on political leadership commissioned by the LGA/IDA Democracy Network, and undertaken by De Montfort and Strathclyde Universities, between October and December 1998. Early results reveal that 75% of responding authorities had reviewed their committee structures in the last three years and that two-thirds had examined the proposals in the White Paper *Modern Local Government: In Touch with the People*.

16. It is important that this momentum for change is not lost. We share the government's desire (expressed in the postscript to *Local Leadership, Local Choice*) for local authorities to continue to make progress in advance of the requirements of legislation. The draft bill's proposals carry huge cultural change for local government and it is important that authorities begin to address this agenda of change as soon as possible.

17. But if the momentum for change is to be sustained, authorities will want to be assured that they will not be penalised for being pioneers. They will want to know that they will not be required to "unpick" large components of interim models introduced in advance of legislation because they fail to meet some of the detailed aspects of the

regulations and guidance which are still to be drafted.

18. A particular problem has already arisen, for example, on the question of local consultation. *Local Leadership, Local Choice* makes it clear that local authorities must consult properly. But proper consultation in this context is not defined in the draft bill and it is not clear what weight should be attached to the comments about consultation in the covering paper. Will authorities that consult extensively on the options before introducing interim arrangements now or coming to a conclusion about the model to be introduced following Royal Assent, need to consult again? Early clarification of the government's intentions would help to enable those authorities who wish to make progress now, to do so.

19. The government should adopt an open and inclusive process to the development of the regulations and guidance in partnership with local government. Local authorities are, we believe, likely to be more confident about responding to the action set out in the postscript to *Local Leadership, Local Choice* if they can see that the regulations and guidance are to be the result of a joint work programme between central and local government – which they could contribute to and be kept informed of as the work progresses. It will therefore be important to signal this joint approach, to develop a timetable and to commence the process as soon as possible.

### **The modernisation agenda – the new duty**

20. We have always seen the proposals for change set out in the White Paper *Modern Local Government: In Touch with the People* dealing with community leadership, political leadership, local democracy, probity and finance as a composite package. Many of

the proposals inter-relate and arguably work most effectively in creating a modern system of local governance when supported by each other. But we accept the realities of the parliamentary process and the pressure on time which effectively prohibits the proposals being taken forward together in one measure.

21. However, we do believe that there are strong arguments for enlarging the draft Local Government (Organisation and Standards) Bill – particularly by the inclusion of the proposed new duty to promote the economic, social and environment well-being of the area, and the accompanying enabling powers, as envisaged in the white paper.

22. This new duty, as set out in the white paper, confirms local authorities' role in community leadership. It is intended to provide an overarching framework for local government. It is to enshrine in law the role of the council as the elected leader of their local community – with a responsibility for the well-being and sustainable development of its area. Local authorities are to be at the centre of public service locally, to take the lead in developing a clear sense of direction for their communities and building partnerships to ensure the best for local communities. The new duty is to be underpinned by a discretionary power enabling councils to take steps to promote the well-being of their area. The community leadership and political leadership proposals are inextricably linked.

23. Community leadership – the prime **function** of modern local government – should be the driver for how local authorities then organise themselves. The new political leadership arrangements are clearly designed to support and work within the context of community leadership. A local authority

executive can provide a clear public focus for leadership in the community (through community planning and partnerships) in order to focus the combined work of agencies operating in the locality on community priorities and needs. It is difficult to see how the executive will properly fulfil this potential role in the absence of the supporting legislative base for community leadership.

24. The inclusion of the new duty would *also* help strengthen the role of non-executive members as a representative of their own localities. Much greater emphasis is now being given to the importance of 'joining things up' locally. This needs to occur at an authority-wide level but also, at a locality or neighbourhood level – where service providers and programmes meet to deliver services to local communities. Many authorities are reflecting this new emphasis in the development of locality or neighbourhood forums providing a vehicle for initiating discussion with local people and partners. Some authorities are taking this a stage further and developing locality or neighbourhood community plans. The inclusion of the new duty in the draft bill would strengthen the representative role of non-executive members and may, as a result, also help to smooth the introduction of the new structures.

25. In short, we do not believe the models will achieve what they are designed to achieve unless they are set within the context of community leadership, the new duty and accompanying powers. These proposals should be included in the bill.

