

CHESHIRE EAST

GOVERNANCE AND CONSTITUTION COMMITTEE

Date of meeting: 12 January 2009
Report of: Monitoring Officer
Title: Scrutiny Procedure Rules

Purpose of Report

- 1.1 For the Committee to consider the draft Scrutiny Procedure Rules which will apply with effect from 1 April 2009.

2.0 Decision Required

- 2.1 That, having considered the issues raised in this report, the Committee recommends the adoption by Council of the Scrutiny Procedure Rules appended to this report, these to take effect on 1 April 2009.
- 2.2 That Council be recommended to authorise the Monitoring Officer to make such consequential changes to the Constitution as he considers are necessary in order to give effect to its intentions.

3.0 Financial Implications for Transition Costs

- 3.1 There are no implications for Transition Costs.

4.0 Financial Implications 2009/10 and beyond

- 4.1 There are no financial implications 2009/10 and beyond.

5.0 Legal Implications

- 5.1 The legal implications are taken into account in the body of this report.

6.0 Risk Assessment

- 6.1 As the recommended model of Procedure Rules largely follows the Modular Constitution format prepared by the Government Department, taking on board tried and tested provisions of Rules in use across Cheshire, no identifiable risks arise.

7.0 Background

- 7.1 The Council has adopted a Constitution, including Procedure Rules, which govern the way in which its Council meetings, Committees, Sub-Committees and Cabinet operate during the Shadow Council period.
- 7.2 These are currently in use and, with the exception of a small number of changes which have been considered by Members, have served the Council well.
- 7.3 Whilst the existing Constitution has been in operation since the Council came into being, this was prepared to serve the needs of the limited functions for which it was responsible. However, the Council will need to adopt a Constitution which will take effect on 1st April 2009 and which will serve the purposes of a unitary local authority.
- 7.4 The adoption of a new Constitution is therefore an opportunity for Members to consider whether the current Scrutiny Procedure Rules contain satisfactory provisions.
- 7.5 Attached to this report as Appendix B are the current Rules, containing minor amendments e.g removal of references to “Council” and “Interim Monitoring Officer”.
- 7.6 Appendix A is a schedule of key issues identified by officers by way of a reminder of key provisions of the Rules.
- 7.7 At its meeting on 15th December, 2008, the Council’s Scrutiny Committee considered the draft Rules and recommended that they should take effect, in the appended form, with effect from 1 April 2009.

8.0 Conclusions and Recommendation

- 8.1 The Committee is asked to give consideration to the proposed Rules and to make a recommendation to Council upon the provisions which should be included in the Rules which will form part of the Constitution from 1 April 2009.

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Background Documents:

- ***Cheshire East Council Constitution***
- ***Government Department Modular Constitution***
- Cheshire local authorities’ constitutions

Appendix A

Ref	Issue	Comment
R 2.2	Task and Finish Panels	Scrutiny Committees may appoint such Panels
R 2.10	Scrutiny structure	Any expansion of the Scrutiny Committee structure will need to be reflected in the drafting
R 4.3	Scrutiny Work Programme	The approved Scrutiny Work Programme is to be provided to all Members of the Council
R 5.2	Scrutiny Member rights	Any Scrutiny Member may require that an item appear on the Committee's agenda
R 5.3	Cabinet Member rights	Any Cabinet Member may require that an item appear on the Committee's agenda
R 5.4	Council Member rights	Any Council Member may request that an item appear on the Committee's agenda
R 6.2	Policy Development	Scrutiny Committees have a role in developing policy. This role needs to be developed and reflected in the Policy and Planning Framework. Scrutiny Committees may involve themselves in the development of policy which is not strictly part of the Policy and Planning Framework, so long as policy falls within their remit.
R 6.3 & 4	Powers of Scrutiny Committees	In carrying out their work, they may hold enquiries, appoint specialists to assist them, visit sites, conduct public surveys, hold public meetings, commission etc. They may call witnesses on any matter under consideration and may pay specialists and witnesses for doing so within budgetary provision.
R 7	Scrutiny reports to Council/ Cabinet	Such reports are to be considered at the next appropriate meeting.
R 10	Officer and Member attendance at Committee meetings	Scrutiny Committees may require officers (with the agreement of the Chief Executive) and Cabinet Members to attend meetings.
R 11	Other attendance at	Individuals may be invited to

