Draft Order laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No.

LOCAL GOVERNMENT, ENGLAND

The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016

Made - - - -

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by section 114 of, and paragraphs 3 and 4(3) of Schedule 5A to, the Local Democracy, Economic Development and Construction Act 2009(**1**).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 117(2) of the Local Democracy, Economic Development and Construction Act 2009.

PART 1

General

Citation and commencement

1. This Order may be cited as the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016 and shall come into force on 8th May 2017.

Interpretation

2.—(1) In this Order—

"the 2009 Act" means the Local Democracy, Economic Development and Construction Act 2009;

(**1**) 2009 c. 20. Section 114 was amended by section 23 of and paragraphs 17 and 26 of Schedule 5 to the Cities and Local Government Devolution Act 2016 (c. 1). Schedule 5A was inserted by section 8 of, and Schedule 3 to, the Cities and Local Government Devolution Act 2016. Section 117(2), (2A) and (3) was substituted by section 13 of the Localism Act 2011 (c. 20). Section 117 was amended by paragraph 24 of Schedule 5 to the Cities and Local Government Devolution Act 2016.

"excluded matter" means any matter which is a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006(**2**) or a matter of any description specified in an order made by the Secretary of State for the purposes of section 9FC of the Local Government Act 2000(**3**);

"mayor" means the mayor for the area of a combined authority established in an order made under section 107A of the 2009 Act;

"member" in relation to membership of an overview and scrutiny committee includes the chair of that overview and scrutiny committee;

"non constituent council" means a council designated as a non constituent council in an order made under section 103(1) of the 2009 Act;

"principal authority" means in the case of a parish council for an area in a district that has a district council, that district council, and in the case of a parish council for any other area, the county council for the county that includes that area; and

"proper officer" has the same meaning as in section 270(3) of the Local Government Act 1972(**4**).

(2) For the purposes of this Order a person ("R") is a relative of another person if R is—

(a) the other person's spouse or civil partner,

(b) living with the other person as husband and wife or as if they were civil partners,

(c) a grandparent of the other person,

(d) a lineal descendant of a grandparent of the other person,

(e) a parent, sibling or child of a person within paragraph (a) or (b),

(f) the spouse or civil partner of a person within paragraph (c), (d) or (e), or

(g) living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.

PART 2

Overview and scrutiny: general provisions

Overview and scrutiny committees

3.—(1) The majority of members of a combined authority's overview and scrutiny committee must be members of that combined authority's constituent councils.

(2) At least two-thirds of the total number of members of the overview and scrutiny committee must be present at a meeting of the overview and scrutiny committee before business may be transacted.

(**2**) 2006 c. 48. Section 19 was amended by section 126 of the Local Government and Public Involvement in Health Act 2007 (c. 28) and by paragraph 80 of Schedule 3 to and paragraph 1 of Part 4 of Schedule 25 to the Localism Act 2011 (c. 20).

(**3**) 2000 c. 22. Section 9FC was inserted by section 21 of and Schedule 2 to the Localism Act 2011.

(**4**) c. 70. Section 270 was amended by paragraph 20 of Schedule 23 to the Local Government, Planning and Land Act 1980 (c. 65), sections 1, 84 and 102 of, paragraph 34 of Schedule 14 to and paragraph 8 of Schedule 16 and Schedule 17 to the Local Government Act 1985 (c. 51), sections 21, 23 and 27 of and paragraph 10 of Schedule 6 to the Norfolk and Suffolk Broads Act 1988 (c. 4), section 4 of and paragraph 28 of Schedule 2 to Planning (Consequential Provisions) Act 1990 (c. 11), section 29 of and paragraph 1 of Schedule 4 to the Local Government Act 1992 (c. 19), section 46 of and paragraph 12 of Schedule 3 to the Local Government Act 2000, section 1 and paragraph 1 of Part 10 of Schedule 1 to the Statute Law (Repeals) Act 2004 (c. 14), section 74 of and paragraph 10 of Schedule 3 to the Local Government and Public Involvement in Health Act 2007, section 119 of and paragraph 38 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009, section 22 of and paragraph 6 of Schedule 3 to the Localism Act 2011, section 59 of and paragraph 6 of Schedule 13 to the Deregulation Act 2015 (c. 20) and by section 23 of and paragraph 5 of Schedule 5 to the Cities and Local Government Devolution Act 2016.

