

Body: **Scrutiny Committee**

Date: **6 April 2009**

Subject: **Democratic participation**

Report of: **Local Democracy Manager and Scrutiny Co-ordinator**

Purpose: To draw Members attention to recent and forthcoming legislative changes that impact upon the Council's Scrutiny function and generally in relation to engaging with the local community and stakeholders and its policy and decision making practices.

In particular, to seek approval to new and revised procedures in relation to Councillor Call for Action and Petitions.

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Recommendations:

- : (1) Recommend full Council to approve the amendment of the Scrutiny Procedure Rules in the Council's Constitution to show the Councillor Call for Action (CCfA) power.

 - (2) The Scrutiny Committee to draw up guidance for Councillors on how issues subject to a potential CCfA might best be handled in order to reflect best practice and ensure that issues are dealt with effectively and in a timely fashion.

 - (3) That the Committee review CCfA after 12 months and at the same time consider the issue of opening up CCfA to other community representatives and groups.

 - (4) Recommend the Council to designate the Scrutiny Committee as the Council's "Crime and Disorder Committee" under S. 19(9) of the Police and Justice Act 2006 and to amend the Committee's terms of reference and procedures accordingly.

 - (5) The Scrutiny Committee to review crime and disorder CCfA in due course in the light of comments from the CDRP and consider whether or not co-option to the Scrutiny Committee when dealing with crime and disorder matters is appropriate.
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(6) Note that new powers in respect of the scrutiny of Local Area Agreements will primarily rest with the County Council and ensure that in any future scrutiny reviews reference is made to LAA targets where applicable.

(7) Note the new Duty to Involve and ask that full account is given to the duty prior to decisions being taken by the Council, its Committees, the Cabinet and by officers when carrying out their functions.

(8) Recommend full Council to adopt the proposed Petitions Procedure Rules as an interim measure pending expected Government legislation.

(9) That the Committee consider whether or not to recommend full Council to adopt section 7 of the proposed Petitions Procedure Rules providing for a full Council debate in respect of petitions receiving over 2,000 signatures where requested by the petitioners.

(10) Note the remaining proposals detailed in this report which are still subject to parliamentary consideration and implementation of legislation.

(11) That the Local Democracy Manager be authorised to make all necessary changes to the Council's Constitution in respect of the relevant recommendations above where approved by full Council.

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1.0 Introduction

- 1.1 This report covers a range of loosely linked topics. Many have an impact, direct or indirect, on the work of the Scrutiny Committee and all have some connection with the Government's agenda to promote local democracy and encourage democratic participation.
- 1.2 Councillor Call for Action (CCfA) , Scrutiny of Local Area Agreements and the Duty to Involve are all featured in the Local Government and Public Involvement in Health Act 2007. Relevant provisions are due to come into effect as from 1 April 2009 and the Council needs to have regard to the new provisions and where necessary make changes in its procedures – hence this report.
- 1.3 In addition, the Government are bringing into effect provisions in the Police and Justice Act 2006 as from 30 April 2009 which will give every local authority the power to review and scrutinise the functioning of authorities that comprise a Crime and Disorder Reduction Partnership (CDRP). A CCfA power for crime and disorder issues will run alongside the CCfA provisions for other local government matters. This was the subject of a notification issued to chairs of CDRPs on 12 March 2009.
- 1.4 The remaining sections of this report provide information to members of forthcoming initiatives currently either the subject of draft legislation before Parliament or expected to be introduced as a draft bill in the near future. Certain of these will also have an impact on the Scrutiny function – particularly in relation to petitions.
- 1.5 Although presented to the Scrutiny Committee, this report will be of interest to the Cabinet and other members of the Council. For this reason, all members of the Council have been invited to attend the Scrutiny Committee. A presentation of the main topics and issues covered in this report will be made and the options highlighted in order to help inform debate at this meeting and again at full Council.

2.0 Scrutiny and overview in local government

- 2.1 Scrutiny in local government was formally created by the Local Government Act 2000, as part of wider changes to the way councils made decisions. In all but a few (small) authorities, decision-making subject committees were abolished, and replaced by the "elected Mayor or Leader and Cabinet" model, by which executive power was vested in either a Mayor directly elected by residents of the local authority area or a council Leader with a small Cabinet of other members having the power to make decisions both individually and collectively. Local authorities were given overview and scrutiny functions which are the responsibility of other members not in the Cabinet, to balance these new arrangements.

- 2.2 The Health and Social Care Act 2001 gave certain councils the responsibility for scrutinising local NHS trusts, including Primary Care Trusts. Powers were further expanded by the Police and Justice Act 2006, which provided powers for all councils to scrutinise the work of Crime and Disorder Reduction Partnerships.
- 2.3 The Local Government and Public Involvement in Health Act 2007 gives more powers to local government to scrutinise other partner organisations, including bodies such as the Environment Agency. It also brings in other provisions that affect how scrutiny committees work, including powers over the creation of joint committees, and powers to resolve local problems through the Councillor Call for Action.
- 2.4 Further legislation is planned that will amend or add to the above provisions. All of which does make for a complex and somewhat confusing picture with different aspects of scrutiny and overview subject to different pieces of legislation with guidance published by different government departments.

3.0 Background to the current changes

- 3.1 The White Paper, "Strong and Prosperous Communities", published in October 2006, had the aim giving local people and local communities more influence and power to improve their lives. It was about creating strong, prosperous communities and delivering better public services through a rebalancing of the relationship between central government, local government and local people. The key piece of legislation introduced following the White Paper was the Local Government and Public Involvement in Health Act 2007 which, in addition to promoting change in local government structures, included provisions in respect of parish governance, local area agreements and community strategies and developing the overview and scrutiny function.
- 3.2 The White Paper also established a Councillors Commission to review the incentives and barriers to people standing and serving as councillors. Their report, *Representing the Future*, published in December 2007, addressed the many issues that affect people's desire to be a councillor and their ability to stand for election; as well as their capacity if successful, to take on and stay in the role. It also looked at how to ensure that councillors' public service was fully recognised. The Commission established as their founding principles (which were endorsed by the Government) that:
- Local authorities are key to promoting local democratic engagement.
 - Promoting a sense that an individual is able to influence the democratic process and course of events is the key to engagement.
 - Councillors are most effective as locally elected representatives when they have similar life experiences to their constituents.
 - The relationship and the connections between councillors and their constituents is key to effective representation.
 - It should be less daunting to become a councillor, better support

should be provided once elected as a councillor and it should be less daunting to stop being a councillor.

