

# Scrutiny of the Levelling-Up and Regeneration Bill

## Parliamentary briefing

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### About the Centre for Governance and Scrutiny

CfGS is a charity whose work focusing on promoting and supporting the value of good governance in public services across the UK. CfGS has provided support on governance to a number of local authorities and combined authorities, and works closely with the LGA to foster and spread good practice in ensuring that CA business is transacted in a transparent and accountable manner.

This briefing has been drafted to support ongoing Parliamentary scrutiny of the passage of the Levelling-Up and Regeneration Bill, and wider discussions in the sector on this subject, with a view to influencing and informing national and local action on CA governance. It is informed by Parliamentary scrutiny of the Bill carried out up to September 2022 – in particular, evidence gathered and considered by the Public Bill Committee.

### a. Introduction: the focus, and limits, of the Bill

It has become common for Government to introduce what are known as “skeleton” Bills – primary legislation which provides a framework around which a superstructure of Regulations and statutory guidance will be built.

This brings benefits for Government, in staggering its approach to legislation and in providing more flexibility on detail. But it makes scrutiny more challenging, because at the time of passage of the primary legislation it is often unclear what final form policy will take. For that reason this briefing uses the Bill as a starting point, comparing it against the White Paper and other publicly-available information about Government plans for levelling-up, to produce what we hope is a more holistic picture of the arrangements that the Bill will eventually bring into force.

Our focus in doing so is on governance – recognised by Government as an important part of the levelling-up agenda. In our judgement good governance is a vital component of levelling up, and devolution, because:

- it brings public transparency and legitimacy to new decision-making arrangements,
- it actively helps to improve the design and implementation of services,
- it ensures that decisions more accurately reflect the needs of the public because they have been subject to public scrutiny – either directly or through the medium of elected representatives
- it assists with efficient management and delivery. A system where responsibility is shared, acknowledged and understood – through a collective commitment to learning - is one where decisions can be made well, in the confidence that they will deliver the right outcomes.

## b. Good governance: central to levelling-up

The White Paper devotes significant space to governance, and changes to systems. This is welcome – it recognises that delivery of the levelling-up missions – the cornerstone of Government’s action in this area – hinges on good governance. Action will need to be taken across Government to deliver these missions, requiring central co-ordination and oversight and strong reporting mechanisms in Whitehall and beyond. Responsibility for the missions – and identifying where and how a wide variety of Governmental and non-Governmental activity will be instrumental in their delivery – needs to be clear and consistent. Those responsible need to be held to account for delivery – particularly if mission progress methodology, metrics or target dates change.

At national level this suggest more, and more sustained, Parliamentary oversight activity. The Bill already contains provision for reviews of levelling-up mission statements, and other Parliamentary reports. We think that relevant select committees (LUHC and BEIS, and the PAC) are likely to need to put in place specific, additional, arrangements to assure proper accountability in relation to the missions, particularly given the uniquely complex and long-term nature of their delivery. Otherwise, periodic (and possibly unco-ordinated Parliamentary scrutiny, including the risk of cursory scrutiny of statements on the floor of the House, will serve to limit proper national oversight.

An awareness of the centrality of governance needs to translate from the Bill and White Paper through to the transaction of devolution deals. The devolution framework will need to take an approach to governance which is based not only on expectations around governance structures, but also on the shifts in mindset needed at national and local level for levelling-up to be “delivered”.

We think that there are three important things that the Bill, and subsequent Government action, can do to enhance the profile of governance as a key component of the devolution framework:

1. Opening out dealmaking – drawing in a wider range of people and perspectives by systematising the sequence of events that leads to a deal being agreed and implemented;
2. Providing a strengthened practical role for governance at a local level, in part by providing more powers and more flexibility for local areas to determine the right models and approaches to meet their unique governance needs;

3. Ensuring that central oversight (through Oflog, for example) is therefore proportionate – given that Government benefits from assurance and confidence in the presence of strong local governance systems.