26. The government should also take the opportunity to widen the bill to provide for the changes to members' allowances and support for councillors discussed in the white

paper. In addition, the DETR's Public Service Agreement with the Treasury includes the commitment to put in place a local business rate. Consultation with local authorities on the detailed arrangements for the local rate are expected shortly. Provision for the introduction of a local business rate should now be added to the draft bill.

## Political leadership arrangements (chapters 2 and 3 of the consultation paper and part I of the draft bill)

### Applying the principles

27. **Other models.** We welcome the flexibility in the draft bill to allow the secretary of state to designate additional alternative models from which local authorities may make a choice. The common feature of those models identified to date is that they must involve a separate executive. We are not yet fully convinced that the Whitehall model involving the separation of the executive is appropriate in all circumstances, or that it will always achieve the proposed objectives of change. Some of the features underpinning the Whitehall model - a two/three party system, majority rule, strong internal sanctions - do not always apply. Many local authorities have a variety of political groups and nearly 40% have no overall control. A number of local authorities – particularly the smaller, more rural authorities and those less dominated by party politics - argue that none of the three modes will work better in their circumstances than their current arrangements based on a radically improved committee system that is far removed from traditional arrangements.

28. This is not an argument for the retention of the old traditional committee structure. That is not tenable. However, we do believe that it may be possible to develop an alternative model based on an “improved committee system” that in some circumstances better meets the principles and objectives of change than the three white paper models. Such a model might be characterised by:

- strong role for the full council
- a radically reduced number of committees
- streamlined working of committees (removal of information only items, etc)
- absence of strong party politics
- greater delegation to officers

- greater opportunities to involve members in policy development
- new system of members' allowances.

29. Given that the government has already accepted that the committee system can remain where a referenda for a directly elected mayor falls, we believe that it would be sensible for the legislation to provide for a model based on an “improved committee system” (as outlined above) where this can be demonstrated to better meet the objectives of change (as set out in the principles) than the models set out in the *Local Leadership, Local Choice*.

30. **Local ownership** It is clear that no political leadership structure will of its own guarantee the delivery of certain perceived benefits. A lot will depend on the dynamics of the structure, the personalities involved, party rules, and whether there is a willingness to make the models work. Local ownership of the models is therefore essential - and we acknowledge and welcome the potential flexibility the bill provides to tailor the models to local circumstances.

31. The potential diversity of approach is already clear from those authorities that are pioneering changes now. These are illustrated in the LGA's recent publication *Leading the Agenda*. No doubt additional variations will emerge in the future.

32. We are concerned at the potential tendency to prescribe some detailed aspects of the models in the bill (for example the size and composition of the executive) and at the wide ranging powers for the secretary of state to prescribe, via regulation, how particular aspects of the models will work, for example:

- the form and broad parameters of the models
- the functions of the executive
- the operation and functions of overview and scrutiny committees
- the conduct of referendums and the conduct of mayoral elections
- the size, proceedings and functions of standards committees.

33. A full list of the secretary of state's powers to issue regulations and guidance is **attached** at Annex A. These provisions sit unhappily against the commitments of the *Better Government* White Paper to reduce unnecessary burdens and avoid regulation for the sake of it. We are not convinced that these wide-ranging powers are all required or could not be exercised by other bodies. We will want to ensure that the regulations and guidance provide a framework for change that is facilitating and enabling rather than prescriptive.

### Consultation

34. Local authorities recognise the importance of involving local people in choices that affect their lives and have led the public policy agenda on participation and involvement. The proposed requirement to involve local people in choosing the most appropriate model for the authority develops similar provisions in the Local Government (Experimental Arrangements) Bill.

35. But we do not think that the difficulties of engaging local people on this issue should be underestimated. Local people are much more interested in what authorities do for them than how they are structured to take administrative decisions. One way of generating local debate could be to clarify beyond doubt local authorities' powers to conduct local referenda and to allow authorities to put a full range of options to local people through the referenda process.

However, experience demonstrates that these are complex issues which may also require the use of a variety of other mechanisms to engage local people in order to ensure that their "informed" views emerge.

### Binding referendums

36. The proposals for binding referendums are similar to those set out in the white paper. Notwithstanding the potential prospect of an authority being required, as a result of a local referendum, to introduce a model that it is itself unwilling to promote, the introduction of binding referendums in local government raises a host of interesting and complex issues. For example:

- the form of the proposition to be put to local people and how consensus for it is secured
- the provision of information to local people in order to facilitate informed debate
- the role of campaigning
- whether turnout thresholds should be set before the vote becomes binding
- what mechanisms should be used to conduct the referendum - would using alternative polling methods (eg telephone voting, all postal ballots, etc) help increase participation
- should referendums be held at the same time as local elections
- how the cost of local referendums should be met.

