

General Purposes Committee on 19th December 2005

Report Title: **Amending Part I of the Constitution on Scrutiny Reviews and Call-In Procedures**

Joint Report of: **The Chief Executive and the Monitoring Officer**

Wards(s) affected: **All**

Report for: **Recommendation to Council**

1. Purpose

1.1 To consider amendments to the procedures for Scrutiny Reviews and Call-In and to make recommendations on these to full Council.

2. Recommendations

2.1 That Members recommend to full Council the adoption of the changes to the procedures for Scrutiny Reviews and Call-In, set out in Appendices 1, 2, 3, 4 and 5 to this report, to have effect as amendments to Parts I.1, I.2, I.3, E.1 and E.7 of the Council's Constitution.

Report Authorised by:

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3. Executive Summary

3.1 This report advises General Purposes Committee of proposed changes to the procedures for Scrutiny Reviews and Call-In. The main change for Scrutiny Reviews is that, in most cases, The Executive would make the final decision on scrutiny recommendations rather than full Council. Following further consultation with Members, it is proposed that full Council will retain the final decision if The Executive rejects any significant recommendations from Overview and Scrutiny Committee. The changes to the Call-In procedure are corrections and clarifications rather than significant changes of substance.

4. Reasons for any change in policy or for new policy development (if applicable)

4.1 N/A

5. Local Government (Access to Information) Act 1985

5.1 The following background papers were used in the preparation of this report:

(a) Reports to Overview & Scrutiny Committee: (i) on Overview & Scrutiny Reforms for the 20 January 2005 meeting, (ii) on the review of Call-In procedures for the 14 June 2005 meeting, (iii) on the current proposals for the 29 September 2005 meeting, and (iv) on the revised proposals for the 21 November/12 December meetings.

(b) Reports to General Purposes Committee on (i) 8 March and (ii) 24 October 2005.

(c) Briefing Note for Group meetings on matters in this report.

6. Background

6.1 The General Purposes Committee (GPC) last considered a report on changes to Overview and Scrutiny procedures at its meeting on 8 March 2005. The changes then proposed related mainly to the replacement of the old standing Scrutiny Panels by the new “task and finish” Scrutiny Review Panels and the new Audit Committee. These changes were adopted as amendments to Parts I.1 and I.2 of the Constitution by full Council on 21 March.

6.2 The Overview and Scrutiny Committee (OSC) requested and considered a report on possible changes to Call-In procedures at its meeting on 14 June 2005. This matter has been discussed by OSC Members on several occasions but no recommendations have been made for significant changes of principle to the existing rules in Part I.3 of the Constitution.

6.3 At its meeting on 29 September 2005 OSC provisionally approved changes to the procedures for:

- (i) Scrutiny Reviews, and
- (ii) Call-In of executive decisions.

6.4 Since that meeting on 29 September the proposals for Scrutiny Reviews and Call-In, respectively, have been subject to slightly different consultation processes. The consultation history and current proposals are therefore summarised under separate headings below.

7. Scrutiny Review Procedures

7.1 The proposals to amend these procedures were reported to GPC at its meeting on 24 October.

7.2 The report contained some further proposed amendments not before OSC on 29 September. They relate to the procedures recommended for Scrutiny Review reports about non-executive or regulatory functions. In such cases, the response to scrutiny is to be considered by the responsible non-executive body and the final decision on the response must be for full Council (rather than The Executive). The text changes are now set out in Part I.2 at paragraphs 1(c)(viii) and 1(d)(i) – (vi) i.e. in Appendix 2 to this report on pages 3 and 4. Some duplicated text is recommended for deletion at paragraph 11 on page 7.

7.3 The reason for the majority of the proposed changes to the Scrutiny Review procedures is to speed up the process of Service improvement and avoid unnecessary duplication of roles between The Executive and full Council.

7.4 The main changes, as reported to GPC on 24 October, can be summarised as follows:

- (i) The Executive will make the final decision on recommendations from OSC arising from Scrutiny Reviews. There will be no need for a report on to full Council, and
- (ii) The responding report from the Chief Officer/Executive Member to be considered by The Executive will contain a detailed tabulated implementation action plan, and
- (iii) This action plan will assist OSC in carrying out a follow up review an appropriate time after the implementation of recommended reforms in order to assess outcomes and measure improvements, and
- (iv) There would be a joint press launch, where appropriate, to explain The Executive's decisions in response to scrutiny reviews involving the relevant Executive Member and the Chair of OSC.
- (v) The order of proceedings for meetings of OSC is to be brought into line with the normal practice for other Committees.

7.5 Members of GPC accepted the proposed changes in principle. However, Members did express concern about leaving The Executive as the final arbiter of scrutiny recommendations in the event of any significant dispute with OSC.

7.6 In order to meet this concern, a new sub-paragraph 1(c)(x) has been inserted into the text changes in Appendix 2 at page 3. This new sub-paragraph is in capitals so as to distinguish it from the other proposals. If The Executive were to refuse to accept any recommendation from OSC, the Chair of OSC would have the right to refer the matter to full Council for final decision.

7.7 It is unlikely that this specific change would undermine the broad objective of speeding up the implementation of scrutiny recommendations. It would help preserve the "checks and balances" within the Council's Constitution that help make The Executive accountable to scrutiny.

7.8 GPC Members asked that their concern and the new sub-paragraph 1(c)(x) be reported to both political Group meetings and to OSC before the matter returned to GPC.

