

Report to: Cabinet

Date of Meeting: 7 March 2016

Report Title: Amendments to the Council's Constitution

Report By: Christine Barkshire-Jones
Chief Legal Officer and Monitoring Officer

Purpose of Report

To effect the required new arrangement for Overview and Scrutiny.

Recommendation(s)

- 1. That Cabinet recommend to Council approval of the changes to the Council's Constitution for Overview and Scrutiny.**

Reasons for Recommendations

A task and finish group of members have been undertaking a review of the structure of the Council's Overview and Scrutiny function. Members have proposed a number of changes to the structure to be implemented from the 2016/17 municipal year.

This requires the following amendments to the Council's Constitution.

The amendments are shown as track changes.

WAG approved the amendments on 3 February 2016.

As part of this process the Members Allowance Scheme has been updated.

Amendments to the following: Parts 2, 3, 4 and 6 of the Constitution

Part 2 - Articles of the Constitution -

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Officer support for Scrutiny Project Groups ~~will be arranged by Chief Officers and~~
~~Other~~ Officer support for the overview and scrutiny function will be arranged by the
Scrutiny and Democratic Services Manager.

Part 3 - Responsibility for Functions -

Replacement of Flow Chart (Appendix 1) with Committee Structure (Appendix 2)
attached

Part 4 - Rules of Procedure

Overview and Scrutiny Committees:

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29.1a The Council will have ~~two~~one Overview and Scrutiny Committees: ~~Resources
Overview and Scrutiny Committee and Services Overview and Scrutiny Committee.~~
~~They~~It will perform all overview and scrutiny functions on behalf of the Council.

- b. The terms of reference of the Overview and Scrutiny Committee will be:
- i. the performance of all overview and scrutiny functions on behalf of the Council relating to the service areas specified in Article 6 (The Constitution, Part 2);
 - ii. To agree an annual overview and scrutiny work programme for that Overview and Scrutiny Committee,
 - iii. To ensure that referrals from overview and scrutiny to the Cabinet, either by way of report or for reconsideration, are managed efficiently and do not exceed the limits set out in this Constitution;
 - iv. in the event of reports to the Cabinet exceeding limits in this Constitution, or if the volume of such reports creates difficulty for the management of Cabinet business or jeopardises the efficient running of Council business, at the request of the Cabinet, to make decisions about the priority of referrals made.
 - v. To receive requests from the Cabinet and/or the full Council for reports from Overview and Scrutiny Committee.
 - vi. To call in decisions of the Cabinet, made but not implemented, where those decisions are within the scope of the Terms of Reference of ~~that particular~~the Overview and Scrutiny Committee.
 - vii. To review the performance of the Council's departments in delivering services which are relevant to the work of ~~the~~at Overview and Scrutiny Committee.

- viii. To consider Scrutiny Reviews and make recommendations to the Cabinet and/or Council
- ix To appoint elected Members to the Review Groups.
- x ~~Services-The~~ Overview and Scrutiny Committee is the Council's crime and disorder committee for the purposes of Section 19 Police and Justice Act 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009.
- xi ~~Both-The~~ committees ~~cante~~ exercise ~~their-its~~ functions in relation to the Charity Committee, a committee of the Cabinet.

Membership of Overview and Scrutiny Committees

29.2 There will be ~~seven-eleven~~ members on ~~each-of~~ the ~~two~~ Overview and Scrutiny Committees. All councillors except members of the Cabinet, the Mayor and Deputy Mayor may be members of an Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

All members appointed to Overview and Scrutiny must commit to be trained in order to perform the specialist role required.

Co-optees Page 40

29.3 ~~Each-The~~ Overview and Scrutiny Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees.

Quorum

29.5 The quorum for an Overview and Scrutiny Committee shall be as set out for committees in the Council Procedure Rules in Part 4 of this Constitution.

The Chair of Overview and Scrutiny Committee meetings

29.6 The Council will appoint the Chairs and Vice Chairs of the Overview and Scrutiny Committees. Chairs and Vice Chairs may be minority party members. The rules of political balance will apply to these posts.

Work programme

29.7 Shortly after Annual Council there will be an annual public ~~joint~~ meeting of the ~~two~~ Overview and Scrutiny Committees to set a work programme for the overview and scrutiny function for the municipal year and to review the results of the previous year's work programme.

The Overview and Scrutiny Committees will be responsible for setting their own work programme and in doing so they shall take into account wishes of members on that committee who are not members of the largest political group on the Council.

Agenda items Page 41

29.8 Any member of an Overview and Scrutiny Committee or sub-committee shall be entitled to give notice to the Chief Legal Officer that he/she wishes an item relevant to the functions of the committee to be included on the agenda for the next available meeting of the committee. On receipt of such a request the Chief Legal Officer will ensure that it is included on the next available agenda.

The Overview and Scrutiny Committees shall also respond, as soon as their-its work programme permits, to requests from the Council and if they consider it appropriate, the Cabinet, to review particular areas of Council activity. Where they do so, the Overview and Scrutiny Committees shall report their findings and any recommendations back to the Cabinet and/or Council. The Council and/or the Cabinet shall consider the report of the Overview and Scrutiny Committee at the next available meeting.