	meetings	attend meetings to discuss issues of local concern/ answer questions.
R 12.1	Call-in (application to decisions)	Call-in applies to all executive decisions, including those which may be taken under delegated powers
R 12.2	Call-in (decisions not to take effect)	Executive decisions not to take effect until 5 working days have elapsed from publication
R 12.3	Call-in (number of Members required)	Call-in is triggered by any 8 Members of the Council
R 12.8	Call-in (advice to decision-maker)	Scrutiny Committees may offer advice to the Cabinet but cabinet is not bound to accept such advice (note that, where referred-up for reconsideration, Cabinet performs this role).
R 13	Call-in (urgency)	Call-in is suspended where delay caused by the call-in process would seriously prejudice the Council's or the public's interests. The Chairman of the appropriate committee must agree the reasons for urgency. All Members will be notified where such agreement is reached.
R 14	Party Whip	General assumption that there will be no Whip in respect of scrutiny matters but, where it applies, there is a requirement for disclosure.
R 16	Where a scrutiny matter falls within the remit of more than one Committee	The matter will be resolved by the relevant Committee Chairmen and Vice Chairmen.

Appendix B

SCRUTINY PROCEDURE RULES

1 Scrutiny Arrangements

- 1.1 The Council has established Scrutiny arrangements in accordance with the Local Government Act 2000.
- 1.2 It is recognised that these arrangements are an important and integral part of the Council's functions, not only in relation to calling the Cabinet to account but in allowing all Members of the Council to participate in the development of the Council's policies, plans and strategies, including budgetary work, and to contribute to decision making in the Council, and to work with partners in developing services and improving outcomes for local people.
- 1.3 The role of the Council in scrutinising other public bodies such as the National Health Service is recognised and the Council's arrangements reflect these statutory responsibilities.
- 1.4 The Council's political structure seeks to provide a wide-ranging, robust and well managed Scrutiny function with particular emphasis on ensuring that the Council and its successors can meet obligations and deliver services effectively and as efficiently as possible to its citizens. The monitoring, reviewing and developing of the Council's policies, plans and strategies is also recognised as a key and important function for the authority on both the Cabinet and Scrutiny sides of the organisation.
- 1.5 The Council will keep under review its Scrutiny arrangements and will make changes where it considers these are appropriate and will lead to improvements and an improved Scrutiny function.

2 Scrutiny Structure

- 2.1 Subject to any matters reserved to the Council, the Scrutiny Committees will oversee the discharge of the Council's Scrutiny functions and responsibilities. The detailed responsibilities of the Committees are set out in Part 3 of this Constitution.
- 2.2 The Committees may appoint such task and finish panels as they consider appropriate to undertake specific tasks on their behalf, with the same powers as those Committees. Whilst these will be on a task and finish basis in most cases, the Committees are not precluded from establishing such Panels on a more permanent basis subject to regular

review. Task and finish panel members do not have to be members of the Scrutiny Committees, but may not be members of the Cabinet.

