

RPA TASKFORCE – GOVERNANCE SUB GROUP

PAPER FROM DENVER LYNN (NIAO) 19 May 2006

CORPORATE GOVERNANCE FRAMEWORK

**1. CORPORATE GOVERNANCE FRAMEWORK –
GENERAL**

**2. CORPORATE GOVERNANCE FRAMEWORK –
ENGLAND & WALES**

**3. CORPORATE GOVERNANCE FRAMEWORK –
SCOTLAND**

1. CORPORATE GOVERNANCE FRAMEWORK – GENERAL

The Auditing Practices Board – Bulletin 2004/2

“Corporate Governance: Requirements of Public Sector Auditors (Local Government Bodies)”

Available at:

www.apb.org.uk/images/uploaded/documents/APB%20LG%20Bulletin%20website%20final.pdf

Extract:

SECTION 2: CORPORATE GOVERNANCE FRAMEWORK

Background

10. Local government bodies are governed by democratically elected or appointed members who are supported by professional officers. It is the responsibility of the body to ensure that sound systems of financial management and internal control are in place. However local authorities also have three designed statutory officers each of whom has a specific role in relation to accountability and control:

- Head of Paid Service¹ - usually the Chief Executive, responsible to the full council for the corporate and overall strategic management of the authority;
- Monitoring Officer² - responsible for reporting to the authority any actual or potential breaches of the law or any maladministration, and for ensuring that procedures for recording and reporting key decisions are operating effectively;

¹ England and Wales only.

² England and Wales only.

- Chief Financial Officer³ - local authorities are required to appoint an officer with responsibility for the proper administration of their financial affairs.
11. Corporate governance developments in local government have included the following measures:
- New ethical frameworks including codes of conduct for elected members and employees;
 - Improved accountability through new political management structures⁴; and
 - The introduction of a statement on internal control (SIC)⁵.

³ In England and Wales, this postholder is designated the 'Responsible Financial Officer' under section 151 of the Local Government Act 1972; in Scotland, the 'proper officer' under section 95 of the Local Government (Scotland) Act 1973; and, in Northern Ireland, the Chief Financial Officer' under section 54 of the Local Government Act (Northern Ireland) 1972.

⁴ Introduced in England and Wales by the Local Government Act 2000, and in Scotland following the recommendations of the McIntosh Commission.

⁵ Introduced in England by the Accounts and Audit Regulations 2003.

2. CORPORATE GOVERNANCE FRAMEWORK – ENGLAND & WALES

Local Government Act 2000

Available at:

www.opsi.gov.uk/acts/acts2000/20000022.htm

Extracts from Explanatory Note

Extract 1

PART II: ARRANGEMENTS WITH RESPECT TO EXECUTIVES

Summary

26. Part II of the Act contains provisions for new political management structures for local authorities in England and Wales, including local authority executives and executive arrangements. This Part introduces a new decision-making framework in which there is a separation of decision-making and scrutiny of those decisions. It sets out three initial broad forms of executive on which all local authorities must consult, although for certain small district councils there is a further option for alternative arrangements on which to consult, which does not involve a separate executive (see sections 31 and 32 [of the Act – Explanatory Note of these sections included below as Extract 2]).

27. The objective of the policy underlying Part II is to deliver greater efficiency, transparency and accountability of local authorities. The new arrangements are intended to ensure that decisions can be taken more quickly and efficiently than in the existing committee system, that the individuals or bodies responsible for decision-making can be more readily identified by the public, and that those decision-makers can be held to account in public by overview and scrutiny committees.

28. This Part of the Act allows the Secretary of State to specify further forms of executives and forms of alternative arrangements. It requires local authorities to hold a referendum:

- where their proposals involve a form of executive which includes a directly-elected mayor, or a further form of executive specified in regulations under section 11 for which those regulations specify a referendum is required;

- where 5% or more of the council's electorate petition for a form of executive for which a referendum is required; or
- where the Secretary of State requires an authority or group of authorities to hold a referendum on one of the forms of executive available in or under the Act.

In the last two cases this will be given effect by secondary legislation.