37. The LGA's recent discussion paper *Local Referendums and Citizens' Ballots* identifies these and other issues and seeks to initiate the debate.

38. One thing is clear however - if the result of a binding referendum is to be accepted without complaint then it will be essential to develop a broad consensus around the referenda process and the framing of the individual propositions to be put to local people. This consensus is more likely to be

achieved by an independent body since central government is seen to support a particular result. It may well be that the proposed Electoral Commission should be asked to develop proposals for the conduct of local referendums and to advise on the setting of local propositions.

### **The role and operation of the executive**

39. **Executive functions** The assumption in the draft bill underpinning the allocation of functions between the executive and council is that unless specified otherwise all matters of council business are to be executive functions.

40. Whilst we understand the need to exclude certain functions from the executive (for example agreeing strategies, approving the budget and tax levels, quasi-judicial decisions, etc) we believe that greater local flexibility and ownership could be secured by allowing the council to determine the allocation of functions to the executive. But we agree with the role of the council outlined in para 3.9 and that the role and responsibilities of the executive should broadly be those outlined at para 3.29 of *Local Leadership, Local Choice* ie to:

- lead the community planning process
- lead the preparation of plans and strategies
- consult and draw up the annual budget, including capital plans, for submission to the full council
- lead the search for best value
- take in year decisions on resources and priorities to deliver the strategies and budget approved by the full council, consulting with other councillors and stakeholders in the local community as necessary
- be the focus for forming partnerships with other agencies and the business and voluntary sectors locally to address local needs.

41. **Size of the executive** We agree that smaller executives will, on the whole, tend to work more effectively than larger ones - this is certainly one of the lessons emerging from the simulations being conducted for individual local authorities by the IDA. However the rigid application of the constraints in clause 2(7) (that the executive may not exceed whichever is the smaller of 10 or 15% of the total number of councillors of the authority, rounded down) is likely to cause a number of unnecessary practical difficulties. For example:

- for authorities with small membership where executive members could be overburdened by the weight of their responsibilities - this will particularly be the case in unitary authorities with a limited number of councillors. For example, in a small unitary such as Rutland County Council with only 20 members, this would prohibit an executive larger than three members.
- it may also artificially prevent authorities from organising the allocation of functions in a way they would like to. Some authorities have said that it could inhibit them developing a mixture of service and cross-cutting portfolios
- it may inhibit the development of multi-party executives. Some authorities have said that the size limit will make it more difficult to secure political balance or the involvement of other parties in the executive.

The size of the executive should be a matter of local discretion.

42. **Supporting the executive** We are concerned that the proposed limit on size, combined with the provisions preventing the executive from delegating functions outside of the executive (other than to officers) could lead to the executive becoming

overburdened with day to day decisions concerned with the running of the authority. This could prejudice the executive's ability to focus externally and to provide civic and community leadership.

43. The new arrangements should provide sufficient flexibility to allow individual local authorities to develop locally appropriate arrangements to support the executive in its functions. Some authorities are already doing this, for example:

- by the appointment of deputies who support the executive member in the exercise of their duty. They may attend meetings of the executive when the executive member is unable to do so, act as a consultee on delegated decisions in the absence of the executive member, receive copies of all executive papers
- by the appointment of small policy panels or reference groups who work with individual executive members, act as a sounding board for decisions and help formulate recommendations on issues related to their portfolios
- by designating individual members as advisers on particular topics.

44. **Devolved decision-making** We are also very concerned that the bill appears to fail to recognise the place of devolved decision making structures at an area or locality level in the work of local authorities - and the important contribution such arrangements can make to the democratic renewal agenda.

45. A number of local authorities have long-standing and in some cases substantial devolution arrangements and others have introduced them in the context of their new models. As the bill is currently drafted it appears that devolved arrangements would

only be able to deal with non-executive functions. We believe that executives should be given the freedom to delegate executive decisions to area or neighbourhood committees where they deem it appropriate to do so.

