

# Part 4(e) – Overview & Scrutiny Procedure Rules

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## **Part 4 (e) – Overview and Scrutiny Procedure Rules**

### **1. What will be the number and arrangements for Overview and Scrutiny Committees?**

The Council's scrutiny function is performed by the scrutiny committee as set out in Article 6 and will appoint to them as it considers appropriate.

### **2. Who may sit on the Scrutiny Committee**

All Councillors except members of the Cabinet and Mayor may be members of the scrutiny committee. However, no Councillor may be involved in scrutinising a decision in which they have been directly involved.

The People Scrutiny Committee shall include within its membership the following Co-opted Members:

- 1 x Church of England diocese representative (voting);
- 1 x Roman Catholic diocese representative (voting);
- 2 x Parent governor representatives (voting);
- 3 x Non-voting Co-opted Members: one appointed by SAVS (through election amongst voluntary organisations in the City), one appointed by Healthwatch Southend and the other appointed by the Carers Forum; and
- 2 x Observers appointed by Southend Youth Council

### **3. Meetings of the Scrutiny Committee**

A schedule of meetings will be published. Additional meetings may be called from time to time as and when appropriate. A meeting may be called by the Chair of the Scrutiny or by any five members of the Committee or by the Chief Executive if they consider it necessary or appropriate.

### **4. Quorum**

The quorum for a scrutiny committee shall be five. The quorum must be maintained for the duration of the meeting.

### **5. Who chairs the Scrutiny Committee?**

Chairs and vice chairs of the scrutiny committees will be drawn from among the opposition Councillors sitting on the committee.

### **6. Work programme**

The scrutiny committees will be responsible for setting their own work programme (having due regard to Council resources) and in doing so they

shall consider the wishes of members on that committee. The work programme should include requests from the Council and the Cabinet for advice. Part of the work programme may be undertaken by small Working Parties of the scrutiny committee. Appendices 2 and 3 provides guidance on setting a work programme.

In addition to the more in-depth scrutiny work undertaken by the working parties during the municipal year, the committee may wish to undertake pre-decision scrutiny on decisions in their final form before their consideration at Cabinet. Appendices 3 and 4 sets out how pre-decision scrutiny works in practice.

## **7. Agenda items**

Any elected Councillor may give written notice to the Chief Executive that they wish an item relevant to the functions of the scrutiny committee and relating to a Councillor Call for Action (CCfA) in their ward which cannot be resolved through normal channels, to be included on the agenda for the next available meeting of the committee (in accordance with the Local Protocol on CCfA in Part 5(g) of the Constitution). On receipt of such a notice the Chief Executive will assess whether it is validly submitted and complies with the guidance issued by the Secretary of State. If they are satisfied that it is valid, they shall arrange for investigation and submission of an initial report on the matter for consideration on the next available agenda.

The scrutiny committees shall also respond, as soon as their work programme permits, to requests from the Council and if it considers it appropriate the Cabinet to review particular areas of Council activity. Where they do so, the scrutiny committee 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 scrutiny committee within one month of receiving it.

The People Scrutiny Committee will consider referrals made by Healthwatch Southend.

## **8. Policy review and development**

The role of the scrutiny committees in relation to the Council's Budget and Policy Framework is set out in the Budget and Policy Framework Procedure Rules (Part 4(c)).

In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, scrutiny committees or sub-committees may make proposals to the Cabinet for developments in so far as they relate to matters within their Terms of Reference.

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 and may pay any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

## **9. Reports from the Scrutiny Committee**

Once it has formed recommendations on any matter, a scrutiny committee may prepare a formal report and submit it for consideration by the Cabinet (if the proposals are consistent with the existing Budgetary and Policy Framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed Budget and Policy Framework).

If a scrutiny committee cannot agree on one single final report to the Council or Cabinet on proposals on any matter as referred to above, then up to one minority report may be prepared and submitted for consideration by the Council or Cabinet with the majority report.

The Council or Cabinet shall consider the report of the scrutiny committee normally within 8 weeks of it being submitted.

