

PART 4

SECTION 43

*OVERVIEW AND
SCRUTINY
PROCEDURE RULES
AND TERMS OF
REFERENCE*

1. THE SCRUTINY COMMITTEE

- 1.1 The Council's overview and scrutiny functions will be undertaken on behalf of the Council by the Scrutiny Committee as the Council considers appropriate.
- 1.2 The responsibilities of the Scrutiny Committee are detailed in Section 6.
- 1.3 The Council shall appoint a Scrutiny Committee to :
- (i) provide an effective mechanism for scrutinising executive decisions using the call-in process and undertaking fundamental reviews and reviewing health provision for the District;
 - (ii) as it considers necessary to provide an effective mechanism for scrutinising and reviewing current policies and make recommendations to Council, Cabinet or other Committees as appropriate; and
 - (iii) performance manage the Council's Corporate Improvement Priority Development Plans ('PDP').
- 1.4 Where the Scrutiny Committee identifies the need to appoint sub-committees, it may recommend to Council to do so provided that it has consulted with interested parties, if appropriate.
- 1.5 The Scrutiny Committee may set up panels to undertake reviews of specific issues, which fall within their terms of reference. These panels will be time-limited to the duration of the review.
- 1.6 The Scrutiny Committee may set up working groups as they consider appropriate to investigate and report back on issues.

2. CO-OPTees

- 2.1 The Scrutiny Committee shall be entitled to appoint individuals and/or representatives of organisations as non-voting co-optees, unless there is a statutory power for them to vote.

3. MEETINGS OF THE SCRUTINY COMMITTEE

- 3.1 The meetings of the Scrutiny Committee will be held generally every three months. The Chairman of the Scrutiny Committee does not have the discretion to convene additional meetings unless required to deal with 'call-ins' as referred to in this Section.

3.2 The meetings of any time-limited panels or working groups will be convened as their work programme requires.

3.3 The Chairman of the Scrutiny Committee shall have discretion to convene additional meetings as the work programme requires.

4. WORK PROGRAMME

4.1 The work programme of the Scrutiny Committee will be determined by the Committee having regard to the Council's Performance Management Framework and in consultation with other stakeholders, including representatives from partner organisations which will include health reviews (as considered appropriate).

5. MATTERS WITHIN THE REMIT OF MORE THAN ONE POLICY COMMITTEE

5.1 Where a matter for consideration by a Policy Development Committee also falls within the remit of one or more other Committees, the decision as to which Committee will consider it will be resolved at a meeting of the Chairmen of the Policy Development Committees.

6. AGENDA ITEMS

6.1 Any overview and scrutiny member who wishes to do so may request that an item be included on an agenda for consideration at a future meeting of the relevant committee or Policy Development Committee, even if the member making that request is not a member of the relevant committee. If the requesting member is not a member of the relevant committee, the Chairman may invite that requesting member to address the committee.

6.2 Such requests must be in writing and received by the Chief Executive at least 7 working days prior to the date of the meeting at which the matter is to be considered, with a copy of the letter being forwarded by the Chief Executive to the Chairman of the appropriate Committee.

7. POLICY REVIEW AND DEVELOPMENT – THE POLICY DEVELOPMENT COMMITTEES

7.1 In relation to the development of the Council's approach to other matters not forming part of the process for adopting its policy and budget framework, the Policy Development Committees may make proposals to the Cabinet so far as they relate to matters falling within their terms of reference.

7.2 The Policy Development Committee shall not act as a Scrutiny Committee.

8. REPORTS FROM SCRUTINY AND/OR POLICY DEVELOPMENT COMMITTEES

8.1 When the Scrutiny Committee or Policy Development Committees have considered a matter and reached a conclusion they will prepare a formal report and submit it to the Cabinet, Scrutiny or other Committee as appropriate. The Scrutiny Committee can submit a report to Council if it considers it appropriate.

8.2 Once a report has been prepared for consideration, it shall be considered by Cabinet or the appropriate committee as soon as practicably possible. If for any reason there is an undue delay it will be referred to Council for review. The Chief Executive will call a Council meeting to consider the report and make an appropriate recommendation.

8.3 On consideration of the report by Cabinet, if it is determined that the recommendations would require a departure from or a change to the agreed budget and policy framework, Cabinet will refer its recommendations to Council for consideration.

