Wednesday 1st July 2015

Dear Lady Williams,

I am writing from the News Media Association, the voice of local and national news media in the UK. The NMA exists to promote the interests of news media publishers to government, regulatory authorities, industry bodies and other organisations whose work affects the industry. I write because I am concerned that there are aspects of the Cities and Local Government Devolution Bill that could be used to curtail the rights of the press and the public to access local authority meetings and related documents. These rights underpin local democracy by ensuring that citizens are informed and included in the decision-making process.

In your response to Lord Shipley and Lord Storey's amendment (42A) on press and public access rights, I was pleased that you stressed that the Government intends to apply to the new authorities the openness provisions of the Local Government Act 1972 and subsequent regulations on access to meetings, documents, agendas and the right to film and blog proceedings.

However, given the importance of these rights, I would urge you to put that commitment on the face of the bill as this is the best guarantee that these rights will not be diluted or disapplied in the secondary legislation that sets out in detail the governance arrangements of the new authorities. There is a strong emphasis in the bill and in the Government's pronouncements around it on allowing councils to streamline their governance and to expand their autonomy. We do not want the omission of any mention of press and public access rights to be interpreted as a sign that authorities may dispense with or curtail these rights as part of that streamlining process.

Equally, it ought to be clear that the duty to meet in public applies rigorously to decision-making by the mayor and deputy mayor and also to those they appoint to perform mayoral functions so that we do not see a drift towards decisions being made behind closed doors and outside of the scope of the 1972 Act. This concern was also expressed by Lord Shipley on Monday's debate: "My Lords, can the Minister explain what the Government plan to do if all the members of a combined authority are members of the same political party and hold informal pre-meetings prior to the meeting of the combined authority which is being held in public? Let us say that the meeting of the combined authority ends up being a short meeting and the private meeting beforehand ends up being a long one." You said that nothing would be done to address this.

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This worrying gap makes the role of oversight and scrutiny committees all the more important, yet the appointment of these is discretionary. We also have major concerns about the enabling power in Schedule 3 of the bill that would allow the Secretary of State to make orders on what cannot be disclosed to the oversight and scrutiny committee and what the committees themselves cannot publish (Schedule 3 paragraph 3 (2) (f) & (g) and para 3 (5)):

3 (1) The Secretary of State may by order make further provision about overview and scrutiny committees of a combined authority.
(2) Provision under sub-paragraph (1) may in particular include provision –
….
(f) about the publication of reports, recommendations or responses;
(g) about information which must, or must not be disclosed to an overview and scrutiny committee (whether by members of the authority or by other persons).
…
(5) Provisions under sub-paragraph (2)(f) may include provision for descriptions of confidential or exempt information to be excluded from the publication or reports, recommendations or responses.

This is a very broad power, with no limits or principles that must be adhered to in exercising it. The term "information" is extremely broad as well and could potentially extend beyond the non-disclosure of a specific report but to withholding from an oversight and scrutiny committee the fact that a decision has been made at all.

When these concerns were raised in the House by Lord Shipley, you said that the provision will "ensure that there is flexibility to decide which information can be appropriately disclosed or must be discussed. For example, certain information may be commercially confidential or contain sensitive personal information."

The power in the bill goes far wider than that and in any case the public can already be excluded if a meeting and its related documents creates a possibility of publishing confidential information under the 1972 Act, which the bill does stipulate governs the oversight and scrutiny committees. Under Schedule 12A of the 1972 Act, councillors also have a discretion to go into private session to prevent making public information raising a wide range of other issues, from legal privilege to financial information about an individual. If preventing those sorts of disclosures is the object of the power, then it is superfluous and covered elsewhere. As such it cannot be a justification for introducing a sweeping new power that could be used to suppress the publication of anything that a minister, mayor, or official might find embarrassing. Scandals and public service failure would be easy to cover up.

I would also be grateful for any clarity you can provide on who would exercise the power to block disclosure under these orders. Would it be the Secretary of State, or the mayor? Would the rest of the council have a say? Would officials be able to make the decision? Would there be a duty to notify the public that disclosure has been prevented and would there be a swift, inexpensive means by which the public could challenge these decisions?

I would welcome an opportunity for consultation on any draft orders and related material to be put forward under these provisions. We would be happy to meet with you to discuss the Government's position and our concerns.

Yours sincerely,

Lucy Gill

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Legal, Policy and Regulatory Affairs Advisor