

**2012 No. 1022**

**LOCAL GOVERNMENT, ENGLAND**

**The Overview and Scrutiny (Reference by Councillors)  
(Excluded Matters) (England) Order 2012**

<i>Made</i> - - - -	<i>30th March 2012</i>
<i>Laid before Parliament</i>	<i>10th April 2012</i>
<i>Coming into force</i> - -	<i>4th May 2012</i>

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by sections 9FC(5) and 105 of the Local Government Act 2000(a), makes the following Order.

**Citation and commencement**

1. This Order may be cited as the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012 and comes into force on 4th May 2012.

**Interpretation**

2. In this Order—

“enactment” includes subordinate legislation;

“licensing decision” means—

(a) any decision in relation to—

(i) an application for the authorisation within the meaning of section 2 of the Licensing Act 2003(b); or

(ii) a request for a review of any such decision; or

(b) any enforcement decision made under that Act or subordinate legislation made under that Act;

“the Planning Acts” means—

(a) the Town and Country Planning Act 1990(c);

(b) the Planning (Listed Buildings and Conservation Areas) Act 1990(d);

(c) the Planning (Hazardous Substances) Act 1990(e); and

(d) the Planning Act 2008(f);

---

(a) 2000 c.22. Section 9FC was inserted into the Local Government Act 2000 by section 21 of, and Schedule 2 to, the Localism Act 2011 (c.20).

(b) 2003 c.17.

(c) 1990 c.8.

(d) 1990 c.9.

(e) 1990 c.10.

(f) 2008 c.29.

“planning decision” means—

- (a) any decision on an application under the Planning Acts or subordinate legislation made under those Acts for any agreement, approval, consent or permission; or
- (b) any enforcement decision relating to any development within the meaning of those Acts; and

“right of recourse to a review” does not include any right to make a complaint to the Commission for Local Administration pursuant to the Local Government Act 1974(a).

### **Excluded matters**

3. Subject to article 4, the descriptions of matters specified as excluded matters for the purposes of section 9FC of the Local Government Act 2000 are—

- (a) any matter relating to a planning decision;
- (b) any matter relating to a licensing decision;
- (c) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment;
- (d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

### **Systemic failure in discharge of functions not an excluded matter**

4.—(1) A matter does not fall within a description in article 3(a) to (c) if it consists of an allegation that a function for which the authority is responsible has not been discharged at all or that its discharge has failed or is failing on a systemic basis.

(2) Paragraph (1) applies notwithstanding the fact that the allegation specifies or refers to—

- (a) any matter relating to a planning decision;
- (b) any matter relating to a licensing decision; or
- (c) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment.

### **Revocation**

5. The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 is revoked(b).

Signed by authority of the Secretary of State for Communities and Local Government

30th March 2012

*Andrew Stunell*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 9FC(1)(c) of the Local Government Act 2000 (inserted by section 21 of, and Schedule 2 to, the Localism Act 2011) requires the executive arrangements of a local authority in England to include provision enabling those of its members who are not members of the overview and

---

(a) 1974 c.7.  
(b) S.I. 2008/3261.

scrutiny committee to refer to that committee any matter relevant to the committee's functions, which is not an excluded matter.

Section 9FC(5) defines "excluded matter" as a matter which is a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 or a matter of any description specified in an order made by the Secretary of State for the purposes of section 9FC.

This Order specifies descriptions of matters that are excluded matters for the purposes of section 9FC and therefore cannot be referred to an overview and scrutiny committee by a member of the authority who is not also a member of the committee (article 3).

Article 4 provides that a matter which consists of an allegation of systemic failure of an authority to discharge a function for which the authority is responsible may be referred to an overview and scrutiny committee, notwithstanding the fact that the allegation specifies matters which would otherwise be excluded by virtue of article 3.

A full impact assessment has not been produced for this Order as no impact on the private or voluntary sectors is foreseen.

---

© Crown copyright 2012

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

---

STATUTORY INSTRUMENTS

---

**2012 No. 1022**

**LOCAL GOVERNMENT, ENGLAND**

The Overview and Scrutiny (Reference by Councillors)  
(Excluded Matters) (England) Order 2012

£4.00

E3196 04/2012 123196T 19585

ISBN 978-0-11-152341-4



9 780111 523414