9. ATTENDANCE OF CABINET MEMBERS AND LEAD OFFICERS

9.1 Although members of the Cabinet cannot be members of the Scrutiny Committee they may be invited by the Chairman of the committee to attend meetings and speak but not vote. Cabinet Members may be members of Policy Development Committees.

9.2 As well as reviewing performance and policies, in fulfilling the overview and scrutiny role, the Scrutiny Committee may require any member of the Cabinet, the head of paid service, any director¹ and/or head of service to attend before it to explain in relation to matters within their remit:

- (i) any particular decision or series of decisions;
- (ii) the extent to which the actions taken implement Council policy; and/or
- (iii) the performance of the service delivered

and it is the duty of those persons to attend if so required.

9.3 Where any member or officer is required to attend a Scrutiny Committee under this provision, the chairman of that committee will inform the Chief Executive. The Chief Executive shall inform the member or lead officer in writing giving at least 10 calendar days notice of the meeting at which he/she is required to attend. The notice will state

the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the person who has been called to attend will be given sufficient notice to allow for preparation of that documentation and its circulation at least 5 clear working days before the meeting.

- 9.4 Where the member or lead officer is unable to attend on the required date, then the Chairman of the Scrutiny Committee shall in consultation with that member or lead officer arrange an alternative date for attendance.

10. ATTENDANCE BY OTHERS

- 10.1 The Scrutiny Committee and its panels/working groups may invite (and exercise its statutory powers (as available) and require) other people, external to the organisation, such as residents, stakeholders and members, officers and employees from other public sector organisations, to discuss issues of local concern and/or answer questions.

11. LIAISON WITH CABINET

- 11.1 Liaison meetings will be held between the Cabinet and the Chairman of the Scrutiny Committee as a means of facilitating communication between the Cabinet and Scrutiny members, as necessary.

12. THE CALL-IN PROCEDURE

- 12.1 A key function of Scrutiny Committee is to hold the Executive to account for the discharge of its functions. This can have four principal elements: -

- (i) Scrutinising Executive decisions before they are implemented;
- (ii) Scrutinising decisions after they have been implemented; and
- (iii) Reviewing the performance of the Executive.

- 12.2 The 'call-in' mechanism may be used to review the decisions of the Cabinet prior to implementation. Call-in should only be used where Members have evidence which suggests that the Cabinet did not take the decision in accordance with the following principles, set out in Section 15 (Decision Making):

- (i) Proportionality (i.e. the action must be appropriate to the desired outcome).
- (ii) Due consultation and the taking of professional advice.
- (iii) A presumption in favour of openness.
- (iv) Respect for human rights.
- (v) Explain what options were considered.

- (vi) Giving reasons for the decision.

12.3 The Statutory Guidance requires local authorities to make provision in their executive arrangements:

- (i) To ensure that there is an appropriate balance between effectively holding the executive to account, being able to question decisions before they are implemented and allowing effective and efficient decision making by the executive within the Policy Framework and Budget;
- (ii) To ensure that any call-in procedure is not abused or used unduly to delay decisions or slow down the process of decision making; and
- (iii) To develop local conventions and protocols to prevent abuse of Scrutiny Committee's powers to recommend that decisions made, but not yet implemented, be reconsidered.

12.4 In order to meet these requirements the Council adopts the following procedure:

- (i) The Cabinet (Executive) publishes within 5 calendar days decisions made at a Cabinet meeting. There is then a period of 7 calendar days during which decisions can be subject to call-in.
- (ii) To call-in a decision five Members, none of whom are Cabinet Members, must complete and return forms requesting and supporting the request for a decision to be called in, within 7 calendar days after the publication of the decision. The request for call-in must clearly state the reason for the call-in, explaining why it is considered that the Cabinet did not take the decision in accordance with either or all of the principles outlined above. The call-in form should also present a motion which will be proposed at the Scrutiny Committee.
- (iii) The Chief Executive is responsible for notifying the appropriate Director to ensure that all action to implement a decision subject to call-in is suspended and that the decision is not implemented for the duration of the call-in. The matter is then referred to Scrutiny Committee for consideration.
- (iv) A meeting of the Scrutiny Committee is to be held within 20 working days from the end of the call-in period. A report will be prepared by the appropriate Director (which identifies those Members who have made and support the call-in), containing the original Cabinet report and an extract from the Cabinet Minute.
- (v) Arrangements will be made by the Chief Executive to invite to the Scrutiny Committee those persons who the person requesting the call-in wishes to be present (as specified on the call-in form) such as the Cabinet Portfolio Leader(s), appropriate employees of the Council etc. On occasions, other people, such as

representatives from other organisations and members of the public, may be invited to attend to provide the Scrutiny Committee with information.