- 2.3 Where the Committees establish any Panel under 2.2 above, they will set out the name of the Panel, its membership (including the Chairman and, if appropriate, the Vice-Chairman) and the terms of reference including relevant dates for completion of the task or review.
- 2.4 The Council may from time to time, as it considers appropriate, review and change its Scrutiny arrangements.
- 2.5 The functions of the Council's Scrutiny Committees are set out in detail in Part 3 of this Constitution.
- 2.6 Any body established under these Scrutiny arrangements will be a politically proportionate body reflecting the overall political representation on the Council.
- 2.7 The Council will appoint the Chairman and Vice-Chairman of the Scrutiny Committees at its Annual meeting.
- 2.8 A Member who is appointed to and sits on the Cabinet shall not be appointed as a Member of any Scrutiny Committee, or any task and finish panel.
- 2.9 No Member of the Council shall be involved in scrutinising a decision where he/she has been directly involved.
- 2.10 The Council has appointed the following Scrutiny Committees:

[Insert details of the appointed Committees as further details emerge]

3 Co-option

- 3.1 There are four statutory co-optees in respect of the Council's Education function as follows:
 - A Church of England Diocese representative
 - A Roman Catholic Diocese representative
 - Two parent governor representatives
- 3.2 The statutory co-optees will be voting members of the **[appropriate]** Scrutiny Committee. They will be invited to attend other Scrutiny Committee meetings (excluding Full Council) where Children's Services matters are under consideration, subject to any exclusions in law or statutory guidance.
- 3.3 At those other bodies to which they have not been appointed, they shall be entitled only to speak on matters relating to Children's

Services issues. They may speak on other issues only with the consent of the Chairman.

The Scrutiny Committees shall be entitled to appoint persons to be non-voting co-optees taking into account any advice or guidelines issued from time to time by the Council. Such co-options may relate to a prescribed period of office or to specific issues under consideration. Any person co-opted under these arrangements will be entitled to participate fully in the work of the Committees subject to any conflicts of interests.

4 Work Programme

- 4.1 The Scrutiny Committees will consult with other parts of the organisation as appropriate, including the Cabinet, on the preparation of any work programme.
- 4.2 The Committees will take into account any views expressed following consultation under 4.1 above in drawing-up and agreeing any work programme. It should also take into account the resources, both officer and financial, available to support its proposals.
- 4.3 Once any programme has been approved, a copy will be sent to all Members of the Council and all relevant officers.
- 4.4 The Scrutiny Committees shall respond, as soon as they may consider it is possible to do so, to requests from the Council and the Cabinet, to review particular areas of Council activities. Where they do so, they will report their findings and any recommendations back to the Cabinet and/or Council.

5 Agenda for Scrutiny Committees

- 5.1 Matters to be considered will be set out in an Agenda, together with appropriate and relevant supporting papers.
- 5.2 Any Member of a Scrutiny Committee shall be entitled to require, in writing, that an item be included on the agenda, and such item shall appear on the agenda for the next meeting of the Committee in question. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.
- 5.3 Similarly, the Leader of the Council or a Cabinet Member with specific portfolio responsibilities may give notice in writing requiring an item to appear on an agenda of a Scrutiny Committee, relating to their area of responsibilities. The Committee will decide how the item should be considered and whether or not it can be included in its work programme.

- 5.4 Subject to Council Procedure Rule 34 and Appendix 6 of the Council Procedure Rules, any other Member may give notice in writing to the Monitoring Officer, requesting an item to appear on an agenda of a Scrutiny Committee. The item shall be included after consulting the Chairman of the Committee.
- 5.5 Any Member raising an item under 5.2, 5.3 and 5.4 above shall be precluded from raising the matter again for a period of six months from the date it is considered by the Committee in question.

6 Policy Review and Development

- 6.1 The Scrutiny Committees have a key role in policy and budget development.
- 6.2 The Budget and Policy Planning Framework contains details of the process by which the Scrutiny Committees may perform that role.
- 6.3 In relation to the development of the Council's approach to other matters not forming part of its Policy and Planning and Budget Framework, the Scrutiny Committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.
- 6.4 Scrutiny Committees may hold enquiries and investigate options for future direction in policy development and may appoint specialists to assist them in this process. They may visit sites, conduct public surveys, hold public meetings, commission research and undertake such other things they consider reasonable and necessary to inform their deliberations. They may call witnesses on any matter under consideration and may pay to any specialists and witnesses a reasonable fee and expenses for doing so within budgetary provision.

