

REPORT FOR DECISION

MEETING: THE COUNCIL
DATE: 18 MAY 2010
SUBJECT: AMENDMENTS TO THE COUNCIL CONSTITUTION
REPORT FROM: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
CONTACT OFFICER: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

TYPE OF DECISION: COUNCIL

FREEDOM OF INFORMATION/STATUS: [This paper is within the public domain]

SUMMARY: The purpose of this report is to set out recommendations to amend the Council's Constitution to accommodate the "Strong Leader" model of executive decision making; and the changes to Overview and Scrutiny.

OPTIONS & RECOMMENDED OPTION

1. That members agree the revisions to the Council's Constitution as set out in this report and its appendices.
2. That any further necessary consequential amendments be delegated to the Director of Legal and Democratic Services, in consultation with the Group Leaders.

IMPLICATIONS:

Corporate Aims/Policy Framework:

Do the proposals accord with the Policy Framework? Yes

The proposals in this report do not affect the Policy Framework. However, issues within this report require approval by the full Council.

Statement by Director of Finance and E-Government:

There are no financial implications arising from this report.

Equality/Diversity implications

The proposals in this report do not directly affect any of the Equality/Diversity Policies and Strategies of the Authority.

Considered by Monitoring Officer:

Yes

Are there any legal implications?

Yes No

The Council is under a statutory duty to maintain a Constitution. Most of the changes set out in the Appendices are required as a result of the statutory provisions changing the Council's executive arrangements. These were the subject of a previous report to Council on 19 December 2009. The statutory provisions are set out in the Local Government and Public Involvement in Health Act 2007

Staffing/ICT/Property:

There are no staffing/ICT/Property issues from this report.

Wards Affected:

All Wards

Scrutiny Interest:

All

TRACKING/PROCESS

DIRECTOR: JAYNE HAMMOND, DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

Chief Executive/ Management Board	Executive Member/Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council

1.0 BACKGROUND

1.1 This report seeks Council's agreement to a series of changes to the Council's Constitution.

2.0 "STRONG LEADER MODEL OF EXECUTIVE DECISION MAKING

- 2.1 Under this statutory model, the Council appoints the Leader who then appoints and determines the size of the Cabinet. The Leader can appoint two or more Councillors to the Cabinet but the maximum number still remains as 10. The "Strong Leader" will have a fixed term of office for four years. The Leader appoints a Deputy Leader with power to act in his/her absence. Under the Local Government and Public Involvement in Health Act 2007, all of the Council's executive functions are vested in the Leader and he or she will have the power to determine how these are to be discharged. The previous report to Council (dated 19 December 2009) set out that the Council's executive functions would not be finally determined until after the election of the new style Leader, at Council. This is because under the new form of Executive, it is the Leader and not the Council who will decide on the allocation of the Council's executive functions.
- 2.2 The constitutional changes relating to the "Strong Leader" model are set out in Appendix 1 to this report and the amended version of the Constitution (revised edition March 2010).

3. OVERVIEW AND SCRUTINY ARRANGEMENTS

- 3.1 Following discussions at the Strategic Planning Event in 2009, the Strategic Priorities meetings and group meetings; a new model of Overview and Scrutiny has been agreed. This model is set out at Appendix 2 and is the outcome of a review into the effectiveness and fitness for purpose of the scrutiny function. The model comprises that of a dedicated Overview body together with dedicated Scrutiny bodies (to look at internal and external issues). These would be standing committees with programmes of meetings fixed throughout the year, whilst retaining some flexibility. The Overview body would manage its work programme (via a Management Committee) and would meet to fix and monitor this. The work programme would then be dealt with by "ad hoc" groupings of members, which it is anticipated, will be interested in particular, projects/subjects. This would mean that members would not be called to work on every particular project in the work programme. Similarly each of the standing Scrutiny Committees would be responsible for setting and overseeing an annual work programme. The work programmes will largely be based on the priorities of the Council.
- 3.2 The Local Government Act 2000 sets out that where party groups have been declared in a local authority, Overview and Scrutiny bodies must reflect the political balance. Overview and Scrutiny bodies must also meet in public, in accordance with the Access to Information provisions and provision must also be made for Diocesan and the Parent Governor Representatives to participate in any scrutiny work of functions relating to education. These representatives must have full voting rights on such bodies in respect of education matters. It has also been agreed that the Scrutiny Committee considering internal matters will be Chaired by an Opposition Member.
- 3.3 The work programmes of Overview and Scrutiny bodies will need careful consideration, bearing in mind the resources available, time constraints of members and also the interests of the local community. Protocols have been in place in the past to assist members in setting the work programme and in project managing any items of work.