12.5 The procedure for debating the call-in at the meeting will be as follows:

- (i) The Proposer of the call-in shall read their motion and give a brief reason for the call-in. There will be no Secunder required at this stage.

(If at the meeting (or any adjourned meeting) the proposer of the call-in is not present, one of the five Members who supported the request for the call-in may stand in as the proposer for the duration of the meeting. In the event that there be no stand-in proposer, the motion will fall and the Scrutiny will end. The resolution of Cabinet will then be implemented).

- (ii) The Proposer shall introduce those persons to support his/her case. Each person will be requested to come in turn before the Committee. The Proposer shall ask questions of the invited persons. Such questions will be for clarity and will relate only to the reasons given for the call-in. Any such person called by the Proposer shall remain available for questioning by the Portfolio Holder.
- (iii) Members of the Scrutiny Committee (only) will be invited to ask questions of the persons called by the Proposer. Once the Members of the Committee have finished asking questions of the person invited by the Proposer, the Proposer may ask a brief set of questions to clarify any matters which have not been already established by the Committee.
- (iv) When the Proposer has called all of his/her witnesses, the Portfolio Holder shall come forward and present his/her response to the call-in. The Portfolio Holder will give a summary response to the decisions made by the Cabinet which is the subject of the call-in. The Portfolio Holder will call any invited persons to support the executive decision and to respond to the call-in. Each person will be requested to come forward one at a time.
- (v) The Members of the Committee will be given an opportunity to ask each person invited by the Portfolio Holder any questions relating to the information given by them. Such questions will be limited to points of clarification. No debate on the merits of the call-in shall be undertaken directly or indirectly through the process of questioning. The Proposer of the motion may also ask questions of the persons invited by the Portfolio Holder who have not been previously questioned.
- (vi) The Portfolio Holder may also ask those persons invited by the Proposer to support his/her case to come forward again for questioning by the Portfolio Holder. In the event that the Portfolio Holder asks questions of persons originally invited by the Proposer, the Proposer may subsequently ask questions

of clarity (by way of re-examination) of the invited persons following their responses to the questions by the Portfolio Holder.

- (vii) The Portfolio Holder will then summarise his/her response to the call-in but will not call any further persons in support of his case. Questions may be asked by the Proposer and the Committee following his/her response unless exceptional circumstances arise. The Proposer of the call-in will not be given a further opportunity to make a statement to the Committee (as this will have been dealt with during the opening statements by the Proposer and in the course of asking questions of those invited by him).
- (viii) The Proposer will be invited to read out his/her motion. In the event that the Proposer is no longer present and any member of the Committee who supported the original call-in may act as the Proposer.
- (ix) A Secunder will be requested to the Proposers motion.
- (x) Prior to Members of the Committee debating the call-in, other Members of the Council present and other invited persons who are not Members of the Scrutiny Committee will be requested to sit in a public gallery. All Members of the Cabinet will be required to leave the meeting in accordance with the Council's Code of Conduct.
- (xi) During the course of the debate Members of the Committee may propose minor amendments to the motion with the consent of the Proposer (or the stand-in Proposer). The accepted amendments must be incorporated by the proposer of the call-in at the meeting before it is voted upon.
- (xii) After sufficient time, the discussions shall be brought to a close and the Proposer requested to sum up before the motion shall be put to the vote.
- (xiii) The Committee may:-
 - (i) vote on the original motion (or as amended) or
 - (ii) vote on a motion to seek an adjournment or
 - (iii) request an extension of time from the Cabinet or
- (xiv) to refer the matter to the Council's Statutory Officers (Monitoring Officer and Chief Finance Officer and Head of Paid Service) for an opinion as to whether or not the decision of the executive falls outside the policy framework and/or budget framework in full or part. In such circumstances such a report shall be presented to the Council.
- (xiv) If, having considered the decision, the Scrutiny Committee is still concerned about the matter, it may refer it back to the Cabinet for reconsideration, setting out in writing the nature of its concerns. The Cabinet will then reconsider and

make a decision. Cabinet may also be requested to allow further time for the Scrutiny Committee to seek the advice of the Monitoring Officer and/or Chief Finance Officer and/or Head of Paid Service as to whether the decision of Cabinet is contrary (wholly or in part) with the policy framework or budget framework and, if applicable, to refer the matter to full Council for a final decision.