The Chair of a Best Value Project Group can refer that Best Value Review back to the Overview and Scrutiny Committee for further consideration at any point in the Review.

Policy review and development

29.9a The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.

b. In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, the Overview and Scrutiny Committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.

c. The Overview and Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration. The Cabinet is required to meet reasonable requests for funding. Funding should be used for specific activities in support of the functions outlined in the Terms of reference for each-the Overview and Scrutiny Committee.

Reports from the Overview and Scrutiny Committees

29.10a Once it has formed recommendations on proposals, the Overview and Scrutiny Committee will prepare a formal report and submit it for consideration by the Cabinet if it is a Cabinet matter. If it is a matter for Council then the Cabinet will be invited to comment before the report goes before the Council.

b. If an Overview and Scrutiny Committee cannot agree on one single final report to the Council or Cabinet as appropriate, then one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.

c. Where the final outcome of a Best Value Review is reported to the Overview and Scrutiny Committee, the Director of that service may produce an Officer response for consideration by Members.

d. The Council or Cabinet shall consider the report of the Overview and Scrutiny Committee at the next available meeting.

Forward Plan

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29.11 The Overview and Scrutiny Committee will have access to the Cabinet's forward plan and timetable for decisions and intentions for consultation.

Rights of Overview and Scrutiny Committee members to documents

29.12a In addition to their rights as councillors, members of the Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

b. Nothing in this paragraph prevents more detailed liaison between the Cabinet and Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

Members and Officers giving account

29.13a Any Overview and Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet or one or more of the Directors 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. their performance
and it is the duty of those persons to attend if so required.

b. Where any member or officer is required to attend an Overview and Scrutiny Committee under this provision, the chair of that committee will inform the Chief Legal Officer. The Chief Legal Officer shall inform the member or officer in writing giving at least five working 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 member or officer concerned will be given sufficient notice to allow for preparation of that report.

c. Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee, shall in consultation with the member or officer, arrange an alternative date for attendance or for an alternative officer to attend.

Attendance by others

29.14 An Overview and Scrutiny Committee may invite people other than those people referred to in Rule 29.13 above to address it, discuss issues of local concern and/or

answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend. Attendance cannot be made compulsory.

At each programmed meeting of the Overview and Scrutiny Committees, the appropriate Cabinet Members may be questioned by members of that Committee on key issues and respond to questions on those issues. If any members of that Committee wish to question a Cabinet Member on a particular issue, it may be helpful to provide the question in advance.

For the purposes of completing service reviews and policy development, any member may be invited by the Chair of the Overview and Scrutiny to participate, although all decisions and reports will be the responsibility of the members appointed to the Overview and Scrutiny Committees by Annual Council.

Call-in

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29.15 Call-in should only be used in exceptional circumstances.

a. When a decision is made by the Cabinet, a committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. Members of the all Overview and Scrutiny Committees will be sent copies of the records of all such decisions within the same timescale.

b. That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of three working days after the publication of the decision, unless the an Overview and Scrutiny Committee objects to it and calls it in.

c. During that period, the Chief Legal Officer shall call-in a decision for scrutiny by the committee if so requested by the chair or any two members of the relevant committee, and shall then notify the decision-taker of the call-in. The meeting will be held within eight working days, where possible after consultation with the chair of the committee.

d. If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the Cabinet for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. On receipt of the response from the Overview and Scrutiny Committee the Cabinet or Council may decide to proceed with the original decision or make an amended decision.

e. If, following an objection to the decision, the Overview and Scrutiny Committee does not meet within eight working days of the decision to call-in or does meet but does not refer the matter back to the Cabinet, the decision shall take effect on the expiry of the period, or the date of the overview and scrutiny meeting, whichever is the earlier.

f. If the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does

object, it has no locus to make decisions in respect of a Cabinet decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the Cabinet, together with the Council's views on the decision. The Cabinet shall choose whether to amend the decision or not before reaching a final decision and implementing it.

g. If the Council does not meet, or if it does but does not refer the decision back to the Cabinet, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

Exceptions

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In order to ensure that call-in is not abused, nor causes unreasonable delay, **a written request signed by** the Chair or any two members of **the relevant** Overview and Scrutiny Committee is needed for a decision to be called in. **The notice shall specify which part or parts of the decision is/are called in and the reason why it/they should be referred to the committee for consideration.**

Call-In and Urgency

h. 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 subject to call-in.

The Party Whip

29.16 The Party Whip is defined here as any instruction given by or on behalf of a political group to any councillor who is a member of that group as to how that councillor shall speak or vote on any matter before the Council or any committee or sub-committee, or the application or threat to apply any sanction by the group in respect of that councillor should he/she speak or vote in any particular manner. Government guidance says that the party whip should not apply on Overview and Scrutiny Committee.