- 3.4 The amendments to the Constitution are set out in appendix 3 to this report and the draft amended Constitution. Members are also asked to approve amendments set out at Appendix 4 which deals with establishing smaller working groups and a "Call In" Protocol.
- 3.5 Section 31 of the Local Democracy, Economic Development and Construction Act 2009 sets out that the Council must designate one of their Officers to discharge the scrutiny function and that the Officer designated is to be known as the Council's "Scrutiny Officer". The Council can not delegate the Head of Paid Service (The Chief Executive); the Monitoring Officer (Director of Legal and Democratic Services or the Council's Chief Finance Officer (Director of Finance and E-Government). It is therefore proposed to designate the Head of Democratic Services as the Council's Scrutiny Officer.

4.0 CONCLUSION

The revisions contained in this report and the attached appendices are put forward for approval by the Council as amendments to the Constitution. Council is also asked to delegate any consequential changes to the Director of Legal and Democratic Services in consultation with the group leaders.

Contact Details:-

Jayne Hammond, Director of Legal and Democratic Services.

Tel No: 0161 253 5002

Email: j.m.hammond@bury.gov.uk

Strong Leader Model – Changes to the Constitution

Summary and Explanation (Pages 9 – 15)

Minor changes to describe the 'Leader/Cabinet' (as opposed to Executive)

Article 2

Minor changes to describe 'Leader/Cabinet'

Article 3 and 5

Minor changes to describe 'Leader/Cabinet'

Article 4

Amendments to numbering of sub paragraphs to Paragraph 4.2

Minor changes to describe 'Leader/Cabinet'

Article 7

Appointment/Role of the Leader

Role of the Deputy Leader

Form and composition of the Cabinet

Cabinet members

Role Specifications for Cabinet Member (to follow)

Article 11

Minor changes to describe 'Leader/Cabinet'

Article 13

Minor changes to describe 'Leader/Cabinet'

Part 3 – Responsibilities for functions

Minor changes to describe 'Leader/Cabinet'

Part 4 – Rules of Procedure

Minor changes to describe 'Leader/Cabinet'

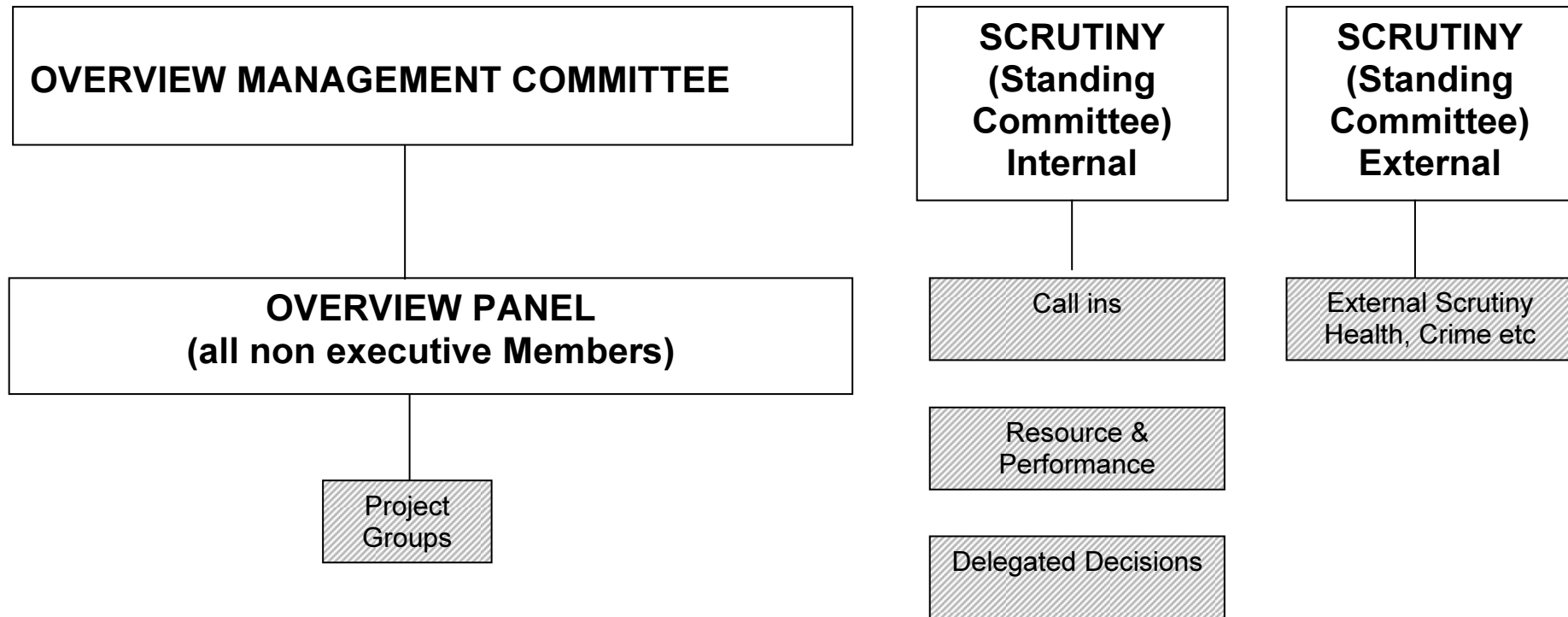
Amendments to apply the Access to Information Rules to the Cabinet and individual cabinet members.