- 7.9 The Majority Group considered this point, and all the other proposed changes, at the Group meeting on 3 November. The Group agreed with GPC's concern and the proposed new sub-paragraph 1(c)(x). Majority Group Members accepted all the other proposals except the idea of holding a joint press launch to explain The Executive's response to scrutiny reviews, as mentioned in paragraph 7.4 (iv) above.
- 7.10 Accordingly, the joint press launch was deleted from the proposals which are being reported to OSC for approval and are now coming before GPC again. The new sub-paragraph 1(c)(x), on the role of full Council in disputes, has obviously been included.
- 7.11 Unfortunately, OSC was unable to consider the revised Scrutiny Review Procedure proposals because of other urgent business at its meeting on 21 November. The matter will be on the agenda again at OSC's next meeting on 12 December. The views of OSC Members will be reported orally to GPC Members on 19 December.
- 7.12 The next Minority Group meeting is to be held on 14 December. Minority Group will consider the same proposals as Majority Group. Their views will also be reported via their Group Secretary and tabled for the information of GPC Members on 19 December.

8. Call-In Procedures

- 8.1 At the request of the Chair of GPC, the proposed amendments to Call-In procedures were not reported to GPC on 24 October but were to be sent for consultation to both political Group meetings before returning to GPC.
- 8.2 The main changes proposed are summarised below. The references to paragraph numbers are to those in Part I.3 of the Constitution as set out in Appendix 3 to this report:
- (i) in paragraph 4 provision is made to ensure that all Executive Members are notified about valid Call-In requests
 - (ii) paragraph 5 is amended to clarify that an Executive decision will be implemented immediately if the Call-In request is deemed invalid by the Monitoring Officer (MO)
 - (iii) in paragraph 6 it is recommended that the Monitoring Officer/Director of Finance (MO/DF) should prepare a report advising whether the decision is inside or outside the policy/budget framework whenever a call-in request is deemed valid, rather than only where those seeking the Call-in claim that the decision was outside the framework.
 - (iv) changes in paragraphs 2, 3(f), 7 and 8 are proposed to clarify that decisions taken under the special urgency procedure are not subject to Call-In. In other cases nothing must be done until the MO has ruled on the validity of the Call-In request and the 10 working days (for OSC to meet and decide its response to the Call-In) start to run from the date of the MO's ruling. These changes are for clarification only; they are not substantive changes to the existing procedures.

- (v) in paragraph 10 it is proposed to clarify that Members of OSC have the final decision whether the original decision was inside or outside the policy/budget framework but after considering the report of the MO/DF. The same point is clarified in paragraphs 14, 15 (a) and 16.
- (vi) at the end of paragraph 10 there are 4 options for OSC to take in relation to a Call-In. OSC Members had expressed the view that the first option, described as “fail to take any action”, was irrelevant and confusing and should be deleted. OSC will retain the option to “decide not to take any further action”. Logically, the option of full Council to “fail to take any action” is also recommended for deletion in paragraph 12.
- (vii) OSC Members also wished to retain, as one of the options open to them, the right to refer the decisions on a called-in item directly to Full Council, even where the decision is within the policy/budget framework.
- (viii) in paragraph 18(d), the rules about agreeing urgent decisions are being corrected in line with the Government’s Access to Information Regulations. In the absence of the Chair of OSC, it is not legally possible to rely on the consent of the Vice-Chair. It is the consent of the Mayor that is required and in the absence of the Mayor, the consent of the Deputy Mayor. This is a matter prescribed by the Regulations and not for local choice.

8.3 Majority Group accepted the above proposals at their meeting on 3 November without suggesting any changes to them.

8.4 The Minority Group’s views, after their meeting on 14 December, will be reported orally to GPC Members on 19 December.

9. Amendments in Appendices 1, 4 and 5 to this report

9.1 Appendix 1 sets out the few amendments recommended to Part I.1 of the Constitution. This is the introductory Article to the Parts dealing with Overview and Scrutiny and the amendments are consequential or minor clarifications. Appendix 4 (Part E.1) and Appendix 5 (Part E.7) show the changes to the terms of reference for full Council that follow from the Scrutiny Review proposals.

10. Recommendations

10.1 That Members recommend to full Council the adoption of the changes to the procedures for Scrutiny Reviews and Call-In, set out in Appendices 1, 2, 3, 4 and 5 to this report, to have effect as amendments to Parts I.1, I.2, I.3, E.1 and E.7 of the Council’s Constitution.

11. Legal Implications

11.1 It is a matter for local choice whether OSC make their reports and recommendations to full Council or The Executive. In the event of dispute between The Executive and OSC, the underlying purpose of Scrutiny Review is best served by retaining the role of full Council as arbiter.

12. Comments of the Director of Finance

12.1 There are no specific financial implications.

13. Equalities Implications

13.1 There are no specific equalities implications.

14. Use of Appendices / Tables / Photographs

14.1 Appendix 1 sets out the text changes now recommended to Part I.1 of the Constitution (introductory Article on Overview and Scrutiny).

14.2 Appendix 2 sets out the text changes to Part I.2 (Overview and Scrutiny Procedure Rules).

14.3 Appendix 3 sets out the text changes to Part I.3 (Call-In Procedure Rules).

14.4 Appendix 4 sets out the text changes to Part E.1 (Full Council Article).

14.5 Appendix 5 sets out the text changes to Part E.7 (Terms of Reference of Full Council).