7 Reports from the Scrutiny Committees

- 7.1 The Council or Cabinet (as appropriate) shall consider any report from the Committees at its next programmed meeting.

8 Access to the Forward Plan

- 8.1 The Scrutiny Committees will have access to the Cabinet's Forward Plan and timetable for decisions and intentions for consultation.

9 Rights of Scrutiny Members to documents

- 9.1 In addition to their rights as Councillors, Members of Scrutiny Committees have the additional right of access to documents, and to

notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

- 9.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and the Scrutiny Committees depending on the particular matter under consideration.

10 Members and Officers giving account

- 10.1 The Scrutiny Committees may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function. As well as reviewing the documentation, in fulfilling its scrutiny role, it may require any Member of the Cabinet, to attend before it to explain in relation to matters within their remit:

- any particular decision or series of decisions;
- the extent to which the actions taken implement Council policy; and/or
- their performance.

and it is the duty of those persons to attend if so required.

- 10.2 Where any Scrutiny Committee requires an officer to attend to answer questions or discuss issues, this will be agreed with the Chief Executive.

Where it is agreed that an officer should appear to answer questions, their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may explain:-

- what the policies are;
- the justification and objectives of those policies as the Cabinet sees them;
- the extent to which those objectives have been met; and
- how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

- 10.3 Officers may be asked to explain and justify advice they have given prior to executive decisions being taken. They may also be asked to explain and justify executive decisions they have taken under delegated powers.
- 10.4 Officers should not be expected and should avoid being drawn into discussions of politically contentious matters and any officer input should be consistent with the requirements for political impartiality.
- 10.5 The requirements of any protocols on Member/Officer relationships and the Officer Code of Conduct must be adhered to where an officer is attending the Scrutiny Committees.

- 10.6 Where any Member or Officer is required to attend a Scrutiny Committee under this provision, the Chairman of that Committee will inform the Monitoring Officer, who will inform the Member or Officer in writing giving, at least ten clear working days notice of the meeting. 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 reasonable and sufficient notice to allow for its preparation.
- 10.7 Where, in exceptional circumstances, the Member or Officer is unable to attend on the required date, then the Committee shall, in consultation with the Member or Officer, arrange an alternative date for attendance.

11 Attendance by others

- 11.1 The Scrutiny Committees may invite individuals other than those referred to in paragraph 10.1 and 10.2 above to address it, discuss issues of local concern and/or answer questions.

12 Call-in

- 12.1 When a decision is made by the Cabinet, or a Committees or Sub-Committees of the Cabinet, by an individual Cabinet Member, or when a key decision is made by an officer with delegated authority from the Cabinet, the decision shall be published, by electronic means, and shall be available at the main offices of the Council normally within 2 clear working days of being made. All Members of the Council will be sent an electronic record of all such decisions within the same timescale.
- 12.2 Subject to paragraphs 12.3 and 12.4 below a decision taken and to which paragraph 12.1 above refers will not come into force, and may not be implemented, until the expiry of 5 clear working days after the decision was made and recorded.
- 12.3 Where a decision referred to in paragraph 12.1 has been made, any 8 or more Members of the Council may submit a call-in notice, in writing, within the period specified in paragraph 12.2 above, to the Monitoring Officer. Where the notice is valid, the decision cannot be implemented until the procedures in this section have been followed. Where a valid notice is received the decision shall stand referred to the appropriate Scrutiny Committee for advice.
- 12.4 Where as a result of a corporate electronic system failure or planned shutdown, which prevents the issuing of or access to Cabinet decisions or the submission of a call-in notice by electronic means in accordance

with the Council's call-in provisions, the periods for notification or submission shall be extended by the period of delay, provided that period is in excess of four hours. When, in the opinion of the Monitoring Officer, the period of delay is likely to extend beyond two clear working days, he/she shall agree with the Chairman of the appropriate Scrutiny Committee, alternative arrangements to avoid any delay in implementing Cabinet decisions not subject to "call-in".

