

Sustainable Communities Act – Response to consultation on statutory guidance

12 May 2008



Response from the Local Government Association to CLG consultation on Draft Regulations and Guidance on the Sustainable Communities Act 2007

1. The LGA welcomes the opportunity to comment on draft regulations and guidance on the Sustainable Communities Act, as published by CLG in January 2008. The LGA supports the objectives of the Act, and its underlying principle that local people know best what needs to be done to promote the sustainability of their area.

Consultation question 1 – the approach to regulations and guidance

2. The LGA welcomes the fact that the draft guidance is light-touch and non-prescriptive, allowing flexibility to local people and their elected representatives in implementing the detail of the legislation.

3. The Act provides for a 'selector' body, to consider and short-list proposals made under the Act. The LGA has agreed to take on this role. The draft guidance proposes that the details of the role should not be set in stone through Regulations, and the LGA supports this approach. Discussions to agree arrangements for carrying out the selector role are continuing between the LGA and CLG.

4. In terms of the proposed timetable for implementation of the legislation, the LGA has concerns over the planned date for publication of Local Spending Reports. The sponsors of the Bill envisaged these statements as contributing an integral element of the proposals which could be made under the Act. These statements of public spending in the area also have great potential to contribute to public awareness and empowerment, including extending the scope of participatory budgeting, supported by the Secretary of State. LGA also sees these reports as an important feature of the Act (and of the wider agenda of increased devolution and local autonomy) and questions why publication need be delayed until April 2009 (six months after the first invitation for SCA proposals). The LGA believes it is essential that publication of the statements takes place in autumn 2008, linked to the invitation for SCA proposals, and is willing to work closely with CLG to achieve earlier implementation

Consultation question 2 – alignment between the Sustainable Communities Act and the Local Government and Public Involvement in Health Act 2007

5. The LGA supports such alignment, and agrees with the proposal to publish final statutory guidance on both acts as a single unified document.

6. This final guidance could usefully encourage councils to take practical steps to align the processes and consultation mechanisms used at local level to draw up Sustainable Community Strategies and local area agreements, with those introduced for the Sustainable Communities Act. The annual process of LAA review will provide opportunities for local people, working with councils and LSP partner agencies, to generate new propositions under the SCA.

7. It will be essential to ensure consistency between the two Acts, in terms of statutory definitions of e.g. 'representatives of local persons'.

submission

Local Government House, Smith Square, London SW1P 3HZ
DX 119450 Clerkenwell 3 Email info@lga.gov.uk
Tel 020 7664 3000 Fax 020 7664 3030
Information centre 020 7664 3131 www.lga.gov.uk

Consultation question 3 – further comments on consultation document

8. The LGA has a number of detailed comments, as set out below, on the Annex 2 Draft Guidance and on Annex 3 (paragraph numbering refers to the CLG draft):

9. The definition of 'local persons' is intentionally broad and the LGA supports the principle that this should include those who work in, or visit an area, as well as those who reside there (para f)

10. The guidance recognises (para i) that local authorities will have already established a range of panels and/or consultative bodies, as part of their arrangements for consulting local people on priorities and existing statutory processes for preparing sustainable community strategies, local development frameworks, and local area agreements. It is helpful that the new requirements under the SCA to constitute one or more 'panels of representatives of local persons' can be met either by establishing new panels, or by 'recognising' existing arrangements that meet the requirements of the SCA, or by a combination of the two. (The use of the singular 'panel' in the draft regulations needs to be reconsidered in this light).

11. It seems likely that many councils will choose the latter route, in using a wide range of existing local bodies as a means of generating ideas and potential proposals under the Act, while also establishing a new panel to take a view on those to be advanced to the stage of formal sponsorship and onward submission via the local authority to the LGA as national 'selector'.

12. In such circumstances, it would be helpful if the final guidance clarified whether the new provisions of the SCA in relation to '*panels*', and to definitions of '*representatives of local persons*' and '*under-represented groups*' will apply to each and every local body which may, at some time, discuss an idea as a possible proposal under the SCA, or only to a more formalised 'SCA panel' which considers proposals at a later stage? For reasons of simple practicality, the LGA would argue for the latter. Paragraphs (c) and (d) of the current draft could be read to suggest the former.

13. If the new provisions of the SCA are to apply only to panels established or formally 'recognised' under the Act, this should not be seen as excluding other local bodies from ever discussing potential SCA proposals. In practice, partnership bodies within the LSP family, council scrutiny meetings, or neighbourhood forums of varying kinds, may all come up with ideas and suggestions for subsequent development under the Act. Councils will have an option to 'recognise' such bodies for SCA purposes (with consequential requirements on representativeness), or of channelling such suggestions through a separately established SCA panel.

14. The definition of '*representative of local persons*' (para k) uses slightly different wording to that proposed in the draft guidance *Creating Strong, Safe and Prosperous Communities* (at para 2.16). The two definitions need to be aligned in the final merged publication. The LGA would argue that the version in the SCA draft guidance is preferable, and has previously raised concerns that the version in the Local Government and Public Involvement in Health Act draft guidance could be read as suggesting that formally elected or nominated members of the community (such as councillors, or elected office holders in community organisations) are excluded from the definition.

