

Committee: Council

Agenda Item

Date: 8 December 2016

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Title: Reports from the Constitution Working Group

Author: Simon Pugh, Interim Head of Legal Services

Item for decision:
yes

Summary

1. The Constitution Working Group considered reports on the following topics at its meeting on 27 September 2016. The reports are attached to this covering report and cover the following:
 - The deletion from agendas for meetings of the standard item called “Matters Arising: To consider matters arising from the minutes.”
 - The addition of a provision to the Overview and Scrutiny Procedure Rules to allow a scrutiny committee meeting to be cancelled following withdrawal of a call-in request.
 - The inclusion in the Constitution of powers for the Monitoring Officer to make routine changes to keep the Constitution up to date.

The officer recommendations in the three reports were approved by the Working Group.

Recommendations

2. That the head of business: “deal with any matters arising from those minutes” in paragraph 1.1.4 (page (4)-5) and in paragraph 2.3 (page (4)-7) of the Council Procedure Rules is deleted.
3. That a new paragraph 9.13 be included in the Overview and Scrutiny Procedure Rules as set out in paragraph 10 of the report to the Constitution Working Group on withdrawal of call-in requests.
4. That the changes to the Constitution set out in the Appendix of the report to the Constitution Working Group on updating the Constitution are approved..

Financial Implications

5. None.

Background Papers

6. The three reports mentioned to the Constitution Working Group meeting on 27 September. These are available on the Council’s website.

Impact

7.

Communication/Consultation	The reports have been considered by the Constitution Working Group.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	Legal implications are dealt with in the body of the appended reports.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

8. The issues are set out in the reports to the Constitution Working Group, which are attached to this report.
9. When the Constitution Working Group considered the “matters arising” issue, officers were asked to compile a note setting out ways in which members could raise queries on the progress of matters. A note is annexed to this report setting out a variety of ways in which this might be done.

Risk Analysis

10. This is considered separately in the three reports annexed.

Appendices

Appendix 1: Note to Council: Monitoring Progress in Implementing Decisions.

Appendix 2: Report to Constitution Working Party – “Matters Arising” Agenda Item

Appendix 3: Report to Constitution Working Party – Scrutiny Committee: Withdrawal of call-in requests

Appendix 4: Report to Constitution Working Party – Updating the Constitution

Appendix 1

Monitoring Progress in Implementing Decisions.

The Constitution Working Group is recommending that the standard “Matters Arising” item is removed from Council and Committee agendas. Concern was expressed, however, on how queries about progress on minuted items could be raised. The issue is a wider one, as members may wish to ask about progress on matters other than those that fall within “matters arising” from the minutes of the last meeting.

There are various steps that can be taken:

1. Informal

1.1 At the most simple, members can contact the relevant Assistant Director or Director to ask about progress or to raise issues or concerns.

1.2 Similarly, members can contact the lead Cabinet member or Committee Chair to ask about the implementation of decisions.

2. Formal

2.1 As part of making a decision, members can plan for how they can monitor its implementation; e.g. by including as part of the resolution a request for an update report to be brought to the committee, either at key stages or at specified times.

2.2 Members can ask for an update report to be included in the Members’ Bulletin by contacting the Democratic Services team.

2.3 Members can ask questions at Council meetings. There is a standing item on Council agendas that, for a period not exceeding 15 minutes, allows for the leader, members of the executive and Chairmen of committees to receive questions from members, to permit the Leader, members of the executive or Chairmen to reply and for the questioner to ask a supplementary question but without any debate on the issues raised.

2.4 Members are entitled to give notice of motions for consideration by Council. This will lead (with limited exceptions for matters previously considered) to the inclusion of an item on the agenda and the opportunity for debate.

2.5 The “notice of motion” procedure may be applied to committee meetings, other than meetings of the Cabinet. Less formally, members may request the inclusion of an item on a committee agenda, which may be more appropriate where they want a formal update or want to raise an issue.