## 1. Opening out dealmaking

CfGS has previously commented on the sometimes opaque process of devolution dealmaking. The Bill, and the development of the devolution framework, provides an ideal to systematise that process, and bring more transparency to it.

In research published in 2017, we highlighted common features of the dealmaking process based on the flurry of negotiations carried out during the 2015-17 Government. We concluded that the general sequence of events was as follows – and that strong local governance around the dealmaking process can help to answer the associated questions:

- Determining the “why”: what is the rationale underpinning a bid for devolution? What is the prize for the area? The sense of place: is the geography right? Is there a common, shared narrative about the future, and about outcomes?
- Clarifying the proposal: are we able to put forward a coherent, consistent proposal to Government?
- Engaging in the negotiation: how is Government provoking us to change our plans? What will we need to do once the deal is agreed to get it implemented?
- Making the deal and securing buy-in: did we get the deal we wanted? How do we secure buy-in and ensure that plans for implementation are robust?
- The design: how can we design detailed governance arrangements which meet the standards in our design principles, as well as knitting together good governance and the delivery of outcomes?
- The implementation and the outcomes: what are the next steps? What do we do to monitoring ongoing performance?

We still think that the opportunity exists to systematise the dealmaking process to make these steps clearer, and to therefore draw a wider range of people in. A broader range of perspectives will mean that proposals and plans, when agreed, will be more robust. We recognise the need for negotiation to be between a tight group of individuals, but the evidence-base on which that negotiation is based – and the extent to which it can be critiqued and challenge – needs to be more broadly based. For now, even if the devolution framework brings some transparency, the process still looks quite opaque.

## 2. A strengthened role for local governance (including overview and scrutiny)

Mayoral combined authorities, and county combined authorities, are required to appoint overview and scrutiny committees. OSCs were originally introduced to local government in 2000 and this local government-based model has been followed for CAs.

At the time of the design of the current CA governance framework, some of the complexities of the practical operations of CA governance were not known. With the benefit of five years’ experience for MCAs, the Bill, subsequent Regulations and statutory guidance provides the perfect opportunity to refine governance systems. For us, this is based on the core principles that:

- CAs are likely to be best placed to make the most accurate, nuanced judgements about what local governance should look like;
- The devolution framework should reflect this;
- A devolution framework based on the strength of local governance will be able to give Government the confidence that its own assurance and oversight systems (through Oflog, or through some other means) can be less resource-intensive.

We think that there are several ways to do this:

- i. Providing for the local design of governance arrangements. Mayors, CA Boards and overview and scrutiny committees should be recognised as having an equal stake in good governance, with the core of the governance framework designed to ensure that they can lead and own that framework in the future. In particular, we think that this involves thinking of national prescription on governance more as providing a menu of options which CAs can select and adopt depending on their needs;
- ii. Providing for flexibility and evolution. As devolution deals iterate and evolve, so should good governance. This is inherent in the devolution framework, but more work will be needed at national and local level to ensure that governance is flexible, while still stable enough to offer certainty;
- iii. Recognising the distinctiveness of combined authority scrutiny. Guidance should highlight how combined authority and local authority scrutiny are different – and additional powers might be provided to CA scrutiny;
- iv. Providing clarity on resourcing expectations for governance and scrutiny;
- v. The need for continued central oversight. This is an inevitable feature of the devolution framework but, as we will note below, we believe that strong local governance will limit the need for broad, sustained oversight from Whitehall.

#### i. Local design and leadership on governance arrangements

Hitherto governance arrangements for CAs have been introduced through bespoke Orders and CA governance schemes. Orders and schemes date to the beginning of the devo process in England (for most areas the 2016/17 period) and were not drafted with the benefit of a practical understanding of the working arrangements between Mayors and CAs.

Experience over the course of the past seven years has demonstrated that in MCAs it is best to see accountability and responsibility, at a local level, working three ways – between the Mayor, the CA Board, and the overview and scrutiny committee. Other partners are involved too of course – but the formal, institutional accountability is delivered through the relationships between these three actors.