Background

29. Until now, council business has been carried out under a committee system. Decisions which are not delegated to officers, area committees or to other authorities, contracted out, or carried out jointly with one or more other authorities must be taken either in full council or by committees or sub-committees which comply with the statutory requirements as to the political balance of the council and committees. The Government believes that this system is in need of reform.

30. Under executive arrangements it is proposed that the council's policy framework and budget would be agreed by the full council following proposals from the executive. The executive would then be charged with implementing the agreed policy framework. Overview and scrutiny committees, which may co-opt people who are not councillors onto their committees, would be charged with holding the executive accountable for that implementation. Such committees would also be able to advise the executive and council on policy development.

31. The Government paper *Local Leadership, Local Choice*² provided further details of these proposals and included a draft Local Government (Organisation and Standards) Bill which was submitted to the scrutiny of a Parliamentary Joint Committee of MPs and Peers in May 1999. This built on proposals in the White Papers *Modern Local Government: In Touch with the People*³ and *Local Voices: Modernising Local Government in Wales*⁴.

2 Cm 4298, March 1999.

3 Cm 4014, July 1998.

4 Cm 4028, 1998.

Extract 2

Sections 31 to 33: Alternative arrangements

78. Section 31 provides that certain authorities may decide whether to draw up proposals for executive arrangement or proposals for alternative arrangements. The authorities who

have this choice are district councils whose area is within the area of a county council and whose resident population is less than 85,000 (as estimated by the Registrar General on 30 June 1999), and any other description of authorities specified in regulations under this section.

79. Section 31 requires that authorities must consult widely with the local community in deciding whether to draw up proposals for executive or alternative arrangements and each authority must consider, in drawing up its proposals, the extent to which the proposals are likely to assist in securing continuous improvement in the way in which the authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Authorities which draw up proposals for alternative arrangements under this section must also comply with other requirements in regulations, such as requirements as to the implementation of the proposals.

80. Section 32 allows the Secretary of State to specify in regulations alternative arrangements for the discharge of functions which do not involve an executive. Such arrangements cannot include a separate executive, must include overview and scrutiny arrangements and must, in the Secretary of State's opinion, be likely to ensure that decisions are taken in an efficient, transparent and accountable way. Alternative arrangements may also include provision for the discharge of functions by individual members of the authority, or appointment of committees whose membership does not reflect the political balance of the authority.

81. *Section 33* provides that an authority may not operate alternative arrangements unless required or permitted to do so by virtue of this Part of the Act, and that once an authority is operating alternative arrangements it may not cease to do so unless it operates executive arrangements in their place. A resolution of the full council is necessary to adopt executive arrangements and, once adopted, details of the arrangements must be made available for inspection by the public and be widely publicised in the area of the authority. Such publicity should include the main features of how the arrangements will work and a date on which the arrangements come into effect.

82. This section also enables the Secretary of State to make regulations which provide for all the eventualities where:

- authorities to which section 31 applies are changing from executive arrangements to alternative arrangements;
- any authorities are changing their alternative arrangements or moving from one form of alternative arrangements to another, different, form of alternative arrangements; and
- any authorities are changing from alternative arrangements to executive arrangements.

Extract 3

PART III: CONDUCT OF LOCAL GOVERNMENT MEMBERS AND EMPLOYEES

Summary

102. Part III of the Act establishes a new ethical framework for local government. This includes the introduction of statutory codes of conduct, with a requirement for every council to adopt a code covering the behaviour of elected members and of officers, and the creation of a standards committee for each authority.

103. It also establishes a new non-Departmental public body (NDPB), the Standards Board for England; in Wales the functions of the Standards Board will be conferred on the Commissioner for Local Administration in Wales (CLAW). This will ensure an independent process for investigating instances of unethical conduct by relevant authority members, including any allegations that a code of conduct has been breached.

Background

104. Until now, councillors have been required (by virtue of section 83 of the Local Government Act 1972) to declare at the time of accepting office that they will be guided by the National Code of Local Government Conduct—which was issued as a Joint Circular under section 31 of the Local Government and Housing Act 1989. The Code deals with the treatment of non-pecuniary interests.

105. A requirement on members to give notice of their pecuniary interests in the form of a register was introduced by regulations made under section 19 of the 1989 Act. The declaration of pecuniary interests at relevant meetings is a requirement under section 94 of the 1972 Act; section 97 of that Act enables dispensations to be granted to speak and/or vote at such meetings.