## **10 Making sure that scrutiny reports are considered by the Cabinet**

The agenda for Cabinet meetings shall include an item entitled "Issues arising from scrutiny". The reports of scrutiny committees referred to the Cabinet shall be included at this point in the agenda (unless they have been considered in the context of the Cabinet's deliberations on a substantive item on the agenda) within one month of the scrutiny committee completing its report.

Only one report every three months may be submitted by each scrutiny committee to the Cabinet.

Scrutiny committees will in any event have access to the Cabinet's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from a scrutiny committee following a consideration of possible policy / service developments, the committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.

## **11. Rights of Scrutiny Committee members to documents**

In addition to their rights as Councillors, members of 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(b).

Nothing in this paragraph prevents more detailed liaison between the Cabinet and scrutiny committees as appropriate depending on the matter under consideration.

## **12. Councillors and officers giving account**

The scrutiny committee will confine its questions to the particular issue on the agenda. Scrutiny committees may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. This power does not relate solely to scrutiny of decisions taken and can be used to ask a Cabinet Member, for example, about forthcoming issues, provided due notice is given. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any Cabinet Member, the Head of Paid Service and / or any senior officer 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.

Where any Councillor or officer is required to attend a scrutiny committee under this provision, the chair of that committee will inform the Chief Executive. The Chief Executive shall inform the Councillor or officer in writing giving at least 15 working days' notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are 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 Councillor or officer concerned will be given sufficient notice to allow for preparation of that documentation.

Where, in exceptional circumstances, the Councillor or officer is unable to attend on the required date, then the scrutiny committee shall in consultation with the Councillor or officer arrange an alternative date for attendance to take place within a maximum of 15 days from the date of the original request.

### **13. Attendance by others**

A Scrutiny Committee may invite people other than those people referred to 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.

### **14. Call-in**

Only key decisions can be called-in, urgent key decisions cannot be called in.

Call-in should only be used in exceptional circumstances. Exceptional circumstances are where a decision has been made which is either outside the policy framework or contrary to, or not wholly consistent with the budget, or the decision was not taken in accordance with the principles set out in Article 13.02. The right to call-in should not be abused.

Where a decision is made by the Cabinet, the decision shall be published in a Digest, including where possible by electronic means, and shall be available at the main offices of the Council as soon as possible after the Cabinet meeting. The Digest will be sent to all Councillors.

The published decision will bear the date on which it is published and will specify that the decision will come into force and may be implemented at 4.00pm on the fifth working day after the publication of the decision (not including the date of publication), unless called-in under these provisions.

During this period, the Chief Executive shall call-in a decision for scrutiny by the relevant scrutiny committee if so requested by at least 3 members of the Council (not including Cabinet Members) or voting co-opted members and providing the request complies with the requirements set out in the reasons for call-in below. For the purposes of this provision the education co-opted members referred to in paragraph 3 of these Rules shall only be entitled to request the call-in of a decision relating to education matters.

Councillors requesting that a decision be called-in for scrutiny shall complete a call-in form (attached at Appendix 1) either electronically or on paper and indicate one councillor as the lead councillor for the call-in and send it to the Chief Executive.

The councillors requesting the call-in must include reason(s) why the decision should be scrutinised.

A reason for call-in shall not be valid if:-

- (i) the reason for call-in does not relate directly to the decision;
- (ii) the reason for call-in is answered by information already to be found in the report relating to the decision;
- (iii) the reason for call-in is to obtain information which does not directly relate to the reasons for taking the decision which is being called in;
- (iv) the reason for call-in relates to a decision which is yet to go to statutory consultation. However, the reason for call-in may be valid if it relates to the basis of or criteria for the consultation;
- (v) the reason for call-in relates to a previous policy or strategy decision which has been subject to the call-in process within the previous six months;
- (vi) there was sufficient time for pre-decision scrutiny.

On receipt of a call-in form the Chief Executive will arrange for:

- (a) the call-in form to be acknowledged in writing;
- (b) consideration that the call-in is valid within these Rules;

If the call-in is valid:

- (c) Cabinet to be formally notified in writing of the receipt of a call-in; and
- (d) the Chair of the scrutiny committee to be informed (if the Chair is not a party to the call-in).