This relationship should be reflected in the way that Government proceeds with the development of the devolution framework. Where structure are already in place, governance should be “owned” by these three bodies collectively, within the CA. Where a combined authority is wholly new, the devolution framework should provide local areas with a baseline on which they should build strong, locally relevant, governance systems. Any new governance and oversight system will need to be proportionate – it will need to focus on those areas where it can most obviously add value and make a difference. Local partners are the people best placed to understand what “proportionality” means in a given context.

This will involve removing nationally-mandated expectations for the operation of CA governance – for example, the requirements relating to quoracy, which have caused significant problems (see below), and the requirement to hold meetings in person. Instead, it would involve using the Bill, Regulations and subsequent statutory guidance to provide a “menu” of options, with statutory backing where necessary, from which CAs could choose to develop their own, bespoke, arrangements.

Designing arrangements locally should be a transparent process. The three key partners described above should be able to agree on a balanced model, and make clear how that model would be resourced. This is not allowing – as the Minister warned in debate in Committee – a “potentially transient majority of local authority leaders” to bring about fundamental change to governance unilaterally, but it is about recognising that a nationally-directed governance framework is exactly that, a framework, within which proportionate local discretion, carried out in a measured and transparent way, will ensure that local governance arrangements can stay relevant.

## A menu of options

Centring the governance of devolution on

- Different choices for the electoral system to be used for Mayoral elections. While we note that Government proposes to limit councils to FPTP, CAs should be able to opt to remain with SV, or to adopt other proportional systems;
- Different arrangements for the appointment, and powers, of deputy Mayors (and other Mayoral appointments). The granting of some formal powers to deputies might provide a way of managing a complex and challenging Mayoral workload;
- Different options on the balance between the powers of the Mayor and the powers of the constituent authorities, and the way in which they will work together. This might be provided for through an executive decision-making protocol which would lay out areas where Mayors would lead on decision-making, where consultation and/or agreement of the CA Board might be necessary, and so on;
- Different powers and rules about the establishment, powers and oversight of Mayoral Corporations. The establishment of such structures brings benefits, but also risks around transparency. CAs could provide assurance by adopting models that provide for greater local oversight;
- Different responsibilities and resourcing arrangements for overview and scrutiny – including the possibility of establishing local Public Accounts Committees (see below). This could also include the option of co-opting other individuals onto scrutiny committees, such as MPs.

## Case study: quoracy for CA meetings, and powers for remote meetings

### Quoracy

The governance framework applying to all CAs imposes onerous requirements on CAs for the quoracy of meetings. This has produced real challenge in ensuring that some meetings can go ahead legally.

CAs struggle with quoracy because travelling long distances to attend meetings is onerous for members with a large number of other responsibilities. Not all CAs experience the same challenges, but for some, more than half of recent meetings have either been postponed due to inquoracy, or have gone ahead as “informal” meetings of members – which raises questions about the status of the business those meetings transact.

We recognise that the quoracy requirements exist for a reason – that they are intended to ensure that meetings are seen as credible, and legitimate, because the representatives of a sufficient number of constituent authorities are present. But there are better ways to achieve the same outcome – better work programming and agenda management, for example – and the current system is disproportionate to these aims.

CAs need discretion to set their own quoracy requirements. This is a practical example of how the approach we suggest above could apply in a specific circumstances. For example, a CA with a small number of constituent authorities might keep quoracy requirements as they are. One with a large number of constituent authorities – particularly where those authorities are geographically dispersed in a semi-rural environment – may wish to loosen these restrictions.

This connects closely with the power to convene remote meetings.

### Remote meetings

In 2016 Government consulted on the introduction of remote meetings for combined authorities, and for joint committees. After a lengthy hiatus, the Government produced its findings and response in 2019. Government said,

“the Government is satisfied that, with appropriate safeguards to maintain town hall transparency, there are clear benefits to giving local authorities operating joint committees and combined authorities the ability to hold formal meetings by video conference. Enabling joint committees and combined authorities to hold meetings by video conference will add to town hall transparency, and potentially encourage a greater degree of participation in these meetings which are the cornerstone of local democracy.”