3.3 The Government White Paper, 'Communities In Control', published in July 2008, set out the Government's vision for the future of democracy, society and the relationship between citizens and the State. Secretary of State, Hazel Blears made it clear that she wanted power to pass into the hands of local communities. In the future, local people should have a greater say over decisions and be more involved in politics. The White Paper set out a range of measures to strengthen democracy – representative and participative. It also acknowledged the important role of the third sector and independent community action. The Government are seeking to realise their vision through a mix of legislation and encouragement.

4.0 Councillor Call for Action (CCfA)

4.1 Introduced by Section 119 of the Local Government and Public Involvement in Health Act 2007, CCfA allows councillors to refer matters affecting the ward they represent to a scrutiny and overview committee. The Government believes that this will help frontline councillors raise matters on behalf of their constituents. It signals a measure of support to frontline councillors and gives clear recognition of the role of scrutiny and overview in contributing to community leadership.

4.2 In addition, Section 19 of the Police and Justice Act 2006 provides for local authority scrutiny of crime and disorder matters. Although broadly similar to those for local government matters, the CCfA provisions for crime and disorder matters do have some differences and these, along with the new powers for scrutiny of CDRP partners, are detailed in section 5 of this report.

4.3 The power to initiate a local government matter CCfA (as distinct from a crime and disorder one) rests with the local councillor:-

- It will be up to individual councillors to determine which issues to take forward as CcfAs.
- If a councillor decides not to refer matter, no further action is taken under a CcfA.
- There will be no right of appeal for the constituent via the council's executive or committees.
- The CCfA may cover any local government matter relating to any function of the authority and affecting the councillor's ward or constituents subject to certain exclusions (e.g. a planning or licensing decision).

4.4 Councillors may feel that listening to their constituents concerns and raising these issues within the council and with partner agencies is something that they have always done and that the new power is simply an affirmation of their existing role. At present, our Constitution provides for members of the Scrutiny Committee to ask for an item to be placed on a Scrutiny Committee

agenda. From 1 April 2009 this right is extended to all elected members. The procedural impact of this new right will be minimal as it was always open for a non-scrutiny councillor to seek the support of a colleague on the committee if so desired. Guidance also suggests that use of the CCfA power should be seen as longstop and used only when other attempts to deal with an issue or solve a problem have failed. Guidance recently published (13 February 2009) jointly by the Centre for Public Scrutiny and the Improvement and Development Agency (IDeA) has been taken into account in framing the proposed procedure rule for CCfA (see listing of background papers).

- 4.5 Our current practice is that once the annual programme of scrutiny reviews has been agreed, additional items will only normally be added at the request of committee members. The annual programme is, however, intended to be flexible. Monthly meetings are held with the Chair and Deputy Chair to review the Cabinet forward plan. Councillors have an opportunity to pass issues to the Chair and Deputy Chair for consideration at this meeting time with a view to consideration by the Committee and possible review. As mentioned above, any councillor can at any time can advise a scrutiny member on issues of concern which can be fed back the Chair and Deputy Chair or the Scrutiny Co-ordinator.
- 4.6 The Council's website has a form for both Councillors and members of the public to submit items for review which are then considered at the monthly meeting: <http://www.eastbourne.gov.uk/council/scrutiny/guidance/>
- 4.7 In addition the committee (including substitutes) holds a brainstorming session at the beginning of every year – all scrutiny members are invited to brainstorm and discuss ideas for the forthcoming year, which can form reviews, reports or seminars etc. Again issues of concern can be fed in at this stage.
- 4.8 At this time we don't believe that it is necessary or indeed useful to adopt an overly bureaucratic approach to CCfA. The aim, we believe, should be to keep things simple and straightforward, however the Scrutiny Committee will no doubt want to review the use of CCfA after time to ensure that it is working as it should. If a more prescriptive approach is needed then it can be introduced in the future. The suggested approach for adoption is set out in appendix 1 to this report. It is intended to produce further guidance for Councillors on how issues subject to a potential CCfA might best be handled in order to reflect best practice and ensure that issues are dealt with effectively and in a timely fashion. A pro forma/checklist for submitting CCfA will also be issued.
- 4.9 In the future the Council may wish to consider whether it might extend the CCfA provision beyond Borough Councillors and open it up to County Councillors representing Eastbourne divisions, the local Member of Parliament and recognised neighbourhood fora and community groups.

4.10 In conclusion, CCfA can be seen as a valuable contribution empowering ward councillors but allowing them to operate as the democratic champions for their area. Evidence from pilots undertaken by other councils suggests that we will not be inundated by CCfAs and that Councillors will make use of the power as a last resort when all other avenues for resolution have been exhausted. Indeed, infrequent use of CCfA should be seen as a success and demonstrate that the Council is responsive to the concerns of its citizens.

4.11 **Suggested action:**

4.11.1 **The Scrutiny Procedure Rules in the Council's Constitution need to be amended to show the CCfA power. Section 8 of the rules deals with agenda items and it is proposed that the new provisions shown in appendix 1 are inserted immediately before this section (recommendation 1).**

4.11.2 **The Scrutiny Committee to draw up guidance for Councillors on how issues subject to a potential CCfA might best be handled in order to reflect best practice and ensure that issues are dealt with effectively and in a timely fashion (recommendation 2).**

4.11.3 **The Scrutiny Committee to review after say 12 months and at the same time consider the issue of opening up CCfA to other community representatives and groups (recommendation 3).**

5.0 Scrutiny of crime and disorder matters

5.1 Sections 19 to 21 of the Police and Justice Act 2006 are due to be implemented as from 30 April 2009. The new provisions will give every local authority the power to review and scrutinise, and make reports and recommendations, regarding the functioning of authorities that comprise a Crime and Disorder Reduction Partnership (CDRP). In addition, A CCfA power for crime and disorder issues will run alongside the CCfA provisions for other local government matters. These provisions appear to fill the gap in democratic accountability of CDRPs whose meetings take place in private.