### **Non-executive members**

46. We agree wholeheartedly with the need to develop powerful roles for all councillors in the new arrangements - and with the broader definition of scrutiny that the proposals envisage. There is considerable potential to develop more rewarding and constructive roles than those offered to the majority of members by the traditional committee system.

47. We also agree with the need to develop strong mechanisms to facilitate the scrutiny of executive decisions and monitor how the executive is implementing council policy. The legislation and regulations should provide for this, for example, through a statutory requirement for all councils to establish at least one overview and scrutiny committee.

48. However back bench members will also have a number of other important roles (as *Local Leadership, Local Choice* recognises), for example:-

- as representatives of their ward/division
- in policy development
- in examining particular areas of council activity.

Considering and investigating broad policy issues and undertaking in depth reviews of areas of council activity may be better undertaken through structures specifically designed for these purposes. We hope that the bill and regulations will provide substantial flexibility for individual authorities to determine how these other roles are exercised.



49. As currently drafted the proposals do not appear to allow non-executive members, in their capacity as ward/division representatives, to input the views of their constituents to the executive decision making process *before* decisions are taken. This could undermine the importance of the ward representational role - especially if, as is implied, the government see no need to introduce arrangements to veto or "call in" executive decisions (other than in the directly elected mayor model). A number of authorities have already introduced such mechanisms as part of their new arrangements and we hope this flexibility will be retained.

### **Support for councillors**

50. The LGA welcomes the government's view that the culture of the modern local authority needs to be reinforced by the system of financial support given to councillors. Councillors are still too often significantly financially disadvantaged as a result of their public duties, yet authorities often feel constrained by hostile local comment (mainly media based) from arriving at realistic levels of allowances in their local schemes, particularly for leading members. The use of independent panels has helped in this regard and many authorities are already making use of this approach. However, we feel that the government could help in setting the climate of opinion. In the past, governments have been too ready to criticise local authorities for setting levels of allowances which would be considered restrained in any other field of activity.

51. The LGA remains firmly committed to the principle of local discretion in setting schemes of allowances, but will be happy to work with DETR to produce guidance on approaching the setting of levels of allowances appropriate to local circumstances. An early indication of the

government's timetable for the abolition of attendance allowance would be helpful. The LGA would also want to see an early start to the review of travel and subsistence allowances. This need not await the passage of legislation.

52. Whilst welcoming the recognition by government of the need for the allowances system to reflect the roles of senior members, (including the possibility of pensionable salaries); we remain of the view that other issues also need to be addressed -

- the operation of the benefits system still impacts unfairly on those elected members in receipt of benefits, and should be addressed in discussions with LGA
- a clarification, (and if necessary amending legislation) of the ability of local authorities to pay carers allowances to councillors and to provide a range of technical and equipment support to enable them better to undertake their duties in the new arrangements.

53. The development of new member roles will also require practical support. We believe that it is inevitable that some authorities will want to assist non-executive members in their functions by providing dedicated officer support. Indeed some have already begun to move in this direction.

### **Meetings and access to information**

54. Clarity as to the rights of access to information for non-executive members of the council and the wider public will be essential in the move to new management arrangements. It will be necessary to re-examine the proposals in the bill in the light of the content of the draft Freedom of Information Bill.

55. Whilst the proposed principles in the consultation document relating to access to

information appear in general to address the outward flow of information from an executive (or mayor) to the wider council, the media and the public, they relate to action to be taken, and information to be made available, once decisions have been taken. No reference is made to the ability, under the existing system, for councillors, the media and the public to be aware of issues before decisions are made through the receipt of agendas and supporting papers. Particularly affected, as mentioned above in para 49, are likely to be non-executive councillors when decisions related to their locality are taken, or, indeed, the public in the area. Whilst the paper discusses possible arrangements for a veto for an elected mayor, no such proposals are put forward for any referral or delay mechanism for non-executive councillors.

56. Moving away from long-standing and well understood practices on access to information and meeting administration will require the development of local protocols which will ensure the essential clarity referred to above. Issues of access and meeting protocols ought to be matters on which the local standards committee could provide guidance and resolve disputes.

57. Clarity on the requirements for recording decisions is also crucial both to ensure a timely and adequate record and to provide a robust audit trail of decision making. Responsibility for arrangements for recording decisions and the reasons for them should rest with an officer of the authority, whatever the source of that decision. The government should therefore reconsider its proposal that, where a decision is taken by an individual member of an executive, that person, and not an officer, would be responsible for ensuring that the necessary record is taken.