CAs, like other authorities, benefited from the obligation to convene meetings remotely during the pandemic. The proportion of meetings that were quorate increased significantly. Authorities were able to be more flexible in the timing, and management, of meetings.

It was therefore disappointing that Government advised, on the expiry of the powers in emergency legislation to convene meetings remotely, there were no plans to roll those powers over permanently. Government issued a “call for evidence” in summer 2021 on the subject – with the caveat that primary legislation would be needed to put powers in place.

Given that primary legislation in the form of the Bill is currently progressing through Parliament, and that Government has already formally committed to a change in the law on this matter, we consider that the need for action is now urgent. The introduction of a power to convene meetings remotely would give combined authorities the opportunity to be more creative, and responsive to local needs, in how meetings are convened.

Not all CAs would want to convene all meetings remotely as a matter of course. But this power would permit significant flexibility where it is needed.

## ii. Flexibility and evolution

Under devolution in England, councils have been keen to agitate for further powers once the initial deal is done. In itself, this means that the role of the Mayor and combined authority are likely to continue to evolve – and governance will need to evolve with them.

Nobody wants to establish some overarching, complex bureaucracy attached to the Mayor and combined authority. For this reason CAs may wish to innovate, to take governance in different or unexpected directions. The involvement of local people is a case in point; some CAs may in time want to experiment with drawing in local people to the decision-making process as active participants – things like co-design and other models for greater involvement and participation. An effective governance model for CAs would provide the opportunity for this to happen.

## iii. Recognising the distinctiveness of combined authority scrutiny

What has become very clear since 2017 is that combined authority scrutiny needs to be quite different to the model of scrutiny carried out since 2000 in local authorities.

Although the structures are the same – framed around the appointment of politically balanced committees to act as a check and balance on decision-making – it is the different nature of CA decision-making itself which provides the opportunity for CA to think more long-term about the area. While for a local authority the horizon for the planning of services might be two or three years, CAs will be making decisions which will aim to have an impact over the course of a generation – the “missions” in the Bill will cement this long term thinking.

CA scrutiny can play a vital role in connecting this long term vision to immediate action – but to do this, serious thought will need to be given in every area about what this means for work programmes and scrutiny’s priorities. In some areas scrutiny remains “stuck” in a cycle of receiving information and updates on CA activity, rather than carrying out the more probing, forensic activity that it ought to be doing – this is, in part, due to a lack of understanding of the different focus that is needed for CA scrutiny.

## iv. Enhanced powers

CA scrutiny committees might benefit from enhanced powers and responsibilities.

Potential additional powers might include:

- An expectation that certain forthcoming strategies, policies and decisions will be subject to debate and recommendations at scrutiny before being made. Mayors (and CA Boards) are the ultimate decision-makers, but their powers should in the most important decisions be circumscribed by the need to draw in evidence from scrutiny. It could be left to CAs to determine which decisions such requirements should apply to;
- A more formal role in reviewing and overseeing actions taken against the devolution deal, and actions taken against the levelling up “missions”;
- A more formal role in respect of investment and commercial activity. CAs will have project and programme management systems for risk in particular to be managed – but scrutiny could also take on a role here;
- A more formal role around assurance on the CA’s actions in the context of needs relating to equality, diversity and inclusion (as suggested in an opposition amendment tabled during Committee stage).

In some areas, we think there is the appetite to establish local Public Accounts Committees, and we think that powers should exist to allow CAs, and others in the area, to “draw down” the power to do that.

Since 2014 CfGS has sought to promote the idea of local Public Accounts Committees – bodies with powers to follow the “public pound” at a local level, to bring together partners and partnerships and to make assessments about the extent to which public spend overall delivers value for money.

Importantly, local PACs would not be just about CA governance. They are about governance across an area, cutting across institutions. We consider that they cut closely to Government’s wider intentions on levelling up because, like the levelling-up “missions”, local PACs are about wider public services, and wider systems – not just work being carried out by institutions acting alone.