(3) Each member of the overview and scrutiny committee appointed from the constituent councils is to have one vote and no member is to have a casting vote.

(4) Members of the overview and scrutiny committee who are appointed other than from the constituent councils shall be non-voting members of the committee but may be given voting rights by resolution of the combined authority(**5**).

(5) Any questions that are to be decided by the overview and scrutiny committee are to be decided by a simple majority of the members present and voting on that question at a meeting of the overview and scrutiny committee.

(6) If a vote is tied on any matter it is deemed not to have been carried.

(7) In this article, references to an overview and scrutiny committee include references to a sub-committee of such a committee.

Appointment of members

4.—(1) The combined authority must—

(a) appoint such a number of members of each of the constituent councils to an overview and scrutiny committee, so that the members of the committee taken as a whole reflect so far as reasonably practicable the balance of political parties for the time being prevailing among members of the constituent councils when taken together; and

(b) within the period of 28 days beginning with the day on which an appointment is made to the overview and scrutiny committee, publish a notice that—

(i) states that it has made an appointment;

(ii) identifies each member of the committee who has been appointed; and

(iii) specifies the period for which the members of the committee have been appointed.

(2) The notice mentioned at paragraph (1)(b) must be published—

(a) if the combined authority has a website, on its website; or

(b) otherwise, in such manner as it thinks is likely to bring the notice to the attention of persons who live in its area.

Appointment of chair

5.—(1) — Paragraphs (2) to (4) apply where the chair of an overview and scrutiny committee is to be an independent person in accordance with provision made under paragraph 3 of Schedule 5A to the 2009 Act(**6**).

(2) A person is independent if the person—

(a) is not a member, co-opted member or officer of the combined authority;

(b) is not a member, co-opted member or officer of a constituent council or a parish council for which a constituent council is the principal authority;

(c) is not a relative, or close friend, of a person within sub-paragraph (a) or (b); and

(d) was not at any time during the 5 years ending with an appointment as chair of the overview and scrutiny committee under arrangements made by the combined authority in accordance with paragraph 3(4)(a) of Schedule 5A to the 2009 Act—

(**5**) Paragraph 2(5) of Schedule 5A to the 2009 Act applies section 102 (2) to (5) of the Local Government Act 1972 to combined authorities.

(**6**) Paragraph 3(4) of Schedule 5A to the 2009 Act requires the Secretary of State to make provision that the chair of an overview and scrutiny committee is an independent person, as defined by the order (paragraph 3(4)(a) of Schedule 5A) or an appropriate person who is a member of one of the combined authority's constituent councils (paragraph 3(4)(b) of Schedule 5A).

(i) a member, co-opted member or officer of the combined authority; or

(ii) a member, co-opted member or officer of a constituent council or a parish council for which a constituent council is the principal authority.

(3) A person may not be appointed as independent chair of the overview and scrutiny committee unless—

(a) the vacancy for a chair of the overview and scrutiny committee has been advertised in such manner as the combined authority considers is likely to bring it to the attention of the public;

(b) the person has submitted an application to fill the vacancy to the combined authority, and

(c) the person's appointment has been approved by a majority of the members of the combined authority.

(4) A person appointed as independent chair of the overview and scrutiny committee does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment.

(5) Paragraph (6) applies where the chair of an overview and scrutiny committee is to be an appropriate person in accordance with provision made under paragraph 3(4)(b) of Schedule 5A to the 2009 Act.