Deletion of Paragraph 1.2 – Arrangements for the discharge of Executive functions

Deletion of Sub Paragraph ii, Paragraph 2.5

Consequential amendments to the remaining Constitution to describe 'Leader/Cabinet' where relevant.

OVERVIEW & SCRUTINY MODEL



 Indicative

Overview and Scrutiny Provisions – Changes to the Constitution

Summary and Explanation

Article 6

Amendment to reflect the new Overview and Scrutiny Model

Part 4 Rules of Procedure

Overview and Scrutiny Procedure Rules

New Terms of Reference for Overview Committee

Scrutiny Committee

Overview Project Groups

Insertion of a “Call in” Protocol

Terms for Reference for Scrutiny

Overview Management Committee (Policy Development)

Terms of Reference

1. (a) To agree and set an annual work programme at the beginning of each Municipal Year:-
 - (i) in consultation with key stake holders
 - (ii) in accordance with the Work Programme and Prioritisation Protocol
 - (iii) ensuring the work programme is set within Member and Officer capacity and budget with outcomes and performance standards that are measureable, achievable realistic and timely
- (b) To decide on topics arising out of the annual work programme following prioritisation which require an in depth review
 - (i) appoint the appropriate sub group (overview Project Group) to carry out each review
 - (ii) appoint appropriate co-optees as may be relevant to assist as “expert witnesses” on a review
 - (iii) to consider the need for any other outside body to assist in the review
 - (iv) to appoint lead officers for particular reviews
 - (v) to set broad terms of reference for the review within the terms of a scoping document
 - (vi) timetable the review to report back to the overview management committee
- (c) To consider in the year, the addition to the work programme of urgent priority topics (in accordance with the Work Programme and Prioritisation Protocol) as and when they may arise with final decision on whether the matter is included in the work programme to be the Chair of the Committee.
2. To be consulted in the policy development stages of initiatives referred to by the Leader and to examine policy initiatives at the request of the Leader/Executive.
3. To oversee the development of member skills and competencies in overview and scrutiny in consultation with the member development and training group.
4. To report to Council on an annual basis and as appropriate during the year
5. To ensure the workloads are balanced and co-ordinated and kept under review.
6. To allocate a Champion from the Committee to ensure the work programme is aligned with the Council’s key priorities and to provide a focus for consultations on policy initiatives.

7. To be advised of major policy initiatives in the policy development stages and where considered necessary in accordance with the Council's objectives, to set up review groups to take up any detailed work.
8. To deal with all issues relating to the Councillor Call for Action initiative.
9. To take overall responsibility for the overview and scrutiny budget and to allocate funds accordingly.

Overview Project Groups (Project Specific)

1. To scrutinise policy issues as scoped and referred to by the Overview Management Committee.
2. To scope reviews in detail bearing in mind the Overview Management Committees outline brief.

Scrutiny Committee (Internal)

Terms of reference

1. To review and scrutinise the decisions made or actions taken in connection with the discharge of any of the Council's functions.
2. To review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and all particular service areas.
3. To report outcomes to the Overview Management Committee unless the Committee determines otherwise for expediency.
4. To make recommendations to the Executive and/or appropriate Committee and/or Council arising from the outcome of the Scrutiny process.
5. Oversight of the provision, planning and management of the Council's resources including its budget, revenue borrowing assets and audit arrangements.
6. Oversight of the Council's corporate plans and strategies and the monitoring of the corporate plan and departmental plans.
7. To receive all reports from external inspectors.

Scrutiny Committee (External)

Terms of reference

Together with the Overview Management Committee and Scrutiny Committee (internal)

1. To scrutinise relevant aspects of the community strategy.
2. To scrutinise outside bodies and partners relevant to the Council.