58. The issue of whether or not officer recommendations to executives should be published is a difficult one. At present, committee reports available to the public will usually contain an officer recommendation. However, it is a moot point as to whether such information is an essential element to an understanding of how and why a decision was reached. More crucial will be information on the range of options considered; the arguments in support of the options and other background information. It is intended that such information, unless coming with an exempt category, would be available to the public - and all would be available to a scrutiny committee. In those circumstances, information as to specific officer recommendations may not contribute significantly to a consideration of the merits of a decision. On balance, therefore, we believe that decisions on whether officer advice should be published should not be a matter for national prescription, but should be left to local protocols. The approach to this proposal may also be affected by any proposals, relating to policy advice from civil servants, in the draft Freedom of Information Bill.

## **Conduct of local authority members and employees (chapter 4 of the consultation paper and part II of the draft bill)**

59. The LGA reiterates its support for the thrust of the government's proposals for a new ethical framework. The recognition in the consultation document that "the vast majority (of councillors) operate in a conscientious and professional manner" is welcomed.

60. But we also accept that modern local government requires councillors and officers to enter into a more complex set of relationships with other private and public sector partners and alternative service providers. This complexity in turn requires greater clarity in the codes governing appropriate member and employee behaviour, which adequately reflect these new relationships and which enable councillors to fulfil their responsibilities with confidence.

61. It is important to remember that the focus of the ethical framework is standards of conduct, not corruption or other actions amounting to abuse of office, which are dealt with through other legislation. The association hopes therefore that there will be no undue delay in abolishing the present surcharge provisions and bringing forward the new offence of abuse of public office.

### **National codes of practice**

62. An updated and clarified National model code is central to the ethical proposals and we welcome the invitation to develop it in the light of the general principles of conduct set out in the white paper. This work will need to reflect the greater complexity of relationships mentioned above, and, in particular, ensure that particular attention is given to those occasions where councillors need to balance competing interests in a fair and transparent manner.

63. The present national code applies to councillors when they represent their local authorities - on a whole range of outside bodies. The extent to which the provisions of the new code should similarly apply to the conduct of councillors serving on outside bodies - and the impact of that approach for the conduct of business of those bodies - will be a significant element for consideration. Increasingly, councillors serving on such partnership bodies are liable to conform to the national code; elements of company legislation and requirements under charity law - all of which may, in certain circumstances, be in conflict. Furthermore, they will be serving with partners whose representatives may be under less demanding or no ethical codes. The ability of a local authority to indemnify a councillor acting as its representative on another body should also be clarified, so that such community involvement is not inhibited by doubts as to the councillor's position.

64. Comments have been made that it may be necessary to develop separate codes for elected mayors or members of executives. Our basic approach is that questions of probity and ethical conduct ought to apply equally to all council members, whatever their position. The greater the individual's powers, the greater the necessity to ensure that probity standards are adhered to - but this is not to argue that those standards should be differentiated. So whilst not wishing to dismiss this proposal in advance of detailed consideration of the revised code, the LGA would be disappointed if separate codes were subsequently thought to be necessary. It will, however, be necessary to be clear, in an elected mayor model, what would be the appropriate procedure for decision-making in cases where the elected mayor has an interest.

## **Standards committees and the National Standards Board**

65. The investigative and adjudicative system to handle complaints of misconduct should command the respect of both the public and councillors as to its integrity, transparency and fairness. It should also provide as rapid a resolution of complaints as is consistent with thoroughness and natural justice. The structure proposed by the bill appears, as a process, to go a long way to meet these objectives, but there are concerns.

66. The association has argued for greater powers for local standards committees to give initial consideration to complaints received against councillors, an approach originally proposed by the Nolan Committee. The government has not accepted that approach and the draft bill appears to require that all written complaints are referred in the first instance to the National Board for consideration. The government has accepted that there will be uncertainty in the early stages as to the volume of complaints which will be received by the National Board. There is concern that this approach could lead to an overload of the national system in its early months. In particular, given that any unresolved complaint against councillors will reflect on their reputations, we are concerned that the new system should adequately address the potential for abuse for party political purposes. It must also be able to deal speedily with trivial, vexatious and possibly malicious complaints.