5.2 CDRPs were introduced under the 1998 Crime and Disorder Act. They comprise local authorities, the police, the police authority, fire and rescue authority, probation committees and primary care trusts. They are required to specify a 3-yearly cycle of partnership working involving:

- The production of an audit of local crime and disorder
- Local consultation on its contents
- The formulation, implementation and monitoring of a strategy based on problems highlighted in the audit.

5.3 The Home Office are currently consulting on regulations to underpin the new powers and are expected to issue further guidance in the near future (the draft regulations are listed as a background paper).

- 5.4 The Council is expected to designate one of its scrutiny and overview committees (or panels) as its "Crime and Disorder Committee" (CDC). As the Council has a single overarching committee it will be appropriate to designate the Scrutiny Committee as the Council's CDC under S. 19(9) of the Police and Justice Act 2006.
- 5.5 Such committees are to be allowed to co-opt up to half their membership. Co-opted members will have voting powers, although voting rights may be limited to particular types of matter. Guidance is expected to suggest that a police authority co-optee be placed on the CDC but this will be discretionary. The CDC must meet not less than twice yearly to consider crime and disorder issues.
- 5.6 The Committee will be able to require the attendance of appropriate representatives of the "responsible authorities" that comprise the CDRP. The Committee must give attendees from partner organisations a minimum of 2 weeks notice to attend meeting (unless they agree it can be shorter). Partners must send someone to Committee unless they have a "reasonable excuse". The police authority/other bodies are expected to respond to crime and disorder recommendations made by Scrutiny one month after they are made, in writing.
- 5.7 A person living or working in the area that a Councillor represents may ask that Councillor to consider a crime and disorder matter. This is defined as:
- (a) crime and disorder (including in particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) in the area represented by the member, or
 - (b) the misuse of drugs, alcohol and other substances in that area.

The Councillor receiving the request is under a legal duty (under S. 19(3)) to respond to that person to say what (if any) action he/she proposes to take. The local councillor may refer the matter to the CDC/Scrutiny Committee (as a CCfA) or seek to resolve the issue in some other way. If the Councillor declines to refer the matter, the person raising the issue may approach the Council's executive (i.e. one or more of the Cabinet members), who in turn may either respond or refer the matter to the CDC/Scrutiny Committee. It may be appropriate for the Cabinet to authorise individual executive members to respond to such requests in line with their respective Cabinet portfolios.

- 5.8 There is an expectation that before a matter is placed on the agenda of a CDC/Scrutiny Committee, efforts should have been made to resolve the issue through other avenues, such as a local neighbourhood policing panel, the local Joint Action Group (JAG), the CDRP or other agencies within the CDRP. It is worth noting that the JAG meetings bring together crime and enforcement staff across all agencies to review up-to-date crime 'hot spot'

data and agree joined-up solutions. It meets every two weeks with a view to resolving issues 'fast-time', the JAG aims to target joint resources to tackle some of most important quality of life issues for Eastbourne residents. Elected members are encouraged to bring issues affecting their communities to the JAG.

5.9 The CDRP will consider the new scrutiny and CCfA powers at their next meeting and it is hoped that they will be able to feed back their views on how best to operate the new provisions to a future meeting of the Scrutiny Committee.

5.10 **Suggested action**

5.10.1 **The Council should designate the Scrutiny Committee as the Council's "Crime and Disorder Committee" under S. 19(9) of the Police and Justice Act 2006 and to amend the Committee's terms of reference and procedures accordingly (recommendation 4).**

5.10.2 **The Scrutiny Committee to review crime and disorder CCfA in due course in the light of comments from the CDRP and consider whether or not co-option to the Scrutiny Committee when dealing with crime and disorder matters is appropriate (recommendation 5).**

6.0 Devolved power to individual ward members

6.1 Section 236 of the 2007 Act gives the Council the power to devolve Council functions to individual ward members. The intention is to enhance the role of ward members and give them the ability to get things done without going through the council's executive decision-making process. Functions which could be delegated include those relating to environmental services, community grants and youth activities. Formal approval to any devolvement of power would have to be agreed by full Council and would need to be monitored by the Council's overview and scrutiny committee. Statutory regulations require any decisions made by an individual member under these provisions to be recorded in writing within one month and open for public inspection.

6.2 Eastbourne currently has a scheme for devolved ward budgeting. Current arrangements provide for the spending decisions to be made by the Assistant Director (Strategy and Democracy) once the ward members have agreed what they wish to spend their budget on and after checking that the proposals fit within the agreed criteria. The budget and criteria are under the control of the Cabinet. Members will also note that the Scrutiny Committee has signalled its intention to review the operation of the devolved ward budgeting scheme later this year.

6.3 Members should make a distinction between small scale ward budgets of the type operated by the Borough (aimed to assist ward councillors deal quickly with matters of local concern) and wider large scale participatory budgeting.

The latter typically involves more substantial sums of money and as such it is appropriate to seek an input from the local community in shaping proposals for how such money is spent. It should be appreciated that to put in place meaningful arrangements for involving the local community requires significant staff time and resources and to do so for relatively small sums of money would not be a cost effective use of the Council's money.

6.4 **Suggested action:**

No action is suggested at present to adopt this power. The Scrutiny Committee, when they review the Council's devolved ward budget scheme, may wish to review the use of this power. In practical terms, adopting the power for ward budgeting would mean little change other than giving the Scrutiny Committee a more formalised role in the administration of the scheme and on-going monitoring.