If the call-in form states that the decision is outside of the budget and policy framework of the Council, the Chief Financial Officer or Monitoring Officer (as appropriate) will prepare a report for the scrutiny committee upon the matter.

Prior to the meeting of the scrutiny committee arranged to consider the call-in item, the Chair shall arrange an informal meeting with the lead councillor calling in the decision and the lead Cabinet Member to discuss the issue. All members who have signed the call-in request will be invited to the informal meeting, providing the number of signatories does not exceed three.

Where at the informal meeting stage assurances are given by, or agreements reached with the lead Cabinet Member, then those assurances or agreements must subsequently be confirmed in writing.

A report of any call-ins that are withdrawn as a result of an informal meeting will be included on the Agenda for the next meeting of the scrutiny committee.

If the call-in is not withdrawn as a result of the informal meeting or an informal meeting is not held it will go to the scrutiny committee.

The committee should normally meet within 10 clear working days of the notice of call-in. Wherever possible scheduled meetings of the committee will be used. Where this is not possible the Chief Executive will liaise with the parties concerned to arrange a special meeting.

A decision may not be called-in where the scrutiny committee scrutinised the decision before it was taken and made recommendations to Cabinet and those recommendations have been accepted by Cabinet either in whole or without significant addition or modification.

To facilitate the proper scrutiny of the decision being called-in, the lead councillor shall provide the scrutiny committee members with an outline of the case to be presented and any supporting evidence not less than three working days prior to the date of the scrutiny committee meeting.

Where a decision has been called-in and none of the councillors who have called-in the decision attends, the scrutiny committee will have the option of confirming the decision without any further discussion.

The Chair of the scrutiny committee shall primarily confine the debate at the meeting to the reasons stated on the call-in form.

The options available to the scrutiny committee in respect of a called in matter are as follows:

- a) To note the Cabinet's decision – in which case the decision takes effect immediately
- b) To refer the matter back to the Cabinet for reconsideration – in which case the Cabinet shall reconsider the matter within 28 days, normally at its next planned meeting. The Cabinet may then determine the matter as it thinks fit and the decision takes effect on publication of the fresh decision, there being no further call-in.
- c) Refer Cabinet's decision to the Council where the Chief Financial Officer/ Monitoring Officer's report confirms that the decision is outside of the budgetary and policy framework.

If a matter is referred to the full council in accordance with paragraph (c) above, the Chief Executive, in consultation with the Mayor, shall call an extraordinary meeting of the council within seven working days.

Essentially the same procedures also apply to the call-in of key decisions by the Cabinet Committee and officers. However, in the latter case if the scrutiny committee refers the matter back, it will be considered again by the officer who will refer the matter to Cabinet.



## **15. Call-In and Urgency**

The call-in procedure set out above shall not apply or shall cease to apply where the decision being taken by the Cabinet is urgent or becomes urgent during the call-in process. A decision is urgent if any delay likely to be caused by the call-in process is likely to 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 Cabinet, the decision is or has become an urgent one, and therefore not, or no longer subject to call-in.

The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

## **16. Procedure at Scrutiny Committee meetings**

Scrutiny committees shall consider the following business:

- (i) minutes of the last meeting;
- (ii) declarations of interest;
- (iii) consideration of any matter referred to the committee in relation to call-in of a decision;
- (iv) responses of the Cabinet to reports of the scrutiny committees; and
- (v) the business otherwise set out on the agenda for the meeting.

Where the 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.

Following any investigation or review, the committee / sub-committee shall prepare a report for submission to Cabinet and / or Council as appropriate and shall make its report and findings public.

**Appendix 1**

This form may be used to request a call in of any key decision (except urgent decisions) taken by the Cabinet or an officer acting under delegated powers.

This form must be completed by at least 3 voting members of the Council and must be delivered to the Chief Executive by 4pm of the fifth working day following publication of the decision.

We, the undersigned, request that the following decision be scrutinised by the .....Scrutiny Committee for the reasons set out below:-

The decision of the Cabinet on .....20.. item ..... ; or  
The decision contained in the Record of Decisions Taken Under Delegated Powers, Reference No..... dated .....