Procedure at Overview and Scrutiny Committee meetings

29.17a The Overview and Scrutiny Committees shall consider the following business:

- i. minutes of the last meeting;
- ii. declarations of interest (including whipping declarations);
- iii. consideration of any matter referred to the committee for a decision in relation to call in of a decision;
- iv. responses of the Cabinet to reports of the Overview and Scrutiny Committee;

- v. the business otherwise set out on the agenda for the meeting.
- b. Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the committee may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:
 - i. that the investigation be conducted fairly and all members of the committee be given the opportunity to ask questions of attendees, and to contribute and speak;
 - ii. that those assisting the committee by giving evidence be treated with respect and courtesy; and
 - iii. that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- c. Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall make its report and findings public.

Matters within the remit of more than one Overview and Scrutiny
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~~29.18 Where an Overview and Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Overview and Scrutiny Committee, before submitting its findings to the Cabinet and/or Council for consideration, the report of the reviewing Overview and Scrutiny Committee shall be considered by the other Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to the appropriate body for consideration. If appropriate the Overview and Scrutiny Committee conducting the review may invite the chair of the other committee (or his/her nominee) to attend its meetings when the matter is being reviewed. One or more Overview and Scrutiny Committees may have joint meetings.~~

Councillor Call for Action (CCFA)

29.19 Ward councillors have the power to request a debate and discussion at an Overview and Scrutiny Committee on the subject of neighbourhood concern. The powers are limited to single issues affecting the councillor's ward and are there as a longstop when all other attempts at a resolution have failed. The matter must be a local government matter for which the Overview and Scrutiny Committee has a responsibility, relate to the councillor's ward and not be excluded.

Excluded matters are:

- a. matters relating to a planning or licensing decision;
- b. a matter relating to an individual or entity in respect of which that individual or entity has recourse to a right of appeal conferred by legislation;
- c. any matter which is vexatious, discriminatory or unreasonable.

~~29.20 The process for the consideration of requests is that the ward councillor submits the request on a pro-forma to the Scrutiny and Democratic Services Manager. On the pro-forma application the ward member specifies the exact nature of the issue, what~~

~~steps have already been taken to resolve it, how the Overview and Scrutiny Committee can assist and what a successful resolution might be. Relevant officers would be requested to comment before consideration of the request by the Chairs and Vice-Chairs Steering Sub-Committee, a joint Sub-Committee of the Overview and Scrutiny Committees. The Sub-Committee would consider whether the matter was appropriate for reference to the relevant Overview and Scrutiny Committee, having regard to the criteria and exclusions set out in rule 29.19. Where it is decided not to be appropriate to refer the matter to the Committee, the Sub-Committee's reasons for refusal shall be provided in writing. The process for the consideration of requests is that the ward councillor submits the request by e-mail to democraticservices@hastings.gov.uk. The ward member must specify the exact nature of the issue, what steps have already been taken to resolve it, how the Overview and Scrutiny Committee can assist and what a successful resolution might be. Relevant officers would be requested to comment before consideration of the request by the Chair and Vice-Chair at an agenda planning meeting. The agenda planning meeting would consider whether the matter was appropriate for reference to the Overview and Scrutiny Committee. Having regard to the criteria and exclusions set out in Rule 29.19 where it is decided not to be appropriate to refer the matter to the agenda planning meeting reasons for refusal shall be provided in writing.~~

29.21 At a meeting of the Overview and Scrutiny Committee to consider the matter, the ward member is entitled to address the Committee to present the call for action. Relevant Lead members, officers and partner organisations, where appropriate, will be invited to attend and contribute. The Committee will explore the potential options for resolution and decide on their recommendation for certain action. The Committee might consider any delegated decision making powers the ward member may have and representations from the ward member on why it would be appropriate for the Committee to exercise its powers as Overview and Scrutiny Committee. The Committee will direct its recommendation to the Cabinet or the relevant committee of the Council, or ~~relevant Assistant Director Head of Service~~ where there is a delegation to officers. The Cabinet, committee or ~~Head of Service or relevant Assistant Director~~, in question, is required to report back to the Overview and Scrutiny Committee on actions taken as a result of the reference or the reasons for not taking action. If it decides not to take any action, the Committee shall notify the member of its decision and the reasons for the decision.

~~29.22 Crime and disorder matters are the responsibility of the Overview and Scrutiny Committee for Services. This Committee receives requests for consideration of a crime and disorder matter, including anti-social behaviour and the misuse of drugs, alcohol and other substances, affecting a member's ward. The request is processed in the same way as a request under the councillor call for action procedure described above.~~

~~29.23 When the Overview and Scrutiny Committee for Services consider whether or not to make a report to the Cabinet or to the Council in relation to the matter, they may have regard to any decision making powers delegated to the ward member and the representations made by the ward member as to why the Committee should exercise its power to report to Cabinet or the Council. If it decides not to take any action, the Committee shall notify the member of its decision and the reasons for the decision.~~

Part 6 - Members' Allowances

Appendix A is the old version of the Table - Members Allowance Scheme replaced by Appendix B the new version of the Table - Members allowance Scheme.

Wards Affected

None

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	No
Local People's Views	No
Anti-Poverty	No

Additional Information

Appendix A - Part 6 old table of Members Allowance Scheme
Appendix B - Part 6 new table of Members Allowance Scheme
Appendix 1 - Old Committee Structure Chart
Appendix 2 - New Committee Structure Chart

Officer to Contact

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