106. However, apart from the criminal offences under section 94(2) of the 1972 Act of failure to declare a pecuniary interest or non-registration of such an interest under section 19(2) of the 1989 Act, the only action that can be taken against an individual member for misconduct is under section 30(3A) of the Local Government Act 1974 which provides for the local government Ombudsman to be able to name a member or members where he finds that a breach of the code by an individual member constitutes maladministration.

107. The Third Report of the Committee on Standards in Public Life on Standards of Conduct in Local Government (the Nolan Committee) in July 1997 recommended that the existing National Code of Local Government Conduct should be replaced. The Nolan Committee also recommended that local authorities should be able to discipline individual councillors, subject to a right of appeal to an independent tribunal.

108. The Government response to the Nolan Committee's report was included in the consultation paper *Modernising Local Government: a new ethical framework*⁵. The paper set out possible arrangements for introducing such a new framework, subject to consultation. It broadly agreed with the Nolan Committee conclusions but went further in its emphasis on external independent investigation and discipline.

5 Published April 1998, DETR.

109. A separate consultation paper, entitled *Modernising Local Government in Wales: a new ethical framework*⁶, was published in Wales, setting out suggested arrangements for introducing a new framework tailored to Welsh requirements.

6 Published June 1998, Welsh Office.

110. The White Paper *Modern Local Government: In Touch with the People*⁷ set out the Government's intention to legislate for a new ethical framework for local authorities. It signalled three principal components of the new framework:

- a requirement on every council to adopt a code of conduct, based on a national model, that all members would have to sign up to;
- a requirement for all authorities to set up a standards committee to oversee ethical issues and provide advice and guidance on the code of conduct and its implementation;
- the establishment of an independent body, the Standards Board, with responsibility for investigating alleged breaches of the council's code of conduct.

7 Cm 4014, July 1998.

111. A separate White Paper, *Local Voices: Modernising Local Government in Wales*⁸, set out the intentions of the newly formed National Assembly for Wales (NAW) to implement a new ethical framework for Welsh authorities, broadly comparable to the English framework.

8 Cm 4028, July 1998.

112. The Government papers *Local Leadership, Local Choice*⁹ in England and *A Stronger Voice for Local People*¹⁰ in Wales provided further details of the framework; proposals were included in the draft Local Government (Organisation and Standards) Bill which was submitted to the scrutiny of a Parliamentary Joint Committee of MPs and Peers in May 1999.

9 Cm 4298, March 1999.

10 Published April 1998, Welsh Office.

3. CORPORATE GOVERNANCE FRAMEWORK – SCOTLAND

Report of the Commission on Local Government and the Scottish Parliament (the McIntosh Report): The Scottish Executive's Response

Available at:

www.scotland.gov.uk/library2/doc04/ser-01.htm

Extract from Appendix 1 Summary of McIntosh Recommendations:

The conduct of council business

13. Every council should carry out a review of its management of business and working practices, under the guiding principles of accountability and accessibility. (94) A prime aim of these reviews should be to set on a formal, open and accountable footing the political leadership within the council, in whatever form is most appropriate to the circumstances of the individual council, so that policy proposals and matters for decision by the council should be subject to open debate, and so that the council may scrutinise the actions of the leadership and hold it to account for its performance. (paragraph 103 [of the report])

14. Councils should give particular consideration to formalising the political leadership as an executive, but should also be able to consider other options. (106, 110)

15. We do not consider that it is necessary at present to legislate to permit delegation to a single councillor nor direct election of a council leader; but we consider that the latter option should be kept in view, in the light of developments which may take place elsewhere in Great Britain. (112, 113)

16. The political parties should review their advice to local parties on the application of the party whip to council business, so as to ensure that it is not applied inappropriately or indiscriminately (123). Councils should incorporate in their standing orders rules to the

effect that where whipping is applied in council business it should be declared at the commencement of the relevant discussions and minuted for public information and record. (124)

17. The reviews should also involve a close and critical examination of the nature, volume and timing of business; all with a view to organising the business so that a wider cross-section of the community could realistically consider taking on the responsibilities of council membership. (128)

18. As part of their general review of their business all councils should produce a job description for members. (131)