Reasons for call in:

Names

1. ....
2. ....
3. ....

Please indicate the lead representative who must present the case at the scrutiny committee meeting.

### **Scrutiny work programme**

At the first meeting of each scrutiny committee in the municipal year, the committee will set their work programme (having due regard to Council resources) and in doing so they shall consider the wishes of members on that committee. Part of the work programme may be undertaken by small Working Parties of the scrutiny committee.

The scrutiny committees shall also respond, as soon as their work programme permits, to requests from the Executive to review particular areas of Council activity. Where they do so, the scrutiny committee shall report their findings and any recommendations back to the Executive. The Executive shall consider the report of the scrutiny committee at the next available meeting.

The Committees should anticipate that during the municipal year they may wish to undertake pre-decision scrutiny or call-in a decision and accordingly it is advisable leave sufficient time within the planned work programme for these eventualities.

### **Issues suitable for scrutiny**

The following criteria can help to determine a scrutiny committee's programme. A topic does not need to meet all of these criteria in order to be scrutinised, but they are intended as a guide for prioritisation.

- Is the issue a priority area for the Council?
- Is it a key issue for local people?
- Will it be practicable to implement the outcomes of the scrutiny?
- Are improvements for local people likely?
- Does it examine a poor performing service?
- Will it result in improvements to the way the Council operates?
- Is it related to new Government guidance or legislation?

Other points also need to be taken into account when considering whether to review a particular issue:

- Is the subject specific – so that those undertaking the scrutiny can understand exactly what they are scrutinising?
- Is it achievable within the timescale allowed?

The following criteria may also be helpful in identifying what issues are not suitable for scrutiny:

- The issue is already being examined by another body.
- The matter is sub judice or prejudicial to the Council's interests.
- The matter relates to a specific case falling within the complaints procedure.
- The issue relates to an individual disciplinary matter or grievance.

It will be important for members to:

- Ensure that the programme includes a balance of different types of work, including short, medium and long term reviews.
- Issues could be considered at single meetings, or may need to be the subject of a longer term, more in-depth scrutiny review;
- Have regard to the ongoing work of the scrutiny committees, including performance monitoring, budget scrutiny, crime and disorder scrutiny and consideration of the Corporate Plan;
- Ensure that the scrutiny committees retain sufficient capacity to respond to issues that may arise within the year, including pre-scrutiny and call-ins;
- Take into account the resources available to support scrutiny.

The scrutiny chairs will need to consider how best to carry out the pieces of work in discussion with relevant officers and the scrutiny team.

### PRE-DECISION SCRUTINY

#### What is pre-decision scrutiny?

1. Pre-decision scrutiny applies to scheduled Cabinet business and provides the opportunity for consultation with non-Executive Members on fully developed proposals, where a clear recommendation exists, before decisions are taken by the Cabinet. This provides scrutiny Councillors with the ability to make comments on a proposed decision before it is made, thereby giving scrutiny a valuable opportunity to influence decision-making through debate and challenge.
2. Pre-decision scrutiny is usually undertaken two or three weeks before a key decision is made at Cabinet. This provides councillors on scrutiny committee to consider and make recommendations on decisions in their final form.
3. The range of possible outcomes may include support for a decision, a different view on the way forward, the flagging up of concerns, or a view that the decision should be deferred pending further work, etc.
4. It does not mean that decisions will necessarily be changed or withdrawn, however it gives an opportunity for those decisions to be more informed. Pre-decision scrutiny can be viewed as non-Executive Members performing a 'critical friend' role in relation to the Executive.

#### What pre-decision scrutiny is not

5. Pre-decision scrutiny does not replace decision-making. It is not intended to blur the lines of accountability, which will always rest with the Executive.
6. Pre-decision scrutiny is not the same as general service or policy development / formulation. Separate to pre-decision scrutiny there will be occasions where scrutiny is already involved at an earlier point in the development of policy or service proposals.
7. Pre-decision scrutiny is not a call to carry out an in-depth inquiry into a matter. It refers to a one-off consultation on a specific report.