7.0 Scrutiny of Local Area Agreements

7.1 Local Area Agreements (LAAs) set out the priorities for a local area agreed between central government and a local area (the local authority and Local Strategic Partnership) and other key partners at the local level.

7.2 Council scrutiny of LAAs is one of the key democratic roles for councillors, giving powers to shape and influence their LAA. There are a variety of activities with which overview and scrutiny can be involved:

- Contributing to the development of policy priorities on which the LAA targets are based.
- Ensuring greater openness and public accountability of public services, through open scrutiny hearings and investigations involving all local partners where appropriate.
- Reviewing how well the achievement of the LAA targets is going.
- Investigating and proposing new approaches to tackling the local problems and needs reflected in the targets.

7.3 The Local Government and Public Involvement in Health Act 2007 provides new powers for council overview and scrutiny. This is part of a legal framework for LAAs, which includes a 'duty to co-operate' on a list of public services and a duty to respond to council scrutiny. These new powers do not apply to the police, to avoid conflict with the powers set out in the Police and Justice Act 2006 (see section 5 above).

7.4 Scrutiny of services external to the council is not new, and since the 2000 Act overview and scrutiny committees have had the power to report on any matters which affect the authority's area or the inhabitants of that area. It should be noted that unlike the crime and disorder scrutiny powers, the Scrutiny Committee is only entitled to information from partner authorities and cannot enforce attendance at its meetings. Partner authorities are however required to have regard to overview and scrutiny recommendations.

- 7.5 In two tier areas, the LAA will be a county-wide agreement, with the overview and scrutiny powers given to county councils. However, there is also provision for joint scrutiny arrangements between county and district councils, for provision of information to district councils, and for some specific aspects of these scrutiny powers to be conferred to district overview and scrutiny committees. At present East Sussex County Council is not proposing to establish a joint committee on the Health Overview and Scrutiny (HOSC) model, believing that such an approach would be unnecessarily bureaucratic. Based on the trials that have taken place in other parts of the country, they are unconvinced that real benefits will emerge from formal joint scrutiny arrangements. Instead, they are suggesting a 'complementary' scrutiny approach whereby we improve the way we share information about scrutiny work programmes, and the evidence gained from our own scrutiny projects, between the districts and County.
- 7.6 The approach suggested by the County is we feel one that should be supported. however, there is a debate taking place at present following an indication by the Centre for Public Scrutiny that certain aspects of LAA scrutiny can only be undertaken by a district council if it operates through a joint committee with the County. This interpretation of the legislation is still uncertain and clarification is currently being sought by the County Council's Scrutiny Manager.
- 7.7 Members will also wish to note the steps being taken by the Council to "mainstream" LAA targets within our own planning and review processes. The Council's Corporate Plan lists LAA targets where appropriate (along with national performance indicators). The Corporate Plan is subject to regular review and annual update by the Cabinet. The Scrutiny Committee is also expecting to hold 2 seminars each year for its members at which consideration can be given to corporate plan actions, including information on performance indicators for these areas of activity.
- 7.8 **Suggested action:**
- 7.8.1 No specific action is required at this time other than to note the current position and endorse the approach suggested by the County Council. The Council will look to the County Council to take the lead should it become apparent that joint scrutiny arrangements have to be established at some future date.
- 7.8.2 **Members are therefore asked to note that new powers in respect of the scrutiny of Local Area Agreements will primarily rest with the County Council and ensure that in any future scrutiny reviews reference is made to LAA targets where applicable (recommendation 6).**

8.0 Duty to Involve

8.1 This new duty comes into force on 1 April 2009. It is intended to ensure that people have greater opportunities to have their say. It requires local authorities to take appropriate steps to involve representatives of local persons. Section 138 of the Local Government and Public Involvement in Health Act 2007 concerns "Involvement of local representatives". Statutory guidance was issued in July 2008 giving more detail about this duty (see background papers).

8.2 It should be noted that in the context of this duty:

- "representative" does not refer to elected members.
- "local persons" refers to those likely to be affected by, or interested in, a particular function of the authority. It is not limited to local residents, but covers people who work or study in an area; visitors; service users; local third sector groups; businesses; parish councils; anyone else likely to be affected. It applies to children and young people as well as adults.
- "representatives of local persons" means a balanced mix of the above.

8.3 Involving is taken to be one of three things:

- providing information
- consulting – formal consultations, satisfaction surveys, focus groups etc
- involvement – the most interactive form of engagement, giving people greater influence.

8.4 Consideration should be given to providing opportunities to:

- influence or directly take part in decision making
- provide feedback on decisions, services, policies and outcomes
- work with the authority in designing policies and services, e.g. as part of commissioning
- carry out some aspects of services, eg managing a community centre; asset transfer
- assessing services, e.g. user evaluations, 'mystery shoppers'

8.5 Feedback must always make clear how the input of these representatives has affected/contributed to subsequent decisions. Section 2.24 of the guidance states:

"There are three possible ways authorities should think about involving the third sector as part of the new duty.

Firstly, local third sector organisations might be affected by, or interested in, a particular authority function. As such an authority

might decide that it is appropriate to inform, consult and/or involve the group in some way.

Secondly, third sector organisations might have a role as advocates for local people (particularly marginal and/or otherwise vulnerable groups). Therefore an authority might decide to involve a third sector organisation in addition to individual citizens and groups.

Finally, third sector organisations might be able to provide relevant expertise and specialist knowledge that might help the authority in reaching out to marginalised and vulnerable groups."

