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STATUTORY INSTRUMENTS

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**2008 No. 3261**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008**

<i>Made</i>	- - - -	<i>18th December 2008</i>
<i>Laid before Parliament</i>		<i>30th December 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2009</i>

The Secretary of State, in exercise of the powers conferred by section 21A(11) of the Local Government Act 2000(1), makes the following Order:

**Citation, commencement, application and interpretation**

1.—(1) This Order may be cited as the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 and shall come into force on 1st April 2009.

(2) This Order is made for the purposes of section 21A of the Local Government Act 2000 and applies in England only.

(3) In this Order—

“the Act” means the Local Government Act 2000;

“enactment” includes subordinate legislation;

“licensing decision” means—

(a) any decision in relation to—

(i) an application for any authorisation within the meaning of section 2 of the Licensing Act 2003(2), 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 the Town and Country Planning Act 1990 (3), the Planning (Listed Building and Conservation Areas) Act 1990(4), the Planning (Hazardous Substances) Act 1990(5) and the Planning Act 2008(6);

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(1) 2000 c. 22. Section 21A was inserted by section 119 of the Local Government and Public Involvement in Health Act 2007 (c.28).

(2) 2003 c. 17.

(3) 1990 c. 8.

“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<sup>(7)</sup>; 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<sup>(8)</sup>.

### **Excluded matters**

2. Subject to article 3, the descriptions of matter specified for the purposes of the definition of “local government matter” within the meaning of section 21A of the Act are—

- (a) any matter relating to a planning decision;
- (b) any matter relating to a licensing decision;
- (c) any matter relating to an individual or entity in respect of which that individual or entity 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.

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

3. A matter does not fall within a description in article 2(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 systematic basis, notwithstanding the fact that the allegation specifies or refers to a planning decision, a licensing decision or a matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to review or right of appeal conferred by or under any enactment.

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

*John Healey*  
Minister of State  
Department for Communities and Local  
Government

18th December 2008

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(4) 1990 c.9.  
(5) 1990 c.10.  
(6) 2008 c. 29.  
(7) “Development” is defined in section 55 of the Town and Country Planning Act 1990 and is used with the same meaning in the other Planning Acts.  
(8) 1974 c. 7.

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## EXPLANATORY NOTE

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

Section 21A(1)(c) of the Local Government Act 2000 (inserted by section 119 of the Local Government and Public Involvement in Health Act 2007) requires the executive arrangements of a local authority in England to include provision enabling those of its members who are not members of the authority's overview and scrutiny committee to refer to that committee any "local government matter" relevant to the committee's functions. A "local government matter" is defined in section 21A(10), in relation to a member of a local authority, as a matter which relates to the discharge of any function of the authority, affects all or part of the electoral area for which the member is elected or any person who lives or works in that area, and is not an "excluded matter".

Section 21A(11) 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 (c.48) or a matter of any description specified in an order made by the Secretary of State for the purposes of section 21A.

This Order specifies descriptions of matters that are not to be local government matters for the purposes of section 21A.

The effect of article 2 of the Order is that a member of an English local authority may not refer to the authority's overview and scrutiny committee any matter relating to a licensing decision or a planning decision (both defined in article 1(3)); a matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Commission for Local Administration – commonly known as the Local Government Ombudsman); or a matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of an overview and scrutiny committee or any of its sub-committees.

Article 3 provides that a matter which consists of an allegation of systematic 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 2.