67. The association remains of the view that local standards committees should have a greater role in policing the system. One approach would be for the government to reconsider the ability of local committees to be able to consider complaints in the first instance. Any concerns about impartiality

could be addressed by a requirement to have a majority of non-councillor members on standards committees. Alternatively, the final bill needs sufficient flexibility to permit an expansion of the role of local committees in the light of experience of the operation of the new regime enabling complaints to go first to local standards committees, once the new regime has settled down. There are doubts that local standards committees limited to a training and advisory role, (crucial as that role is,) may have difficulty in attracting independent persons to serve.

68. The government should also revisit the proposal under Clause 36 that in the event of an Ethical Standards Officer finding no evidence of misconduct, he must produce a report, which must be published in a local newspaper. Whilst this has the wholly laudable aim of ensuring that a councillor's name is seen to be cleared, it seems a lengthy procedure for dealing with such instances. The NSB needs to have some faster method of handling trivial cases. It should be clear that if the evidence does not justify an investigation, then an ESO should be in a position to say so at the outset.

69. Clause 32(7)(c) provides for a finding that a matter under investigation should be referred to the local authority standards committee. However, the bill is silent on the powers open to a local committee in dealing with the referral and in particular, the sanctions available to it which might be applied to individual councillors. An early indication of the government's thinking would be welcome.

70. The bill sets out a minimal framework for the composition of local standards committees, including an independent element. Whilst this outline generally reflects the approach taken by those authorities which have already established such

committees, it does preclude the establishment of committees consisting wholly of independent members, or joint standards committees. The government should reconsider whether it would want to prevent such an approach, or whether the powers under Clause 30 (4), permitting the secretary of state to regulate the exercise of functions by standards committees, are necessary.

71. Whilst the proposed process for the operation of the investigatory and adjudication functions of the NSB and adjudication panels appear fair in relation to the separation of these functions, we are concerned that the process is capable of delivering judgements as quickly as possible. The length of time taken by the District Audit Service and the justice system to deal with serious allegations under existing audit legislation is a serious concern, and lessons need to be drawn from the experience of the District Audit Service in handling recent cases, to ensure as far as it is possible that the new system delivers speedier conclusions. The Commission for Local Administration also has extensive and valuable experience in handling national complaints systems, which should be drawn upon.

72. When councillors are accused of misconduct, it is not clear what support and advice can be offered by the council or its officers. Whilst provision is made in the bill for the payment of costs, because the accusation is against the individual and not the council, there is uncertainty as to whether, and if so, under what circumstances, the council might be able to provide the councillor with advice and other assistance during an investigation - for example, where councillors may have been advised by their standards committee and monitoring officer that a course of action was in accordance with the code.

## **The monitoring officer**

73. Whilst reference has been made earlier to the role of officers in the new structures, we would wish to comment specifically on the role of the monitoring officer in the new probity arrangements.

74. The monitoring officer will, as the government recognises, play a crucial role, both in support of the local standards committee and in relations with the NSB. Yet there is, as yet, little detail as to the scope of this role and in particular the way in which the post will inter-act with the NSB in investigating complaints. Clearly there is potential for tension between the role of the monitoring officer in advising the standards committee and individual members on the implications of the national and local codes; and any role after a complaint of misconduct has been made. There is a case for early guidance on this area, in discussions with the LGA and appropriate officer societies. The government should also consider providing protection for the post in line with that presently provided for chief executives, as envisaged by the white paper. Similar protection might also be afforded to the statutory post of finance officer.

75. There should also be an examination of the requirements placed upon the monitoring officer under Section 5 of the Local Government and Housing Act 1989, particularly in relation to reporting requirements on legislative breaches and maintenance of registers of interest, to ensure consistency and clarity.

76. The government should also consider whether the present ability of a chief executive to hold the post of monitoring officer remain appropriate under the new management arrangements.

## **Code of conduct for employees**

77. The LGA welcomes the opportunity to work with government to develop the statutory code. We would expect to build upon the model of the existing voluntary code, which has been adopted by the great majority of local authorities. A revised code will need to pay particular attention to new and evolving relationships both between members and staff and groups of staff in the new management arrangements.

78. The LGA and IDA have re-issued their voluntary advice note on procedures to deal with 'whistle-blowing'. Work on developing the Statutory Code for Employees will need to take account of its advice.

## Conclusions

79. The LGA welcomes the opportunity to comment on the draft Local Government (Organisation and Standards) Bill and the proposals contained within it. We look forward to working closely with government on the regulations and guidance.