- 2.6 The agenda for Cabinet meetings provides for the meeting “to receive questions or statements from non-executive members on matters included on the agenda”.
- 2.7 The rules for meetings of the Cabinet also provide that any member of the Council may ask the Leader to put an item on the agenda of an executive meeting for consideration, and if the leader agrees the item will be considered at the next available meeting of the executive. However, there may only be up to three such items per executive meeting.
- 2.8 Any member of an overview and scrutiny committee or sub-committee shall be entitled to give notice to the proper officer that he/she wishes an item relevant to the functions of the committee or sub-committee to be included on the agenda for the next available meeting of the committee or sub-committee. Although this power is limited to members of the committee, it would be open to any member of the Council to approach a member of a scrutiny committee and to ask them to raise an issue.
- 2.9 Working groups are less formally constituted and are not governed by procedural rules in the same way that the Council, committees and Cabinet are. If a member wants to raise an issue with a working group, they can approach the Chairman either directly or through an officer and request the inclusion of an item on a working group agenda.

Simon Pugh

Interim Head of Legal Services

21 November 2016

Appendix 2

Committee: Constitution Working Group

Agenda Item

Date: 27 September 2016

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Title: "Matters Arising" Agenda Item

Author: Interim Head of Legal Services

Item for decision

Summary

1. It has been the practice to include on agendas for meetings an item called "Matters Arising: To consider matters arising from the minutes." This report proposes the deletion of this as a standard agenda item for the reasons set out below.

Recommendations

2. Recommend to Council the deletion of the head of business: "deal with any matters arising from those minutes" in paragraph 1.1.4 (page (4)-5) and in paragraph 2.3 (page (4)-7) of the Council Procedure Rules.

Financial Implications

3. None

Background Papers

4. List of Councils in Essex with annotations regarding use of "matters arising".

Impact

- 5.

Communication/Consultation	None.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	Legal implications are dealt with in the body of the report.
Sustainability	None
Ward-specific impacts	None

Workforce/Workplace	None
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Situation

6. Agendas for meetings of the full Council and for Committee and Cabinet meetings routinely include as an item of business: “Matters Arising: To consider matters arising from the minutes.” This is provided for in the Constitution for annual and ordinary meetings of the Council. The provision is not applied by the Constitution to meetings of committees or of the Cabinet but is routinely included on the agenda.
7. The “Matters Arising” item can provide a helpful opportunity for members to obtain a progress report but it also carries risks. The authoritative work on Council procedures, *“Knowles on Local Authority Meetings”*, comments:

“One of the potential problems arising out of confirmation of minutes is the temptation for members to raise issues apart from simply confirming the minutes as a correct record. At its worst this can lead to an attempt to change a decision taken at the previous meeting and any such discussion should be ruled out of order by the chairman. Some authorities are known to provide an item on the agenda “Matters arising from the minutes” to allow, for example, members to be advised of the current position of items discussed at the previous meeting. However, this is not regarded as good practice and, unless the subject to be raised is related to a matter specifically referred to in the agenda, may infringe the statutory restriction that only business specified in the notice can be dealt with [section 110B, Local Government Act, 1072]. The model standing order provides the following:

“Signing the Minutes. The Chairman will sign the minutes of the proceedings at the next suitable meeting. The chairman will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.” “

8. Section 110B referred to in paragraph 7 states:
 - (4) An item of business may not be considered at a meeting of a principal council unless either—
 - (a) a copy of the agenda including the item (or a copy of the item) is open to inspection by members of the public in pursuance of subsection (1) above for at least five clear days before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened; or
 - (b) by reason of special circumstances, which shall be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

One of the principles behind this is that the agenda should contain sufficient information to allow members of the public (and councillors) to decide whether

they should attend. It also allows for publication of reports and access to background papers in advance of the meeting.