- 8.6 The grey area is that authorities get to decide when and who it is appropriate to consult and involve. They must take into account proportionality (the resources needed in relation to the significance of the issue) and co-ordinate their activities with other agencies so as not to add to consultation fatigue. However, involvement should take place as early as possible, to ensure that what the council does reflects the needs and aspirations of the community.
- 8.7 The government intends to extend the duty to other agencies, including Jobcentre Plus, youth offending teams, regional development agencies, the chief officer of police and police authorities, and provision for this is made in Local Democracy, Economic Development and Construction Bill recently introduced into the House of Lords. The NHS is already subject to a similar duty which is due to be strengthened in October 2009 to require PCTs and strategic health authorities to report on how people's views have shaped the decisions they make when commissioning services.
- 8.8 Further analysis will need to be undertaken to assess the implications of this new duty and to relate it against existing obligations under statute law, the Council's Constitution, Code of Corporate Governance, common law, compacts, Local Strategic Partnership obligations, other partnerships, etc. Work is already programmed to take place later this year that will revise the guidance given to officers in the preparation of reports and this will include advice on the undertaking consultation and other forms of public engagement.
- 8.9 **Suggested action:**
- 8.9.1 **Members are asked to note the new Duty to Involve and ask that full account is given to the duty prior to decisions being taken by the Council, its Committees, the Cabinet and by officers when carrying out their functions (recommendation 7).**
- 8.9.2 Guidance provided to members and officers in respect of their decision making responsibilities and in particular in relation to consultation and participation arrangements will need to be reviewed and where necessary updated.

9.0 Petitions

- 9.1 Provisions in the draft Local Democracy, Economic Development and Construction Bill will set out in some detail how councils should deal with any petitions they receive. There will be a new duty for councils to respond to petitions and any petition signed by 5% of residents (the Government's suggested threshold) will be required to be debated in a full council meeting. This could be used to raise issues as diverse as bin collections and street cleaning, or the state of local parks. Councils will also act as "community advocates" in responding to petitions that deal with issues outside of their direct control e.g., GP surgery opening hours. This is distinct from the specific legislation relating to petitions for mayoral referendums and petitions calling for parish governance reviews. These will be unaffected by the new petitions duty.
- 9.2 The Bill will require councils to publish a "petitions scheme" and to allow petitions to be signed by people who "...live, work or study in the authority's area." In addition to the traditional form of petition collected by hand, the Bill proposes that councils will make an e-petitions facility available for local people. It will be possible for anyone to start a petition.
- 9.3 A petition will have to relate to a "relevant matter"; defined in the Bill as a matter relating to a function of the authority or relating to an improvement in the economic, social or environmental well-being of the authority's area to which any of its partner authorities could contribute. Vexatious or abusive petitions will not be allowed and 6 months must elapse before the council is obliged to re-consider the same or a similar petition.
- 9.4 A further feature of the proposed legislation is to provide for certain public officers, including those of the council's partner authorities, to be held to account via the petitions procedure and to require them to appear before public hearings. Senior officers would only be required to attend hearings in relation to their responsibilities and not to be scrutinised for decisions taken at a political level.
- 9.5 The council will have to follow certain procedural steps and take one or more of the following courses of action in response to any petition meeting the criteria set out in the council's petition rules:
- give effect to the petition
 - considering the petition at a meeting of the authority
 - hold an inquiry
 - hold a public meeting
 - commissioning research
 - giving a written response to the petition organiser setting out the authority's views about the request in the petition
 - refer the petition to an overview and scrutiny committee

In addition where the petition receives the required number of signatures it will need to be the subject of debate at full council.

- 9.6 This Council, unlike most other councils, currently has no formal procedures for dealing with petitions. However, members will be aware that we do regularly receive petitions on a wide range of issues and that these are considered and the views expressed taken into account. The lack of a written down procedure does occasionally cause confusion and can lead to an inconsistent approach being taken. Given that in a year or so's time, once legislation is brought into effect, we will be required to have a petitions scheme it would be appropriate to codify our current arrangements into an agreed document. At the same time, some account should be taken of the likely nature of the future rules. This will mean that when we know the final form of the rules for petitions schemes any required changes should be of lesser significance and impact.
- 9.7 Draft Petitions Procedure Rules are set out at appendix 2 to this report. These, to a large extent, follow out current informal practices. There is one important difference however and this is to ask that the Chairman and Deputy Chairman of the Scrutiny Committee are notified of the receipt of petitions, kept informed of progress and have the opportunity of bringing the matter before the Scrutiny Committee if it is felt that appropriate or timely action is not being taken to resolve the issues raised by the petitioners. Such a procedure will in all likelihood be required at some future date so it makes sense to introduce it now. In the future, it may also become necessary to centralise the whole process of receipt and handling of petitions (especially in the light of e-petitions), however, at this time and having regard to resourcing issues, this is not proposed.
- 9.8 The question of an e-petitions facility will need to be the subject of further investigation. We would prefer to wait until the legislation is enacted and the regulations and guidance which will apply to this facility are clear before taking matters too far; particularly if investment in IT is required. We will also be liaising with colleagues across the County to see if a joint solution can be found.
- 9.9 In addition, Members are asked to consider whether, in advance of the legislation, they would want to introduce a provision whereby petitions receiving a certain number of signatures are brought to full Council for debate if the petitioners so desire. The Government's 5% suggested threshold would equate to about 3,700 signatures based on the current local electorate. Members may feel this is too high and we would suggest a threshold figure of 2,000. This optional extra to the petitions procedure rules is shown in section 7 of appendix 2.
- 9.10 **Suggested action**
- 9.10.1 **That full Council be recommended to adopt the proposed Petitions Procedure Rules as an interim measure pending expected**

Government legislation (recommendation 8).

9.10.2 **That the Committee consider whether or not to recommend full Council to adopt section 7 of the proposed Petitions Procedure Rules providing for a full Council debate in respect of petitions receiving over 2,000 signatures where requested by the petitioners (recommendation 9).**

9.10.3 The Council's Petitions Procedure Rules will need to be reviewed once the nature of future legislation and guidance is known.

10.0 Promotion of democracy

10.1 Provisions in the draft Local Democracy, Economic Development and Construction Bill will place a new duty on local authorities to promote democracy. Local leaders will be expected to do more to help residents understand how the democratic process works and how they can get involved. Councils will be expected to increase understanding and awareness about civic roles – whether volunteering, standing as a governor, a councillor or becoming a magistrate – and encouraging people to come forward to fill these roles.