80. The alternative political leadership models offer the potential of providing more rewarding roles for all councillors. But structures of themselves will not deliver. How the models work in practice will depend on a number of factors - including the role of the party groups. It is unfortunate that the opportunity to test the models in individual authorities prior to their introduction on a national basis, which would have been provided for by the Local Government (Experimental Arrangements) Bill, was lost.

81. The proposals also involve a huge agenda of cultural change for councillors and officers. New skills, expertise and ways of working will need to be developed to support and develop the new roles. The Improvement and Development Agency will have an important role to play in supporting the implementation of the proposals.

82. It will be important to safeguard flexibility at a national level (to amend the regulatory framework) and at a local level (to amend local constitutions) in the light of the lessons that will emerge as authorities introduce and operate the new arrangements.

## Annex A

### Draft Local Government (Organisation and Standards) Bill

#### Secretary of State's power to make regulations/issue guidance

##### Part I

- cl 2(5) Secretary of State can prescribe the form(s) of the executive by regulations and determine further models in regulations at a later date. (Local Leadership: Local Choice indicates that this is likely to specify the broad parameters of the models, including.....see para 3.6)
- cl 2(8) Secretary of State can by regulations amend the number (10) but not (%) size of the executive.
- cl 3(1) Secretary of State can by regulations specify the functions of local authorities that may **not** be the subject of executive arrangements and those that may be (but need not be) the subject of executive arrangements.
- cl 3(3) Secretary of State can by regulations specify circumstances in which executive functions **must** be discharged by the authority (and **not** the executive).
- cl 7(5) Secretary of State can by regulations make provisions as to the operation and functions of overview and scrutiny committees.
- cl 14(1) Secretary of State may make regulations regarding the nature of citizens' petitions requesting a referendum. Regulations can specify the form of the petition, verification, timing of referendums, etc. Regulations may amend the threshold for petitions.
- cl 15(1) Secretary of State may make regulations requiring a local authority to hold a referendum. Regulations will specify circumstances when Secretary of State can use this power.
- cl 16(1) Secretary of State may issue guidance under Part I, to which local authorities **must** have regard. Guidance may cover:
- time within which authorities must draw up proposals to move to executive arrangements
  - time within which proposals must be implemented
  - information to be made available to the public about the operation of executive arrangements
  - operation and function of overview and scrutiny committees.
- cl 18(1) Secretary of State may by regulations make provisions regarding the timing of elections for the mayor, within which local authority proposals must comply.



- cl 21(1) Secretary of State may by regulations make provisions regarding the conduct of elections for a mayor.
- cl 22(1) Secretary of State may make regulations regarding the conduct of referendums, including:
- the question
  - publicity
  - conduct of the authority, members, officers and political parties
  - permitting a referendum to take place in a manner not involving a poll.
- cl 22(3) Secretary of State may by regulations make provisions regarding the combination of polls at referendums with polls at any election.
- cl 23 Secretary of State may make regulations to modify, apply, extend or repeal any legislation he thinks necessary for the purpose of operating Part I.
- Part II**
- cl 25(1) Secretary of State can by order specify the principles of conduct to apply to all authorities covered by new ethical framework (to be approved by Parliament).
- cl 26 Secretary of State can issue model code of conduct for members.
- cl 29 Secretary of State has power to make regulations on the size, composition and proceedings of Standards Committee.
- cl 30 Secretary of State can issue further regulations in respect of functions of Standards Committee - and allows the Standards Board also to issue guidance on this matter.
- cl 31 Secretary of State has power to make regulations regarding the functions of the Standards Board.
- cl 38 Secretary of State can confer functions to the Adjudication Panel regarding the conduct of members such as he considers appropriate.
- cl 39 Secretary of State can issue guidance in respect of the composition of the Adjudication Panel.
- cl 40 Secretary of State can issue regulations concerning the process of adjudication.
- cl 42 Secretary of State can issue a code of conduct for local authority employees.

**Part III**

- cl 44 Details the process for making orders, regulations etc.
- cl 45 National Assembly for Wales has most of the Secretary of State's regulation/guidance making powers in Wales - apart from the power to make regulations regarding the election for the mayor. (cl21)
- cl 46 The Act comes into force 12 months after it is passed - subject to power for the Secretary of State by order to provide for any provisions to be effective at an earlier date.

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