- (xv) If, following the objection to the decision, the Scrutiny Committee meets but does not refer the matter back to the Cabinet or concurs with the Cabinet's decision; the decision shall take effect on the date of the Scrutiny Committee meeting and will not be reported back to the Cabinet.
- (xvi) A formal decision will be made on the call-in within ten days of the Scrutiny Committee first meeting.

12.6 The procedure for handling items which have been called in is attached at Annex 1.

Call-In and Urgency

12.7 The call-in procedure set out above shall not apply where the decision being taken by the Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call in process would, seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not be subject to call-in.

Safe Guards

12.8 The following safeguards will apply so as to ensure that decisions are not called-in unnecessarily or that the call-in process is abused:

- (i) The Cabinet (Executive) minutes contain sufficient information to explain the decision and the reasoning behind it. The Cabinet (Executive) minutes are structured in such a way as to indicate clearly which matters are subject to Call-in.
- (ii) No matter may be Called-in more than once.
- (iii) Any Member proposing that a matter be called-in should first discuss this with the appropriate portfolio Leader or in his absence the Council Leader or Deputy Leader. This provides opportunity for detailed explanation of the decision and further information.

- (iv) The request for call-in, detailed on the form, must clearly state the intention of the call-in and present a motion which will be proposed at the Scrutiny Committee.
- (v) The portfolio leader has the right to attend the Scrutiny Committee and speak on an item where a call-in is received in respect of their portfolio area.
- (vi) Members of the Scrutiny Committee are to be present for all of the evidence and debate prior to them exercising their vote to ensure that Members of the Committee make an informed decision based on the evidence presented.

Support from Officers

- 12.9 The role of Directors is to support both the Scrutiny and Executive functions and as such they will provide impartial and objective advice to all Members. Directors will avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by Directors on the Executive's policies and actions will always be consistent with the requirement for officers to remain politically impartial.
- 12.10 Directors in supporting the Scrutiny function may exercise this role in person, they may be supported by other officers or they may choose to nominate a particular officer to assist the Scrutiny Committee with a specific issue.
- 12.11 Members of the Scrutiny Committee may wish to seek the advice of the Monitoring Officer where it is considered that a decision of the Executive might be contrary to the policy framework.
- 12.12 Any Member submitting a request for a matter to be called-in, will be entitled to receive advice and support from Directors as appropriate and/or the Chief Executive Officer's Policy Unit.

13. THE PARTY WHIP

- 13.1 When considering any matter in respect of which a member of the Scrutiny Committee or Select Committee is subject to a party whip the member must declare the existence of the whip, and the nature of it before the commencement of the committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

14. BEST VALUE REVIEWS

- 14.1 In order to discharge the statutory requirement to undertake cross-cutting best value reviews of all the Council's services an annual fundamental service review will be undertaken.

- 14.2 The programme and arrangements for the fundamental service review will be determined by the Scrutiny Committee having regard to the provisions of the Performance Management Framework and relevant performance management information produced by the Council.
- 14.3 The fundamental service review will be carried out through a panel made up of Scrutiny Members ('Fundamental Review Panel'). The Fundamental Review Panel will be time-limited to the duration of the review. Meetings will be called as and when necessary and not on a strict cycle. Members will be expected to take a 'hands on' approach to reviews and should seek views from key stakeholders and specialists.
- 14.4 The report of the Fundamental Review Panel will be presented to the Scrutiny Committee. The Scrutiny Committee may add recommendations to the report to be considered by the Cabinet.

Scrutiny Committee

Terms of Reference

1. STATUS

- 1.1 The Council's scrutiny & overview functions shall be undertaken by the Overview & Scrutiny Committee (referred to as "the Scrutiny Committee"). The Scrutiny Committee is a committee of the Council with the purpose of providing an effective mechanism for, inter alia, holding the Cabinet to account through the call-in of executive decisions, providing a forum for consultation in accordance with the Budget and Policy Framework Rules, performance managing the Council's Corporate Improvement Priority Delivery Plan and undertaking fundamental reviews.