10.2 The draft Bill says:
"... the local authority has a duty to promote understanding of the following among local people—
(a) the functions of the authority;
(b) the democratic arrangements of the authority;
(c) how members of the public can take part in those democratic arrangements and what is involved in taking part."

It will also include a duty to a duty to promote understanding among local people of how to become a member of the council, what members do; and what support is available to members.

10.3 We will also be required to give publicity upon the functions of other public bodies in the area, including their democratic arrangements and how members of the public can take part in those arrangements and what is involved in taking part. This will include (among others) school governing bodies, NHS trusts, probation boards, police and fire authorities and the county council.

10.4 Suggested action:

No specific action is proposed at present, however officers will seek a co-ordinated approach with the other districts and boroughs and the county council and to build upon existing resources and mechanisms providing community information when the time comes to implement the new legislation. The council already provides much of this information on its website (either direct or via links to other sites). This information will in due

course need to be reviewed and enhanced as necessary.

11.0 Joint scrutiny proposals

11.1 An amendment to the Local Democracy, Economic Development and Construction Bill recently approved in the House of Lords (with government support) would give a power for any 2 or more councils to create joint scrutiny committees to look at any issue, should they wish to do so. The new power will be subject to regulations and is expected to be brought into effect 2 months after the Bill receives Royal Assent. This amendment will supplement the powers to operate joint scrutiny arrangements in 2 tier areas.

12.0 Community Empowerment Bill

12.1 This Bill (yet to be published) is planned to include measures to enhance local democracy and empower communities, amend politically restricted posts, enable remote voting for councillors, introduce voting incentives, modernise provisions around parish councils, remove the barriers to directly electing mayors and recognise the contributions of alderwomen and local people through reform of honorary and hereditary freedoms. Some of the key measures are discussed below.

12.2 Remote voting for Councillors

12.2.1 The most contentious proposal in the Government's consultation on improving local accountability is to go ahead, despite widespread opposition. The consultation asked for views on creating legislation to allow authorities to modify their attendance and voting procedures and allow councillors to vote remotely.

12.2.2 The most common concern raised was that remote attendance and voting is contrary to the work of the council and councillors being transparent and accountable and that in lacking transparency and accountability it erodes public confidence in democracy. There was a very clear message from those consulted that not only do councillors have to meet face to face to get the best out of their meetings with each other, but citizens want to be able to attend public meetings and see their councillors at work.

12.2.3 Concerns were also raised about the practicality and cost of remote attendance and voting, with respondents suggesting that the proposals could benefit from being trialled to determine how remote attendance and voting could be successfully achieved. There are also risks involved not just in terms of damage to confidence in local government but also in terms of increased risk of challenge on decisions arrived at through meetings or decisions that involve remote attendance.

12.3 **Directly elected mayors**

12.3.1 The Government supports the directly-elected mayoral model for local leadership, because it provides visible leadership for a local area. They believe that elected mayors make it clearer who is responsible for local services, and have the potential to engage more people in politics. The potential for local areas to elect their mayor was established in the Local Government Act 2000. Since then only 12 places have moved to a directly-elected mayor: Bedford, Doncaster, Hackney, Hartlepool, Lewisham, Mansfield, Middlesbrough, Newham, North Tyneside, Stoke-on-Trent*, Torbay and Watford (* Stoke have now moved back to the Cabinet and Leader model following a referendum last October). In addition, London has a directly elected mayor.

12.3.2 The Government wants to make it easier for people to demand that their local leaders move to establishing a directly-elected mayor through a referendum. They have recently consulted on whether:

- to permit on-line petitioning as well as traditional paper petitions to demonstrate support for a referendum
- on reducing the threshold for a petition to trigger a mayoral referendum from 5 per cent of voters – perhaps to 2, 3 or 4 per cent
- to remove the stipulation that no referendum may be held for 10 years if a referendum is lost and instead move to a system where a new referendum may be held after four years in these circumstances

The Government say they will make the move to a directly-elected mayoralty more attractive to local politicians with an expectation that directly-elected mayors, where they exist, would chair the Local Strategic Partnership and be the new Crime and Policing representative. The outcome of the consultation is awaited.

12.4 **Restrictions on political activities of local government staff**

12.4.1 The Government have announced that they intend to amend the 'Widdicombe rules' (section 2 of the Local Government and Housing Act 1989) which forbid council workers, above a certain salary band, from being active in party politics, so that only the most senior council officers such as chief executives and chief planning officers continue to be barred from political activity along with other 'politically sensitive' posts. This is a demonstration of the Government's desire to rehabilitate politics as a legitimate and worthy activity. Restrictions on council employees being councillors in their local authority in which they work would, however, be retained.

13.0 Publicising new powers and duties

- 13.1 As and when the various measures outlined in this report are implemented steps will be taken to provide information on the Council's website, in leaflets and otherwise as may be appropriate. Resources are limited so it is not intended at this stage to run any publicity campaigns.

14.0 Implications/risk assessment

- 14.1 **Resources.** Some of the draft provisions could well require additional resources to implement and once the eventual shape of new legislation is clearer and we have a better idea of implementation dates input into the budget/service planning process for future years may become necessary. In particular the requirement to have a facility for e-petitions will need to be explored more fully with the assistance of staff responsible for the Council's IT and website.
- 14.2 **Benefits of proposals.** Much of what is discussed or proposed in this report will formalise and extend existing arrangements and practices. Of particular note will be the additional powers to scrutinise partners both as part of the Local Area Agreement and within the Crime and Disorder Reduction Partnership. The CCfA powers should also help local councillors to be seen as democratic champions in their respective communities.
- 14.3 **Consequences of not acting.** The Council could be challenged for failing to meet its statutory obligations.