## Local Public Accounts Committees: roles, powers and outcomes

A local PAC would be a body with a responsibility:

“To hold to account the delivery of public services by organisations working together across a locality, and to investigate the value for money of those services.”

In our briefing on the subject (link below) we defined some of the key words in this sentence in more detail.

The local PAC would not look at the day-to-day activities of individual organisations – which have their own, existing governance arrangements. It would however need to be aware of the roles, duties and work of those organisations, using that insight to look at the way these individual organisations interact.

In particular, it would examine the way that VfM is used as a driving force to align the priorities of different bodies delivering public services. There would be an expectation that broader, systemic issues identified through the governance systems of individual organisations might be “escalated” to the PAC.



The PAC could also provide support and advice to those engaged in non-executive activity in the local area. Importantly, a local PAC model would be scalable and sustainable. Its strategic focus would mean that, as more services come under local control (and hence the purview of the PAC), substantial changes to its means of operation would not be necessary.

#### Possible powers

- “Enter and view” – similar to powers held by Local HealthWatch. “Enter and view” is about giving a PAC the right to directly inspect and investigate public services, to speak to those in receipt of those services, and those delivering them. This could come from statute, or from local agreement of the organisations involved. This is about ensuring that a local PAC can cut through official documentation and paperwork and look directly at how services are experienced on the ground, in order to make a more accurate judgment on VfM. It is not about giving the local PAC free rein to adopt an operational approach to its work. However, it does recognise that in order for the PAC to make strategic recommendations that cut across partners and partnerships, a sense of how things work on the ground is needed.
- Rights of access to papers and documents held by any organisation delivering, commissioning or otherwise directing public services in the local area. This right would need to be broadly expressed to be meaningful. These rights could derive from statute, or from local agreement of the organisations involved. They could be expressed as a more general “duty to cooperate” with the work of the local PAC. It would address the issues raised about the sharing of data, going some way to opening up debate about what information is used to support which outcomes locally, and how this allows partners to demonstrate that what they do is VfM.
- Rights to require people to attend and answer questions. This right would need to be carefully expressed and proportionately applied. The focus of evidence-gathering sessions in public – to which witnesses would presumably be invited – would need to be on partnership issues and their intersection with VfM, rather than specific service issues.
- A power to require a specified response to recommendations. The power to make recommendations is shared with local overview and scrutiny, and Parliamentary select committees. Such a power could be given to a local PAC, enhanced by providing additional powers to require updates on the implementation of recommendations six months or a year after they are accepted. As a general rule, the right for the local PAC to specify the form in which a response to a recommendation is made would mean that a duty to give reasons for rejecting a recommendation could be imposed.
- A specific audit function. We does not propose that a local PAC might undertake an “area-wide” audit – it would be counter-productive and costly. However, the PAC could review the outcome of audit exercises, review associated risks, identify instances where risks are shared, and make recommendations accordingly. Of course, the specific legal and financial duties of auditors – and the intersection of those roles with that

of a local PAC – deserve more investigation. The nature of formal audit duties and responsibilities mean that these powers could only be conferred onto local PACs by statute, although there is conceivably a role that the PAC could perform of audit oversight.

- Sanctions. The presence of sanctions for non-compliance with a local PAC's requests (further to the above powers) is potentially contentious. It would be important for a PAC to be able to enforce its wishes but beyond the use of judicial review by the PAC to bring about this enforcement, it is difficult to see that a formal sanctioning power could be effectively drafted or used. Potentially, sanctions could be attached to any formal audit function.

More information can be found at <http://cfgs.org.uk/wp-content/uploads/CfPS-Local-Public-Accounts-Committees-v3.pdf>

#### v. Resourcing expectations for scrutiny and governance

While this may not necessarily be something for national prescription, we think that the need for meaningful resources to be put in place for local governance is an important part of making it work.