3. To carry out the Council's statutory obligations in relation to reviewing and scrutinising any matters relating to the planning provision and operation of health services in the area of the Council.
4. To review or scrutinise decisions made or other action taken in connection with the discharge by the responsible authorities of their crime and disorder functions.
5. To monitor the implementation of any scrutiny recommendations accepted by the Executive.
6. To scrutinise the results and issues arising from any external inspections of the Council's partnering arrangements.

Setting up of smaller Working Groups (for example Task and Finish Groups, Project Groups)

There is a commitment within this structure for each Committee to establish smaller working groups. Standing groups will be the exception, rather than the rule; and smaller groups will normally be set up by the Overview Management Committee to carry out a specific task or project and will have defined terms of reference and be time limited. The Overview Management Committee would agree the terms of reference and scope of the review and set the priority against any others that are running. The Overview Management Committee will also set the numbers of members who would make up the working group. To help with this it would be useful for all non executive members to be asked what areas they would be interested in looking at. It could also be appropriate to involve the relevant Executive Portfolio holder and head of service as co-opted members of the group.

It is anticipated that the small groups will run as they do now, that is, working on an evidence gathering basis, going on site visits, looking at best practice, seeking out the views of the Local Community and particularly service users, as well as obtaining information from relevant witnesses.

Once the review has been completed it would need to go back to the Overview Management Committee to approve any recommendations before they are sent on to the Executive and/or any external body.

Small working groups need to operate on a relatively informal basis in the sense that they are for information gathering and discussion between group members and officers rather than a formal decision making body. They have no delegated powers.

Early within the project/scoping exercise and wherever possible, the smaller working group should identify details of any co-optees or contributors required to further the gathering of evidence and enhance the process or provide specific knowledge.

Meetings will take place as often as needed until the task is complete. (On average around every six weeks). Following the scoping/planning meeting, the group should aim to hold the necessary meetings within a shorter time frame as possible so that findings do not become out of date before completion of the task.

Meetings of the smaller working groups will be less formal than other meetings and require an approach that allows all members of the group to participate fully and incorporate questioning and discussion with contributors. Informal ways of working are to be encouraged.

The Chair of the working group has a role to ensure that all Councillors have the opportunity to know about the activities of the Working Group. Members of the parent Management Committee will be kept informed regarding progress of tasks through progress reports, if necessary.

Members of the smaller working groups should operate within the agreed plan for the task and must not disclose or use any information/knowledge obtained through involvement in the group for any other purpose. This also applies to Councillors not on the group who have requested information about the work being undertaken. Councillors should not do anything to pre-empt or undermine the outcome of a working groups recommendations and the Chair of the Working Group has joint responsibility with the Chair of the

appropriate Management Committee to issue any appropriate media briefings in relation to the completed review work.

Reporting Process

It would be the role of the Working Groups to prepare reports on any subject assigned to it by the appropriate Management Committee.

The report will contain relevant evidence and/or opinion from persons who have been asked to contribute. They will be asked to confirm the accuracy of any evidence/opinion in the report.

Once approved, the report will be sent to the appropriate Head/Heads of Service affected by its contents. The Heads of Service will be invited to comment on the accuracy of the contents especially on technical matters within their competence. They will submit any such comments to the group within 10 working days of receiving the invitation.

If the Chair of the group so decides, having received any such comments, a meeting of the working group will be convened to decide whether to review its approval of the report. Once finally approved, the report will be submitted to the relevant Management Committee for its approval. Once approved by the relevant Management Committee, the report will be submitted for consideration by the Leader/Cabinet.

Call in Protocol

1. The role of the Scrutiny Committees in calling in a decision is:-

- to test the merits of a key decision
- to consider the process by which the decision has been formulated
- to make recommendations (to support the decision, change aspects of the decision or to invite the decision making body to reconsider); to come to a view in a relatively short time scale so as not to compromise the speed and efficiency of the decision making process.

The call in mechanism is an important part of a short decision making process and is designed to test the merits of the decision and to ensure that Members have an opportunity to recommend change or reconsideration or deferral. A call in mechanism is not therefore:-

- a public enquiry or quasi judicial process
- an extended examination of areas only remotely connected to the actual decision.
- An open house for anyone to attend and make representations.