David Robinson
Local Democracy Manager

Katie Armstrong
Scrutiny Co-ordinator

Background papers (used in writing this report):

Local Government and Public Involvement in Health Act 2007

The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) England) Order 2008

Police and Justice Act 2006
(All the above are available at <http://www.statutelaw.gov.uk/>)

Crime and Disorder (Overview and Scrutiny) Regulations 2009 (Draft)
<http://www.crimereduction.homeoffice.gov.uk/regions/regions019.htm>

Representing the future: The report of the Councillors Commission
(December 2007)
<http://www.communities.gov.uk/councillorscommission/publications/representing>

[ntingthefuture/](#)

Communities in control: Real people, real power, Government response to the improving local accountability consultation (January 2009) (DCLG).
<http://www.communities.gov.uk/documents/localgovernment/pdf/1129377.pdf>

Councillor Call for Action – Guidance (published by CfPS and IDeA:
Summary: <http://www.idea.gov.uk/idk/aio/9413464>
Full guidance and background evidence document at:
<http://www.cfps.org.uk/what-we-do/publications/cfps-general/>

Duty to involve DCLG Guidance (Creating Strong, Safe and Prosperous Communities Statutory Guidance). See para 2.10 at
<http://www.communities.gov.uk/documents/localgovernment/pdf/885397.pdf>

Local Democracy, Economic Development and Construction Bill
<http://www.publications.parliament.uk/pa/ld200809/ldbills/002/2009002.pdf>

To inspect or obtain copies of the background papers, please refer to the contact officers listed on page 1 of this report or use the weblinks provided.

Councillor Call for Action

Suggested addition to the Council's Scrutiny Procedure Rules:

CCfA allows Councillors to refer matters to the Council's Scrutiny Committee.

Use of the CCfA power should be seen as longstop and used only when other attempts to deal with an issue or solve a problem have failed.

Matters which can be the subject of a CCfA include those for which the Council has a responsibility or which directly affect the Borough of Eastbourne and for which the Council can reasonably be expected to exercise some degree of influence.

Certain matters should normally be excluded from being a CCfA in line with the provisions of The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) England) Order 2008. These are:

- (a) Matters relating to a planning or licensing decision.
- (b) A matter relating to an individual or entity in respect of which that individual or entity has recourse to a right of appeal conferred by legislation.
- (c) Any matter which is vexatious, discriminatory or unreasonable.

However, an allegation that a function for which the council is responsible has not been discharged at all or that its discharge has failed on a systematic basis may still be the subject of a valid CCFA notwithstanding the (a) and (b) above.

The Scrutiny Committee may issue further guidance to Councillors on how issues subject to a potential CCfA might be handled in order to reflect best practice and ensure that issues are dealt with effectively and in a timely fashion.

The following procedures will be followed:-

1. A councillor raises the item with the Scrutiny Chairman. This should be done via the Scrutiny Co-ordinator. The Councillor would be expected to provide some basic information, including the following (*N.B. a pro forma will made available and placed on the website*):
 - Description of issue
 - What has prompted raising issue (e.g. concerns of local residents)
 - Who is affected (e.g. neighbourhood, local children etc)
 - Action to date? (what's been done so far to solve problem)
 - What's needed to solve problem? (possible solutions, desired outcomes)
 - Any critical timescales or deadlines?

(N.B. At the time the CCfA is received, the Scrutiny Co-ordinator will seek to find out from the relevant senior manager the current circumstances in relation to the CCfA in order to advise the Chair and Deputy Chair of Scrutiny. It may also be possible to resolve the issue at this stage.)

2. Chairman decides if item is to go forward. It is expected that discussion of any CCfAs will take place at the monthly meeting of the Chairman and Deputy Chairman of the Scrutiny Committee. In deciding if the matter should be placed on the Committee's agenda, the Chairman will wish to take account of the following:
 - Do alternative avenues for resolution exist (complaints procedures, planning/licensing appeals etc)?
 - Have efforts to deal with the issue/solve the problem been sufficiently exhausted to justify Committee consideration?
 - Do any of the other statutory exclusions apply (vexatious, discriminatory, unreasonable etc.)?
3. Chairman decides what steps should be taken to bring the issue before the Committee (e.g. officer report, attendance, including attendance by a Cabinet member or other councillor if appropriate, invitation to partner organisations, outside groups and individuals to attend).
4. Discussion at Committee should be based on achieving the outcomes desired by the member raising the issue – explore options and solutions – and make recommendations for certain action to be taken. Committee discussion alone may not achieve result but act as a spur to members and officers to work together to jointly develop policies to overcome problem.
5. Committee may decide that best course is to establish a scrutiny review task group to look further at the issue and report back to the full Committee.
6. Councillor raising CCfA to be kept advised of progress at all stages and will be invited to attend any meeting of the Scrutiny Committee giving consideration and also invited to give evidence to a review task group if one is established. The Councillor will also be consulted as to who else should be invited to give evidence or have an opportunity of speaking to the Committee.
7. Councillor raising CCfA to keep the person (or the representative of a group) who either drew the matter to the Councillor's attention or asked for the Councillor to take action informed of progress.

Proposed Petitions Procedure Rules

An introductory note will be added putting the petitions procedure into context. It will mention its interim nature and the expected legislation, also noting e-petitions to be introduced in the future.

This procedure will need to be supported by a simple guide (FAQ format?) intended for the public (website and leaflet). Aim will be to say:

- *Why you might want to submit a petition*
- *What can (and what shouldn't) be the subject of a petition*
- *How to submit a petition and who to send it to*
- *What you can expect from the Council (ack, progress information, opportunity to speak at meeting, reasons for decisions etc)*

1. Submission

1.1 Members of the public may submit petitions to the Council on matters for which the Council has a responsibility or which directly affect the Borough of Eastbourne and for which the Council can reasonably be expected to exercise some degree of influence.

1.2 For the purposes of these rules a petition shall require a minimum of 5 signatures from people who either live, work or study in the Borough. In addition, the names and postal addresses (and additionally, if appropriate work or study addresses) of the signatories shall be printed alongside their signatures.

1.3 Persons contemplating petitions should first check with local ward councillors, other councillors or officers of the Council as appropriate, to see if the Council is already acting upon their concerns or will act upon their concerns. They should also check that the Council is the appropriate public body to receive their petition and not another public body such as the County Council.