2. MEMBERSHIP AND METHOD OF APPOINTMENT

- 2.1 All members of the Council are eligible to be members of the Scrutiny Committee except those members of the Cabinet and/or Audit and Governance Committee.
- 2.2 The Scrutiny Committee will comprise such Members as are appointed by the Council in compliance with Section 15 and Schedule 1 of the Local Government and Housing Act 1989 concerning political balance.
- 2.3 A Member of Staffordshire County Council shall be appointed as a Co-opted Member to the Committee with full voting rights for the purposes of scrutinising health services and providers in the District. In turn, a Member of the Committee shall be appointed as a Co-opted Member to that Committee of Staffordshire County Council with equivalent voting rights for the purpose of scrutinising health services within the County.

3. CHAIRMAN

- 3.1 The Chairman and Vice-Chairman will be appointed by Council.

4. ATTENDANCE BY NON-MEMBERS

- 4.1 Council Procedure Rules 6(6) and 19 will apply.

5. FREQUENCY OF MEETINGS

- 5.1 The meetings of the Scrutiny Committee will be held generally every three months. The Chairman of the Scrutiny Committee does not have the discretion to convene additional meetings unless required to deal with 'call-ins' as referred to in this Section.

6. NOTICE OF MEETING

- 6.1 Prior to the meeting of the Scrutiny Committee, the Chief Executive will circulate to all Members of the Council, Agenda and Reports to be considered by the Scrutiny Committee.

7. MINUTES OF MEETING

- 7.1 Reports in the form of Minutes detailing recommendations and/or resolutions will be submitted to the Council, which may accept, amend or reject any recommendation, but not resolutions, of the Scrutiny Committee.

8. FUNCTIONS

- 8.1 The Scrutiny Committee shall:

- a) Make reports and/or recommendations to Cabinet in connection with the discharge of any function on which it has been consulted in accordance with the Budget and Policy Framework Rules, as considered appropriate.
- b) Exercise the right to call-in for consideration the decisions made but not yet implemented by the Cabinet.
- c) Performance manage in accordance with the Performance Management Framework, the Corporate Improvement Priority Delivery Plan.
- d) Receive and review the Council's quarterly and annual performance reports;
- e) Undertake Value for Money reviews, as appropriate.

- 8.2 To carry out its functions, the Scrutiny Committee will be able to call upon any Member, Officer or representative of external bodies or organisations in accordance with paragraphs 9 and 10 of the Overview and Scrutiny Procedure Rules to submit written and/or oral evidence.

- 8.3 Performance manage the Corporate Improvement Priority Delivery Plan ('PDP').

- 8.4 Review and scrutinise current Council policies and consider future policy development particularly arising from paragraph 8.3 above.

- 8.5 Be available for consultation in accordance with the Budget and Policy Framework Procedure Rules.
- 8.6 Be available for consultation as required by the Council's Performance Management Framework concerning any proposed changes to actions and/or targets set out in the Priority Delivery Plans;
- 8.7 Scrutinise and review, as considered necessary, the Council's community consultation, engagement and empowerment arrangements, as appropriate having regard to the work programme of Policy Development Committees.
- 8.8 Deal with any issues or matters referred to it in pursuance of the Local Government and Public Involvement in Health Act 2007 as it considers appropriate (which shall include but not be limited to establishing a 'councillor call for action' protocol).
- 8.9 Consider any reports and/or recommendations received from a Policy Development Committee;
- 8.10 Monitor, review and/or scrutinise:
 - a. the performance of the Council and its Local Strategic Partners;
 - b. cross-cutting issues in relation to the discharge of the Council's functions;
 - c. any matter relating to the planning, provision and operation of health services in the District by organisations and institutions charged with delivering health services in pursuance of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 and associated legislation.
- 8.11 Report its findings and recommendations to the Cabinet, Council or other committee as appropriate.
- 8.12 Undertake those Specific Functions set out Part 2, Section 6, paragraph 6.3 of the Council's Constitution.

9. TIME-LIMITED PANELS

- 9.1 The Scrutiny Committee may set up panels to undertake best value reviews of specific cross-cutting issues and report back on their findings. These panels will be time-limited to the duration of the review.
- 9.2 The Scrutiny Committee may also set up working groups as it considers appropriate to investigate and report back on issues.

10. DELEGATED POWERS

- 10.1 The Scrutiny Committee is empowered to deal with any functions detailed above.
- 10.2 The Scrutiny Committee shall be entitled to appoint individuals and/or representatives of organisations as non-voting co-optees.

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