(6) Where the mayor is not a member of a registered political party, a person may not be appointed as chair of the overview and scrutiny committee if that person is –

(a) a member of the registered political party which has the most representatives among the members of the constituent councils on the combined authority, or

(b) where two or more parties have the same number of representatives, a member of any of those parties.

Reference of matters to overview and scrutiny committees

6.—(1) The combined authority must ensure that it enables—

(a) any member of an overview and scrutiny committee to refer to the committee any matter which is relevant to the functions of the committee;

(b) any member of a sub-committee of an overview and scrutiny committee to refer to the sub-committee any matter which is relevant to the functions of the sub-committee;

(c) any member of the combined authority to refer to an overview and scrutiny committee any matter which is relevant to the functions of the committee and is not an excluded matter; and

(d) any member of a constituent council or a non-constituent council(**7**) of a combined authority to refer to an overview and scrutiny committee any matter which is relevant to the functions of the committee and is not an excluded matter.

(2) For the purposes of paragraph (1), a combined authority enables a member mentioned in paragraph (1)(a) to (d) to refer a matter to a committee or sub-committee if it enables that member to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee or sub-committee.

(3) Paragraphs (4) to (7) apply where a matter is referred to an overview and scrutiny committee by a member of a combined authority or a member of a constituent council or a non-constituent council in accordance with arrangements made by the combined authority pursuant to paragraph (1)(c) or (d).

(**7**) Orders establishing a combined authority may provide for there to be non constituent councils of a combined authority (see article 2 of S.I. 2014/864).

(4) In considering whether or not to exercise any of the powers under arrangements made in accordance with paragraph 1(2)(a) or (3)(a) of Schedule 5A to the 2009 Act in relation to a matter referred to the committee, the committee must have regard to any representations made by the member as to why it would be appropriate for the committee to exercise any of these powers in relation to the matter.

(5) If the committee decides not to exercise any of its powers under arrangements made in accordance with paragraph 1(2)(a) or (3)(a) of Schedule 5A to the 2009 Act in relation to the matter, it must notify the member of—

(a) its decision; and

(b) the reasons for it.

(6) The committee must provide the member with a copy of any report or recommendations which it makes under paragraph 1(2)(b) or (3)(b) of Schedule 5A to the 2009 Act in connection with the matter referred to it by the member.

(7) Paragraph (6) is subject to article 8 (confidential and exempt information).

Duty of combined authority and mayor to respond to overview and scrutiny committee

7.—(1) Where an overview and scrutiny committee or a sub-committee of such a committee makes a report or recommendations the committee may—

(a) publish the report or recommendations;

(b) by notice in writing require the combined authority or the mayor to—

(i) consider the report or recommendations;

(ii) respond to the overview and scrutiny committee indicating what (if any) action the combined authority proposes to take;

(iii) if the overview and scrutiny committee has published the report or recommendations under paragraph (a), publish the response.

(2) A notice given under paragraph (1)(b) must require the combined authority or the mayor to comply with it within two months beginning with the date on which the combined authority or the mayor received the reports or recommendations or (if later) the notice.

(3) The combined authority or the mayor must respond to a report or recommendations made by an overview and scrutiny committee, or a sub-committee of such a committee, as result of a referral made in accordance with article 6 within two months beginning with the date on which the combined authority or the mayor received the notice.

(4) Where an overview and scrutiny committee exercises any of its powers under arrangements made in accordance with paragraph 1(2) or 1(3) of Schedule 5A to the 2009 Act in relation to a decision made but not implemented—

(a) where recommendations have been made under paragraph 1(4)(b) of Schedule 5A to the 2009 Act, the combined authority or the mayor must hold a meeting to reconsider the decision no later than 10 days after the date on which the recommendations of the overview and scrutiny committee were received by the combined authority; and

(b) any direction under arrangements made in accordance with paragraph 1(4)(a) of Schedule 5A to the 2009 Act may have effect for a period not exceeding 14 days from the date on which the direction is issued.

Confidential and exempt information

8.—(1) This article applies in relation to—