1.4 Petitions may be addressed either to a senior officer (e.g. the head of the relevant service area) or to a Councillor (such as a ward member, the lead Cabinet member for the service, to a committee chairman or to the Mayor).

1.5 A petition that is not addressed to a particular person or office holder shall in the first instance be referred to the Assistant Director (Strategy and Democracy) who will decide to whom it should be directed.

1.6 Petitioners (or a person acting on behalf of the petitioners) may ask that a petition be presented at a meeting of the Council, Cabinet or committee of the Council. Such a request will normally be accepted unless it would be appropriate to submit the petition to another body of the Council whose powers and responsibilities are better aligned with the matter of the petition. The Assistant

Director (Strategy and Democracy) will decide such matters in liaison with the relevant lead member or chairman and notify the petitioners accordingly.

2. Receipt of petition

2.1 The person receiving a petition (or a re-directed petition) shall notify the relevant lead Cabinet member or committee chairman and the relevant officer with responsibility for the matter to which the petition relates of the nature of the petition and the number of signatories and make available a copy if requested. The original of the petition should be forwarded to the officer with responsibility for the matter so that it can be placed on the relevant file.

2.2 Receipt of all petitions, other than those within the category described at paragraphs 3.1, 3.2 or 4.1 below (in respect of consultations), must also be notified to the Scrutiny Co-ordinator who will report receipt to the monthly meeting of the Chairman and Deputy Chairman of the Scrutiny Committee for their information. Either the Chairman or the Deputy Chairman may ask to be kept informed of progress in the matter and either may ask that an item be placed on the agenda of a meeting of the Scrutiny Committee to consider the matter raised in the petition. This latter course of action should only be taken if it was felt that appropriate or timely action was not being taken by the office holder or body with responsibility for the matter raised in the petition.

2.3 All petitions received will be acknowledged and the petitioners (or person acting on behalf of the petitioners) advised of the steps being taken for the report and consideration of their petition and the issue raised. This will be the responsibility of the person or office-holder receiving the petition unless this obligation has been passed to a more appropriate person.

3. Exceptions

3.1 If the petition relates to a matter for which the Council has no responsibility or does not directly affect the Borough of Eastbourne and for which the Council cannot reasonably be expected to exercise any degree of influence, the petition will not be accepted. The Assistant Director (Strategy and Democracy) is authorised to make this decision. The petitioners (or a person acting on behalf of the petitioners) may be advised to submit their petition to another public body if that is more appropriate.

3.2 If a petition:-

- calls for action that will be discriminatory;
- discloses matters that are personal;
- discloses confidential or exempt information;
- calls for court action against an identifiable individual;
- is considered to be libellous, abusive, offensive, frivolous or vexatious;
- complains about the conduct of a councillor; or
- is from a business or person where the main purpose is to influence a forthcoming commercial decision of the Council or the terms of a commercial transaction,

the Assistant Director (Strategy and Democracy), in liaison with the Council's Monitoring Officer where appropriate, shall decide the course of action to be taken in respect of such a petition. Such action will normally be a decision to reject the petition unless there is an over-riding public interest reason why the petition should still be considered.

3.3 If a petition complains about the actions of an officer of the Council it will be redirected into the corporate complaints machinery.

3.4 Petitioners should be advised that separate arrangements exist for the making of complaints about the conduct of a councillor.

3.5 The Assistant Director shall notify the petitioners (or person acting on behalf of the petitioners) that their petition has been rejected and the reason for rejection and at the same time will notify the Chairman of the Scrutiny Committee.

4. Report and consideration of petition

4.1 In the case of any petition that relates to a consultation (statutory or otherwise) being conducted by the Council (e.g. on a planning or licensing matter), the petition will be treated as a representation in respect of that consultation and its report and consideration will be the same as that determined for all other such representations received.

4.2 Where a petition relates to a matter which is the subject of a report to the Cabinet or other Council body, mention of the petition shall be made in that report.

4.3 In other cases, where a petition calls for action to be taken by the Council, the person or office holder charged with responsibility for that matter shall take steps to ensure that the petitioners request is considered, and if appropriate, that action is taken.

4.4 Petitioners (or a person acting on behalf of the petitioners) shall be given notice of the date and time of any public meeting at which the matter raised in the petition is due to be considered and given the opportunity of speaking at that meeting in line with the Council's normal rules for public speaking.

5. Response to petitioners

5.1 Petitioners (or a person acting on behalf of the petitioners) shall be kept informed of the steps being taken in response to their petition. Where decisions are made on a matter raised in a petition the petitioners shall be given notice of the decision and the Council's reasons for that decision.

6. Urgent petitions

6.1 In the case of a petition submitted at the last minute with a view to being considered at a meeting about to take place, it may not be possible, in the time available, to follow through with all the procedures set out above, including notification to the Chairman and Deputy Chairman of the Scrutiny Committee. The meeting may decide that such a petition should be considered there and then rather than having the matter delayed.

Optional addition to petition rules:

7. Request for debate by Councillors

7.1 Subject to the exceptions given in section 3 of these rules and the requirements as to the number of signatures at paragraph 7.2 below, petitioners can request that the matter raised in their petition is subject to a debate by the full Council. The matter will normally be included on the agenda for the next ordinary meeting. The objectives of the debate will be to consider the outcomes desired by the petitioners by exploring options and solutions. Recommendations may then be made for action to be taken. This may include the matter being referred to another Council committee, the Cabinet or an officer for consideration, investigation and/or resolution as appropriate.

7.2 To be eligible for a debate at full Council a minimum of 2,000 signatures must be obtained from people who either live, work or study in the Borough

7.3 The Mayor may at his or her discretion refuse a debate in the following circumstances:-

- If it is clear that action has or will shortly be taken that will deliver the outcomes desired by the petitioners.
- If the matter raised in the petition is the same or substantially similar to matters raised in a previous petition the subject of debate at full Council within the previous 6 months.