



Legislation and rules - What powers does Overview and Scrutiny have?

Overview and Scrutiny (O&S) has legal powers in the Local Government Act and elsewhere to review the activities of a wide range of public bodies, to require people to attend public meetings, and to issue reports which must be responded to. The main legal provisions are summarised below, and the full text of the legislation can be viewed on the government's official website <http://www.legislation.gov.uk/>. The **Localism Act 2011** consolidates much of this legislation.

Local Government Act 2000

O&S for local councils was introduced as part of the modernisation of local government in Section 21 of the Local Government Act 2000. It required every local authority to have at least one O&S committee, to: hold the Executive to account; undertake policy development and review; monitor and improve performance; investigate issues of public concern; and carry out external scrutiny including the National Health Service (NHS).

Health and Social Care Act 2001

Section 7 of the Health and Social Care Act 2001 gives statutory functions in relation to the reviewing and scrutinising of local health service matters to O&S committees of local authorities that hold responsibility for social services. The powers of O&S of the NHS enable committees to review any matter relating to the planning, provision and operation of health services in the area of its local authority. Health bodies have a statutory duty to provide the O&S committee with any reasonable information about the planning and operation of health services in its area, and regulations require chief executives of local NHS bodies to come before the committee to answer questions if requested.

The Act also imposes a duty on NHS bodies to consult the local health O&S committee on substantial developments of, or variations to, the health service in the council's area as well as their annual statement to the Care Quality Commission on how they have complied with the NHS core standards. Should O&S committees consider that the process of an NHS body's consultation on any significant changes to services has been inadequate it will have the right to refer it to the Secretary of State. More detailed requirements were set by the government in regulations issued in 2002, which can be viewed in the Health Scrutiny Functions Regulations 2002 document.

Section 7 of the Health and Social Care Act 2001 is now Section 244 of the **NHS Act 2006**, which consolidated much of the current legislation concerning the health service, and the wording of the 2001 Act and the associated regulations remains the same.

Local Government Act 2003

This Act modified the Local Government Act 2000 so as to provide local authorities in England with a power to grant voting rights to co-opted members of O&S committees who are not elected members of the authority. This power may only be used in accordance with a scheme made by the local authority and the Secretary of State can make regulations in relation to the exercise by authorities of this power.

Police and Justice Act 2006

The Police and Justice Act amends the Local Government Act 2000 and introduces the 'Community Call for Action' arising from the then Government's 'Respect' agenda which covers a wide range of preventative and punitive measures in areas such as parenting, schools, housing, community and local public services. This allows unresolved issues of concern to communities to be notified to, and reviewed by, O&S committees. The Act states that every local authority shall ensure that it has a crime and disorder O&S committee with power to review or scrutinise decisions made, or other action taken, in connection with the discharge of crime and disorder functions and to make reports or recommendations to the local authority or its executive with respect to the discharge of those functions [at Bracknell Forest, the Overview and Scrutiny Commission is the Crime and Disorder Committee]. The Act enables the Secretary of State to make an order requiring councils for the local government areas in question to appoint a joint crime and disorder O&S committee of those councils to exercise crime and disorder scrutiny functions in relation to any, or all, of them where Crime and Disorder Reduction Partnership mergers between local authorities have taken place. More detailed requirements on the scrutiny of crime and disorder were set by the government in regulations issued in 2002, which can be viewed in the Scrutiny of Crime and Disorder Matters document.

Local Government and Public Involvement in Health Act 2007

This wide ranging Act includes the process called a "Councillor Call for Action". It requires each local authority operating executive arrangements to ensure its O&S arrangements enable any member of the authority to refer a local government matter to the relevant O&S committee. Section 237 of the Act ensures transparency and accountability by allowing records of decisions or actions taken as a result of a Councillor Call for Action to be made available to the public.

Under Section 236 of the Act, an authority can make arrangements for individual members to exercise functions of the authority in relation to the electoral division or ward for which the member is elected. Section 120 inserts a provision in section 21 of the Local Government Act 2000 allowing O&S committees to require such members to appear before the committee to answer questions in relation to any functions that they exercise.

Powers to require information from partner authorities are in section 121 of the Act which provides for the Secretary of State to make regulations which determine what information relevant partner authorities must provide, or may not disclose, to relevant O&S committees.

Section 122 relates to the submission of O&S reports or recommendations to the Council, the Executive or relevant partner authorities and stipulates how these should be responded to. The treatment of confidential information in reports is also addressed.

Local Democracy, Economic Development and Construction Act 2009

Sections 31 and 32 of this diverse Act extended scrutiny by requiring all authorities (except district councils in two-tier areas) to designate one of its officers, subject to some exclusions, as its scrutiny officer with a number of functions to be carried out by that officer, concerning promoting the role of O&S and providing support and guidance on it to others. Bracknell Forest's Scrutiny Officer is the Director of Corporate Services.

The Act empowers the Secretary of State to make provision for any two or more authorities in England to appoint a joint O&S committee to make reports or recommendations to the appointing authorities in relation to any local government matter other than a crime and disorder matter. This replaces the clause in the Local Government and Public Involvement in Health Act 2007 which limited the nature and scope of joint committees to issues relating to Local Area Agreement targets under the auspices of a county council joint committee with a district in its area.