The Scrutiny Officer may rule that a call in request is not valid only in the limited circumstances below:

- That the call in request has not been made within 5 working days of publication.
- That the call in request has not been made by the Chair or any two or more members of the commission or at least 8 other members of the Council.
- That it not clear which key decision is being called in or that the decision is not a key decision (whether taken by an officer or member under delegated powers).
- That the decision is exempt from call in on account of the urgent nature of the decision (which has been certified by the decision taker)

Notwithstanding that members have properly exercised their right of call in, the Scrutiny Officer in consultation with the Chair and the Lead call in member should still give consideration following the call in and prior to the meeting of any scrutiny committee to determining the matter prior to, or without the need to hold, a meeting of the Scrutiny Committee. For example, by clarification of the decision, or by the provision of additional information. The time scale for convening of a meeting should not be affected by such consideration.

A call-in request must say why there is an objection and present an alternative decision or proposal for consideration.

A decision can only be called in once. If, however the Executive substantially amends the original proposal in a way in which the scrutiny committee has not considered nor could reasonably have foreseen, to the extent that in reality it is a different decision, the Scrutiny Committee have the right to call it in.

Call in: Advice to the Chair of the Scrutiny Committee before the meeting of the Scrutiny Committee to consider a call in

Subject always to the views of the Scrutiny Committee at which the matter is to be considered, the Chair of the relevant Committee shall undertake preliminary enquiries and/all consultations before the meeting in order to:-

1. Clarify the matters to be examined
2. Consider the recorded views of those who have already been consulted or involved before the decision was taken;
3. Form an opinion as to what further papers if any should be made available to the Committee before or decide who should be invited to explain the decision.

Call in: Arrangements for the Scrutiny Committee

The Scrutiny Officer will confirm attendance and the arrangements with those invited to attend. Papers will be despatched as soon as possible with notice of the date and time when the matter is to be considered.

The agenda should include:

- The proposal and supporting papers submitted to the decision taker.
- The minute of the decision.
- The request for the call in.
- The reasons given by the requestors for the call in.
- Any other papers that members request in the call in.
- Background papers listed in the report to the decision taker will not routinely be included in the Agenda unless those members or the Chair so request.
- The persons to be invited to attend to answer questions on the issues before the committee and the order in which they appear.

Any other issues concerning the conduct of the meeting arising between the date of the call in and the date of the scrutiny committee will be dealt with by the Chair of the relevant scrutiny committee in consultation with the lead member requesting the call in with any necessary officer advice/support.

The Chair or members of the committee may feel that it is appropriate to meet informally before the meeting. In those circumstances the Chair will ask the Scrutiny Officer to notify all members of the Committee that there will be an informal meeting at least 30 minutes before the meeting. With the Scrutiny Officer and any other representatives. Members will:

- Read any last minute papers
- Consider the identified other relevant issues
- Consider how sensitive issues should be managed.
- Receive a report from the Chair on any issues concerning the conduct of the meeting on which he/she has taken a view
- Consider the questions to be asked of witnesses.

The purpose of the pre-meeting is purely to discuss and arrange procedural matters; not to discuss the merits of the issue.

The Chair shall allow the call in members a maximum period of 15 minutes in total to present their arguments. How the 15 minutes are allocated between the members is a matter for the lead call in member to determine. He/she may speak for the whole period recognising that the other call in members will not then have the opportunity to make any contribution at this stage of the meeting.

The presumption should be that the meeting and all papers submitted to the Committee shall be open to the press and public. It may be necessary however to exclude the press and public to deal with “exempt” or confidential matters. This may be important not only on the day to stop the disclosure to the press and public of exempt material (such as advice affecting the Council’s legal position, the commercial affairs of the Council or another body or sensitive information about individual members of staff). Exempt material in reports should be organised if possible into an appendix so that the rest of the report can be available to the press and public.

Call in – the Scrutiny Committee view, recommendations to the Leader/Executive

It will be important for the Scrutiny Committee to balance the need on the one hand for decisions not to be unreasonably delayed and on the other for matters called in to be properly discussed and debated. Normally, consideration of a call in will be dealt with at a single meeting but exceptionally there may be circumstances where this is not possible. If the committee agrees that further investigation or information is required, the Leader or Executive Member may agree to extend the time in which a final view may be expressed if, in their opinion, delay would not be prejudicial to the Council’s interest.

Where a scrutiny committee refers a matter back to the Leader/Executive for further consideration and the Leader/Executive reaffirms its original decision, the Leader/Executive shall give reasons to the Scrutiny Committee or the decision. Giving of reasons shall not be a ground for the scrutiny committee to refer the matter back to the Leader/Executive again, either because the Committees disagrees with those reasons, seeks further clarification of the decision or for any other reason.

Review of the Protocol

This protocol shall be kept under review and amended as appropriate from time to time.