On establishment, the expectation (in some areas at least) was that CAs would be lean, streamlined organisations with very few employees. CAs are bigger organisations than expected – necessitated by the wide range of work that they do and the range of responsibilities that they hold. The oversight and management of this work requires well-resourced governance systems.

We have already noted that any local agreement on the model of governance to be followed would need to be accompanied by a statement setting out how governance will be resourced.

### 3. Proportionate continued central oversight

Government is keen that the devolution framework places front and centre the idea of accountability to Government. CAs will be responsible to Government for delivery against the deal. In order to manage this process, Government is establishing Oflog (the Office for Local Government) which will have a role in data collection and analysis, supporting a more holistic understanding of the way that CAs are delivering their agreed responsibilities.

However, more detail is needed on how Government proposes to use that information – and how it will ensure that this collection activity does not duplicate the collection of information by others. The sector already has a mature data and practice-sharing system in place, anchored in systems such as the LGA's LG Inform system, the Knowledge Hub and CIPFA's data and analytics services. Government will need to be clear how Oflog will augment the data these, and other, bodies collect – and how that data will then be used both locally and nationally.

Setting out in primary legislation the ultimate purpose of this body, and then going into more detail about its ways of working in both Regulations and statutory guidance, will help in ensuring that its role is consistently understood. We would agree with the view of

MPs and witnesses at the Public Bill Committee that independent scrutiny is a critical part of the system – it is perhaps the case that bringing greater independence to the role of Oflog would help to assuage concerns about a lack of accountability at a national level.

Without this, there is the risk that Oflog will shift assumptions about where accountability ultimately lies for delivery away from local people, and the local electorate, and towards Whitehall. There is nothing intrinsically wrong (as we note elsewhere) with Whitehall having a stake in the accountability framework for devolution – indeed this is inherent in the dealmaking process. But the risk in establishing national oversight of this nature is that it raises the expectation that Government will need to, and be able to, maintain a continual watching brief over the internal systems, and decision-making, of all CAs. This feels unreasonable, and is a reason why we consider that a strengthening of local governance is more important. We do recognise that – designed well – Oflog will be able to perform a valuable role in the context of this local accountability.

We note that discussion at the Public Bill Committee on scrutiny and accountability focused on accountability centrally, and in particular accountability to Parliament. We think it would be a positive step for Parliamentary select committees to have regard to the success or otherwise in delivering the levelling up “missions”, and the implementation and outcome of devolution deals.

In designing Parliamentary scrutiny, MPs and others should have regard to the experience of the operation of Regional Select Committees in the latter period of the 2005–2010 Parliament. These bodies were not seen as particularly effective, in part (in our view) because their role, and function, as part of the governance framework for sub-regional policy-making was not clear. Any national accountability exerted through Parliament will need to have a clear focus and role, which where possible aligns with the role of CA scrutiny committees.

### c. The mechanics of making changes to the governance framework in the Bill, and subsequently

We recognise that there may not be appetite, from Government, to make additions to the face of the Bill. There may be preference for providing additional detail through Regulations. Whatever the approach, we think that the following needs to be pursued:

- Providing for the content of the devolution framework through primary or secondary legislation. In our view guidance, even statutory guidance, will not provide the necessary certainty or transparency at either national or local level. Where necessary some of the governance options available to CAs would need to be provided for in primary or secondary legislation too;
- The framework should centre on meaningful negotiation between central and local government, framed around the overarching needs of the levelling-up “missions”, but deferring to local politicians’ assessments of local needs and priorities in other respects;
- The framework should follow the sequence that we set out in more detail below, which was based on detailed research on the dealmaking process as it operated between 2015 and 2017. In particular, we think that the devolution framework

should be framed around giving CAs a menu of options on governance, with the right option or options to be locally determined. There would be a formal process for this, to provide assurance;

- Oflog's role should be clearly specified in primary legislation;
- Legislation should provide for a more permissive approach to the options available to councils on local accountability – providing more flexibility on remote meetings, quoracy and the availability to CAs of models such as local public accounts committees.