9. There are arguments in favour of the “matters arising” item. It can provide, as mentioned, a helpful opportunity for members to obtain a progress report on items in the minutes. On the other hand, it cannot be used to revisit decisions already made and can be a distraction from the main focus of meetings and can prolong them. Any decisions made under “matters arising” are likely to be unlawful and, as “*Knowles on Local Authority Meetings*” points out, may infringe the statutory restriction that only business specified in the agenda can be dealt with. On balance, the officer recommendation is to delete this as an agenda item. If members have concerns about a specific matter, it is better to include it as a free-standing item on the agenda for a meeting.
10. Uttlesford DC is, according to research by officers, the only district council in Essex to include a “matters arising” item on its agendas. The County Council also does not have “matters arising” as an agenda item.

Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
If “matters arising” is included as an agenda item, there is a possibility of legal challenge. (2)	Unlikely in the case of general discussion. More likely if decisions are made under “matters arising”.	Minimal in the case of general discussion. Could be significant if decisions are made under “matters arising”.	The principal mitigating action would be to remove the “matters arising” item from agendas. If members reject the recommendation, then a clear understanding that substantive decisions cannot be made under “matters arising” will reduce the risk.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix 3

Committee: Constitution Working Group

Agenda Item

Date: 27 September 2016

5

Title: Scrutiny Committee: Withdrawal of call-in requests

Author: Interim Head of Legal Services

Item for decision

Summary

1. This report follows consideration

Recommendations

11. Recommend to Council the inclusion of a new paragraph 9.13 in the Overview and Scrutiny Procedure Rules as set out in paragraph 10 of this report.

Financial Implications

12. None

Background Papers

13. None. The report of the Director of Finance and Corporate Services to the Scrutiny Committee on 7 September is appended to this report.

Impact

- 14.

Communication/Consultation	None.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	Legal implications are dealt with in the body of the report.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

15. The purpose of this report is to propose changes to the Constitution to allow for the cancellation of a scrutiny committee meeting if members who “called in” the item subsequently conclude that call-in is not necessary. Members may decide they do not wish to pursue call-in if, for instance, they are offered assurance or explanation regarding the effect of the decision in question. Call-in may also not be necessary if assurances are given that the decision will be reconsidered by the Cabinet before its implementation.

16. The issue was considered by the Constitution Working Group at its meeting on 21 July 2016. It made this recommendation:

RECOMMENDED to Council that wording (to be drafted) be added to the Call-in procedure part of the Overview and Scrutiny Procedure Rules to enable Scrutiny Committee meetings to be cancelled, with the agreement of the lead officer and Chairman of the Scrutiny Committee, when the Executive had agreed to take a decision back for reconsideration.

17. This report proposes wording, as recommended by CWG, but goes slightly wider than recommended, as it provides for meetings to be cancelled for additional reasons to that mentioned in the recommendation.

18. A report was submitted by the Director of Finance and Corporate Services to the Scrutiny Committee on 7 September. The Scrutiny Committee voted to support the CWG recommendation, although some concern was expressed regarding transparency. The recommended wording seeks to address this.

19. Scrutiny Committee members asked to see this report at the same time as its circulation to CWG. Any comments made will be passed to CWG when it meets. There was also a suggestion from the Chair of the Scrutiny Committee that a wider review of the scrutiny process is needed. This can be pursued, if members wish, separately.

20. Members are recommended to add the following paragraph 9.13 (at page 4-64) of the Overview and Scrutiny Procedure Rules:

A call-in request under para 9.3 may be withdrawn at any time up until the Scrutiny Committee meets to consider the decision called in. If a request for call-in is withdrawn by all members who made it, then subject to the agreement of the Chairman, a Scrutiny Committee to consider the decision shall either not be summoned or shall be cancelled. For the avoidance of doubt, the meeting shall go ahead if the Chairman of the Scrutiny Committee decides that this is in the public interest. Information about any call-in requests that are withdrawn under this provision shall be included on the agenda for a future meeting of the Scrutiny Committee.

Risk Analysis

21.