Localism Act 2011

The Act replaces the relevant provisions in the 2000 Act in full and consolidates the main part of scrutiny legislation into a single place. The law will continue to be found in Part 1A and Schedule A1 of the 2000 Act. Provisions relating to crime and disorder remain in the Police and Justice Act 2006, and health provisions remain in the NHS Act 2006.

The Act introduces further forms of local authority governance in addition to the leader, cabinet mayor / cabinet and scrutiny model giving councils the option of adopting a committee system or proposing an alternative model which can be accepted by the Secretary of State if it meets certain criteria.

Authorities operating a committee system are not required to operate a formal O&S committee; where they do, the Secretary of State may prescribe by regulations how the system is to operate. Requirements for health, flooding, and community safety scrutiny will apply to committee system authorities and these may be the responsibility of a relevant committee or of a separate O&S committee.

The Act also removes prescription about matters which may be referred to O&S by councillors who are not members of an O&S committee and removes the need to refer petitions to O&S which was introduced by the Local Democracy, Economic Development and Construction Act 2009.

Police Reform and Social Responsibility Act 2011

This Act brings about significant changes to policing governance and accountability, notably, the creation of the new elected post of Police and Crime Commissioner (PCC), who is held to account by a Police and Crime Panel (PCP).

Special functions of the PCP may only be performed by the PCP itself, not a sub-committee. These are scrutiny of the police and crime plan, scrutiny of the PCC's annual report, considering the precept and confirmation hearings for the chief constable, and for senior appointments. Regulations and guidance have been published further to this Act, including sector-led guidance on the scrutiny role of the PCP.

The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012

This statutory instrument made under the Local Government Act 2000 requires that executive arrangements of a local authority must include provision for:

- any member of an O&S committee or sub-committee to refer to the committee or sub-committee any matter which is relevant to its functions;
- any member of the authority to refer to an O&S committee of which he/she is not a member any matter which is relevant to its functions and not an excluded matter.

An excluded matter is a local crime and disorder matter within the meaning of the Police and Justice Act or any matter relating to a planning or licensing decision, or where a person has a right of recourse to a review or appeal, or where the matter is vexatious, discriminatory or not reasonable.

Health and Social Care Act 2012

The Health and Social Care Act 2012 brings in a range of changes to the NHS in England. Principally, the creation of the NHS Commissioning Board and clinical commissioning groups (CCGs), the abolition of Primary Care Trusts and Strategic Health Authorities, and the transfer of public health responsibilities to local authorities. Changes made to the health scrutiny provisions in previous legislation came into force in April 2013, including making health scrutiny the responsibility of the authority, instead of a specific O&S Committee. The Act expands the scope of health scrutiny by applying it to “health service providers” and CCGs in addition to “NHS bodies” and makes consequential amendments, particularly relating to joint scrutiny. The Act establishes local Healthwatch organisations which are the new champion for patients, the public and users of health and social care services. It provides them with information and advice to help them make independent, informed choices about their health and social care and it also gathers their views and ensures they are taken into account when local health and social care services are designed and delivered. The Act requires relevant O&S Panels to receive, have regard to and respond to referrals, reports and recommendations from local Healthwatch.

The regulations in relation to **health scrutiny** make provision for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area. They replace the previous 2002 regulations on health scrutiny. Under the new system of health scrutiny, local authorities have greater flexibilities in how they discharge their health scrutiny functions. Certain elements of the previous regulations have been preserved but there are new obligations on both NHS bodies, relevant health service providers and local authorities around consultations on substantial developments or variations to services to aid transparency and local agreement on proposals.

Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

These Regulations concern functions of local authorities in relation to: Health and Wellbeing Boards, health scrutiny, the community right to challenge public health services and the National Child Measurement Programme.

They have implications for relevant NHS bodies and relevant health service providers, including local authorities carrying out the local authority health scrutiny function, Health and Wellbeing Boards and those involved in patient and public engagement activities. The duties in the Regulations are aimed at supporting local authorities to discharge their scrutiny functions effectively. Failure to comply with those duties would place the relevant NHS body or relevant health service provider in breach of its statutory duty and render it at risk of a legal challenge.

The aspect of the Regulations relating to health scrutiny make provision for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area. They replace the previous 2002 Regulations on health scrutiny under the Health and Social Care Act 2006. Under the new system of health scrutiny, local authorities have greater flexibilities in how they discharge their health scrutiny functions. Although certain elements of the previous Regulations have been preserved, there are new obligations on NHS bodies, relevant health service providers and local authorities around consultations on substantial developments or variations to services to aid transparency and local agreement on proposals.

Bracknell Forest Council's Constitution

The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose. The Constitution sets out, among other matters, our rules and arrangements for running Overview and Scrutiny. This can be viewed here [<http://democratic.bracknell-forest.gov.uk/ieListMeetings.aspx?XXR=0&Year=0&CIId=527&Info=1>]

Part 3 of the Constitution sets out the terms of reference of the Overview and Scrutiny Commission and Panels and describes their specific functions, and Part 4 Section 9 contains the procedure rules for O&S.