- 12.5 The decision will be referred to the first available meeting of the appropriate Scrutiny Committee, subject to the Access to Information Procedure Rules.
- 12.6 The Committee may decide to offer no advice, in which case the decision may be implemented. Where advice is offered, the Cabinet will reconsider the decision as set out in paragraph 12.8 below.
- 12.7 Once the Scrutiny Committees has decided to offer advice or not to offer advice, no further call-in notices may be served in respect of that matter subject to the decision in question. This does not prevent the matter being scrutinised further by the appropriate Committee after the decision has been implemented in accordance with these rules.
- 12.8 Where a matter is considered and advice is offered by a Scrutiny Committee, its advice will be submitted to the Cabinet for a decision to be made on the matter. The Cabinet shall consider the advice but shall not be bound to accept it in whole or in part. It shall have sole discretion to decide on any further action to be taken in relation to the decisions in question, including confirming with or without amendment, of the original decision or deferment pending further consideration, or making a different decision. There are no further rights to enable a Member of the Council to submit a call-in notice. The decision may then be implemented.
- 12.9 If under this procedure the Scrutiny Committee, having considered the matter, indicates that it does not wish to offer any advice to the Cabinet, then the decision can be implemented immediately.
- 12.10 A submitted call-in notice can only be withdrawn with the written consent of all of its signatories.
- 12.11 The "call-in" facility does not apply to the determination of a Motion under Standing Order 12 (Notices of Motion) – Appendix 2.

13 Call-in and Urgency

- 13.1 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, caused by the call-in process, would be likely to seriously prejudice the Council's or the public's interests. The Chairman of the appropriate Scrutiny committee or, in his/her absence, the Chairman of

the Council must agree that the decision should be treated as urgent, and that the call-in procedure should not apply. In the absence of the Chairman, the Vice-Chairman's consent shall be required. In the absence of both, the Chief Executive or her nominee's consent shall be required. Where such agreement is reached, all Members of the Council shall be notified by electronic means.

14 The Party Whip

- 14.1 It is generally accepted that the Party Whip should be suspended in respect of Scrutiny matters. However, when considering any matter in respect of which a Member of the Scrutiny Committees is subject to a formal party whip, the Member must declare the existence of the Whip, and the nature of it before the commencement of the Committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the Minutes of the meeting.

15 Procedure at Scrutiny Committees Meetings

- 15.1 Scrutiny Committees shall consider the following business:
- record of the last meeting;
 - consideration of any matter referred to the Committee by the Council or by the Cabinet;
 - consideration of any matter referred to the Committees for advice in relation to call-in or a decision;
 - responses of the Cabinet on reports of the Scrutiny Committees; and
 - the business otherwise set out on the agenda for the meeting.
- 15.2 Where a Scrutiny Committee conducts investigations (e.g. with a view to policy development), it may also ask people to attend to give evidence at its meetings, which are to be conducted in accordance with the following principles:
- the investigation is to be conducted fairly and all Members of the Committees are to be given the opportunity to ask questions of attendees, and to contribute and speak;
 - those assisting the Committees by giving evidence are to be treated with respect and courtesy; and
 - the investigation to be conducted so as to maximise the efficiency of the investigation or analysis.
- 15.3 Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate and shall, unless there are exceptional reasons, make its report and findings public.

16 Matters within the remit of more than one Scrutiny Committee

- 16.1 Where a matter before a Scrutiny Committee also falls within the remit of one or more Scrutiny Committee, the decision as to which body will consider it, including any arrangements for joint working or sharing information, will be resolved by the Chairmen and Vice Chairmen of the Scrutiny Committees concerned.