#### Who undertakes pre-decision scrutiny?

8. Pre-decision scrutiny is about accountability for decision-making. The scrutiny of decisions and holding the Council's Executive to account is a role that is carried out by the Council's three Scrutiny Committees.
9. The selection of matters for pre-decision scrutiny should have regard to whether the matter has already featured in scrutiny work plans.

### **Impact on work plans**

10. Pre-decision scrutiny is only one of a variety of roles and possible activities that scrutiny may be involved in, and any desire to undertake pre-decision scrutiny will need to be balanced with other activities.
11. Pre-decision scrutiny does not automatically require scrutiny to carry out any in-depth work. The presumption is that a single meeting is sufficient to formulate views. Should the committee feel that more work is necessary then it will need to recommend that to Cabinet. If the committee wishes to carry out any aspect of work in relation to the proposed decision, it will need to state this in its response to the Cabinet.
12. An item for pre-decision scrutiny need not automatically pose a significant impact on the existing work programme, the committee will however have to manage its work to take into account referrals or requests for pre-decision scrutiny.

### **Impact on the Executive**

13. The committee will depend on the cooperation of the Executive in facilitating the involvement of scrutiny. Pre-decision scrutiny will have an impact on existing decision-making procedures, and the time of both councillors and officers involved in the production of Cabinet reports. Pre-decision scrutiny would be facilitated by forward planning and a degree of flexibility on decision-making timetables.

### **The process**

14. The process for pre-decision scrutiny is summarised in the attached flow-chart (Appendix 4). The process is based on a selective approach through identification of items from the City Council's Forward Plan.
15. Only one scrutiny committee may undertake pre-decision scrutiny.

### **Identification / Selection**

16. The City Council publishes its Forward Plan on the Council's website and it will be included with each scrutiny agenda. Scrutiny councillors should use this information as the source from which selections for pre-decision scrutiny are made. Where the chair of a scrutiny committee or a group leader expresses a desire to pre-scrutinise a matter it will be added to the work programme. The relevant Cabinet Member will be made aware of any requests for pre-scrutiny.
17. In some circumstances pre decision scrutiny will not be appropriate. The Chief Executive will be entitled to decline a request for pre-decision scrutiny provided one of the following criteria is met:

- The matter is not the subject of a Cabinet decision-making report
- The matter has already been subject to extensive consideration by scrutiny
- Where pre-decision scrutiny would require that an urgent matter is delayed and that this delay would be detrimental to the interests of the Council
- Whether there is any constitutional or legal reason why pre-decision scrutiny should not take place

### **Notification**

18. The relevant Cabinet Member and relevant Director will be notified of those matters identified for pre-decision scrutiny at the earliest opportunity and advice sought on timing / implications.
19. The relevant Director will advise on the decision-making timetable.

### **Inclusion in Work Plan**

20. Where possible those matters that have been considered appropriate for pre-decision scrutiny will be included in the work plan.
21. At the same time the committee will have to consider the implication on its own time to undertake meaningful pre-decision scrutiny and will need to manage and modify its work programme accordingly.

### **Consideration**

22. Pre-decision scrutiny will normally be based on the report which is to be submitted to Cabinet. The relevant Cabinet Member would be expected to attend the committee to answer questions / provide clarification on the report. The committee can request relevant officers to attend to provide advice and assist the committee in their consideration.
23. Best practice evidence strongly emphasises the need for a constructive and non-party political approach. There would be an expectation of responsible, evidence-based scrutiny. In general, the committee would be expected to focus on:
  - The reasons for the proposed decision and robustness of the process
  - Whether the report outlines all the known or potential implications (including policy/budget issues) and risks
  - Whether the report adequately examines all the available options
  - Whether there has been adequate consultation on the proposals
24. Meetings will be open to the public (unless an exemption applies).

## **Decision**

25. The Committee will inform cabinet in writing of their considerations, this will be included on the Cabinet agenda. Otherwise, the chair of the committee will be invited to address the Cabinet during consideration of the report to outline the views of the committee prior to decision.
  
26. Where possible the Cabinet report should include a section on the outcome from the committee meeting and if necessary, demonstrate how the views expressed by the committee have been addressed.



# Pre-decision scrutiny