15. The proposed definition of '*under-represented groups*' (para l) may well raise new issues. Local authorities have wide experience in trying to ensure that their consultation processes draw in all sections of their communities, and in accessing the views of 'hard to reach' groups. But legislating for such activity is by nature difficult. Individual citizens pursuing a specific cause, single-issue pressure groups, or political parties at the extremes of the spectrum, may all argue that they are 'under-represented in civic and political activity'. How far should (and realistically, can) local authorities be expected to take extra steps to ensure that all such views influence the choice of proposals to be progressed under the SCA?

16. Regulation 3, as drafted, makes clear that these provisions of the Act should apply to those local persons who 'in the opinion of the local authority' are under-represented in civic and political activity in the authority's area. The LGA supports this locally devolved approach to interpretation, albeit that it creates a situation in which a 'representative' body (i.e. the

local council) is acting as final arbiter of what constitutes 'under-representation'.

17. The LGA also supports the requirement in the guidance that any opinion which a local authority holds in this regard will need to be 'reasonable', as being in line with the existing statutory framework for local government decision-making.

18. Propositions coming forward under the SCA may well involve conflicting or competing public interests, on planning, environmental, or other issues. In determining SCA proposals to go forward to the national selector, local representative democracy will (as ever) be required to balance potential benefits for some sections of their community with potential adverse consequences for others.

19. The final guidance could usefully highlight this fact, with a reminder that local authorities are responsible for wellbeing of their community as a whole. It should also be understood that in practical terms (as local authorities know from long experience of consultation and community engagement), it is not feasible to ensure the participation of every conceivable interest group on every possible issue for discussion.

Annex 3

20. In annex 3, paragraph 3 explains the limitations of the wellbeing power. The phrase 'does not involve raising money' is inaccurately worded and could be refined to make clear that charging, cost recovery, and incidental income-generation (as opposed to tax-raising) are legitimate under 2000 Act powers.

21. The final SCA guidance could usefully make clear an expectation on local councils to consider the scope of their own well-being powers, when considering proposals that have come forward from local people under the SCA. In determining a final national shortlist for the Secretary of State, there would be little merit in the LGA sponsoring proposals that are already within the powers of local government to deliver.

Transfer of functions (Annex 3 section 2 paras 6 and 7)

22. Proposals to transfer functions from one body to another may well prove to be a popular form of SCA proposal. As local area agreements and MAAs develop, and as the Sub National Review takes effect, local people should gain a greater understanding of who does what in the delivery of public services, and how matters might be improved in terms of economy and effectiveness. This section needs an explicit statement which links the public spending statements to the scope to propose transfers of functions (similar to that which occurs in paragraph 24).

23. There is a low level of public understanding as to the extent to which functions can be transferred between governmental bodies without primary legislation. Local authority functions are fixed in very detailed and comprehensive legislation, whereas fundamental changes can be made to the machinery of central government, and to the functions of Government Departments, through instant executive action. The position on the NDPBs and Government agencies, and skills, welfare, health and policing appears to lie somewhere in between.

24. For local people to come forward with viable propositions for change, it would help to achieve wider public awareness of the way in which the functional responsibilities of different layers and sectors of government are determined, and the scope for adjustment. Such information could be developed and disseminated alongside the SCA local spending reports, and would contribute to the *Governance of Britain* agenda

Matters in the Schedule (Section 2 para 8)

25. Local Authorities are to be required to 'have regard' to matters specified in the Schedule to the Act, when considering proposals under the Act. Given the specific and detailed nature of many of these matters, and potential additional workloads generated for local authorities, it would be helpful for the guidance to make clear that -

- not each and every SCA proposal must be assessed and considered against every 'matter' in the schedule. Only those matters relevant to the proposal in question should be considered.
- normal principles of proportionality and reasonableness apply, when local authorities are undertaking the work of assessing and determining SCA proposals
- normal administrative principles and practices apply for minuting and recording decisions and reporting these to the public.

Timing of invitations under SCA

26. Given the requirement for an annual report to Parliament by the Secretary of State (para 13) the LGA would favour an annual cycle of invitations for SCA proposals (para 9). It may prove possible to link this with a suitable stage in the annual cycle for reviewing and updating Local Area Agreements, which might help local councils, and local residents, in making best use of local consultation activity.

Local Spending Reports (Section 6)

27. As stated above, the LGA sees these reports as an important part of the Act and is keen to work closely with CLG to achieve earlier implementation so as to enable the public to use information on public expenditure patterns within their area, as a spur to SCA proposals. We would like to see commitment to autumn 2008 publication, in a published timetable.

28. The preparation and publication of Local Spending Reports has close links local area agreements (LAAs) and MAAs. Local Strategic Partnerships already seek to gain an overview of the totality of public spending in their area, and the publication by Government of a standardised set of reports, with common definitions of local as opposed to national spending would accelerate and reinforce their efforts.

29. The LGA favours early discussion and agreement on the scope and coverage of such reports, to determine which spending streams will be considered as sufficiently geographically specific for inclusion (para 25). The LGA would also support alignment with Audit Commission work and publication of area profiles, building on existing routes through which the general public access this type of information.

Consultation Question 4 – further information needed?

30. Communication and awareness-raising on the workings of the Act will be essential to its success, and there will doubtless be further questions raised as implementation proceeds. But the LGA supports the view that statutory regulations and guidance should be limited to the essential features of the legislation, and kept brief and light-touch.

31. The LGA will be continuing to work with CLG, and with the coalition of organisations which sponsored the Bill through Parliament, in developing communications material and best practice guidance.