Risk	Likelihood	Impact	Mitigating actions
<p>(2) That a meeting of a Scrutiny Committee is convened in circumstances in which it is not necessary.</p> <p>(2) That implementation of a decision by the Cabinet is delayed unnecessarily.</p>	<p>Unlikely to occur frequently but likely to occur occasionally.</p>	<p>Unnecessary cost of calling a meeting, use of resources and member and officer time. Could be some impact if implementation of decisions is delayed.</p>	<p>This report proposes a way of mitigating this risk, whilst allowing the Chairman to rule that a meeting should go ahead. Concerns about transparency re addressed by the proposal that information is given to the Scrutiny Committee when call-in requests are withdrawn.</p>

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix 4

Committee: Constitution Working Group

Agenda Item

Date: 27 September 2016

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Title: Updating the Constitution

Author: Interim Head of Legal Services

Item for decision

Summary

1. This report seeks approval for the Monitoring Officer to make routine changes to the Constitution to keep it up to date.

Recommendations

2. To recommend to Council the changes to the Constitution as set out in the Appendix to allow the Monitoring Officer to keep the Constitution updated.

Financial Implications

3. None.

Background Papers

4. There are no background papers.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	There is a risk of challenge to Council decisions if the Constitution is not kept up to date.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. Article 15.2 of the Constitution sets out the procedure for making changes. (Page (2)-46.) It states:

Changes to the constitution may only be made by the Full Council after consideration of the proposal by the Constitution Working Group.

7. Whilst this is appropriate for substantive changes to the Constitution, there is a level of routine updating that is needed on a regular basis and which, in the officers' view, does not require approval by full Council and consideration by the Constitution Working Group. Officers have in mind specifically the following:

- Amending references to posts in the Council's Scheme of Delegation, where responsibilities and/or post titles change in the light of restructuring;
- Updating the Scheme of Delegation to reflect changes to delegations made by regulatory committees or by the Cabinet or Leader;
- Updating the responsibilities of members of the Cabinet, as determined by the Leader;
- Updating references to legislation where an Act of Parliament is replaced by another Act in substantially similar terms or reflecting changes in the law which are required by new legislation which the Council has no choice but to make;
- Drafting changes to the Constitution where these correct obvious errors or better give effect to the clear intention of the constitution.

It is arguable that at least some of these changes could be made by officers on an administrative basis without express provision in the Constitution. However, setting out clear powers to keep the Constitution up to date would avoid doubt and encourage regular review.

8. More significant changes to the Constitution would still require Council approval on the recommendation of the Constitution Working Group.

Risk Analysis

9.

Risk	Likelihood	Impact	Mitigating actions
That the Council's constitution is not kept up to date.	2. Not maintaining the Constitution could result in uncertainty about responsibility for functions, with a	[Click here]	[Click here]

	possible risk of legal challenge, a lack of full transparency, and potential confusion.		
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- 1 = Little or no risk or impact
2 = Some risk or impact – action may be necessary.
3 = Significant risk or impact – action required
4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix:

Proposed Amendments to Article 15.2 of the Constitution. (Page (2)-46)

15.2 Changes to the Constitution

- 15.2.1 Subject to Article 15.2.3, changes to the constitution may only be made by the Full Council after consideration of the proposal by the Constitution Working Group.
- 15.2.2 In the event that the Council considers amending the constitution to provide for a mayor and cabinet form of executive it must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum
- 15.2.3 The Monitoring Officer may approve drafting changes in these circumstances:
- To update the Council’s scheme of delegation where responsibility for a function the subject of delegated powers is moved from one officer to another; for instance, following a departmental restructuring or to reflect changes in job titles or the management structure.
 - To reflect changes to delegations to officers made by regulatory committees or by the Cabinet.
 - To reflect changes in responsibilities of members of the Cabinet, as determined by the Leader.
 - To update references in the Constitution to legislation where an Act of Parliament is replaced by another Act in substantially similar terms or to reflect changes which are required by new legislation which the Council has no choice but to make.
 - To correct obvious errors or to better give effect to the clear intention of the Constitution.