



East
Northamptonshire
Council

Policy and Resources Committee – 12 September 2011

Proposed Constitutional Changes

Purpose of report

To seek amendments to further parts of the constitution

Attachment(s)

Appendix A – Changes to Part 4.4

Appendix B – Changes to Part 5.7

1.0 Background

1.1 The need has been highlighted for more changes to the constitution. This follows:

- (a) The recent operation of the Scrutiny Call In arrangements and the need for the chairmen of the Scrutiny Committee and the relevant policy committee to have the right to attend the respective committees, and
- (b) The need to strengthen the parts of the constitution relating to the training of members of the Licensing Committee and Development Control Committee.

2.0 Proposed Changes

2.1 *Part 4.4 – Scrutiny Procedure Rules*

The recent operation of call in arrangements relating to the proposals for the recycling centre at Oundle highlighted the need for the constitution to:-

- Outline the rights and responsibilities of the chairman of the appropriate policy committee to attend and speak at the Scrutiny Committee when a call in is discussed, with a similar right being given to the Chairman of Scrutiny Committee to attend the policy committee when reconsideration is being given to the called in resolutions;
- Make it clear that it is not the responsibility of an officer of the council to justify decisions, and
- Specify the requirement for the Leader of the council to be kept informed.

2.2 **Appendix A** sets out, in bold italics, the suggested changes to this part of the constitution to address these points.

2.3 *Part 5.7 – Code of Practice for Licensing Procedures - Section 11 - Training*

Paragraph 37 sets out the need for all members of the Licensing Committee to receive training in licensing procedures before they sit on a licensing panel. It is considered that this paragraph requires strengthening to ensure that training is not only offered but taken up. **Appendix B** suggests a change to this paragraph, with the new wording shown in bold italics. The change is supported by the Leader of the council and the chairman of the Licensing Committee.

2.4 Similar wording about member training appears in paragraph 44 of the Planning Procedures (Part 5.4) and it is suggested that the Monitoring Officer be authorised to reflect the same changed approach in that revised paragraph.

3.0 Equality and Diversity Implications

3.1 There are no equality and diversity implications arising from the proposals.

4.0 Legal Implications

4.1 There are no legal implications arising from this report.

5.0 Risk Management

5.1 There are no significant risks arising from this report.

6.0 Financial Implications

6.1 There are no financial implications arising from the proposals.

7.0 Corporate Outcomes

7.1 The following outcomes are applicable:-

- Effective Management
- Strong Community Leadership

8.0 Consultation

8.1 The views of the Scrutiny Committee will be sought on 26 September and a verbal report will be made to the full council.

9.0 Recommendations

9.1 The committee is requested to recommend that full council approves the changes to the constitution set out in appendices A and B attached to this report and authorises the Monitoring Officer to adjust paragraph 44 of part 5.4 of the constitution (Planning Procedures) to reflect the same approach suggested in the change to Part 5.7.

(Reason – to ensure that the constitution is continuously kept up to date; to ensure that all relevant legislation is included, and to facilitate the supply of a completely revised constitution to all members of the council)

Legal	Power: Local Government Acts 1972 and 2000				
	Other considerations: Council's Constitution				
Background Papers: None					
Person Originating Report: Keith Osborne, Democratic Services Manager, 01832 742113					
Date: 10 August 2011					
CFO		MO		CX	

(Committee Report Normal Rev. 22)

Part 4.4 of the Constitution – Suggested Changes

13. Delaying the Implementation of Decisions (“Call-in”)

- 13.1 Implementing the “Call-In” procedure will have the effect of delaying the implementation of a decision of a policy committee made under delegation from the full Council in accordance with the scheme of delegation in Part 3 of the constitution. Members of the Scrutiny Committee may ‘call-in’ a decision in accordance with the procedure set out in Rule 14.3 below. Members who call in a decision and propose an alternative decision should have good reason to believe that the appropriate policy committee did not take the decision in accordance with the principles set out in Article 12. The names of the Members implementing the call-in procedure and the reasons for call-in will be disclosed on the published agenda.

14. Call-In Procedure

- 14.1 Decisions made by the appropriate policy committee will be notified to all members of the Council within three working days of the meeting at which the decision was made.
- 14.2 A decision will come into force and may then be implemented on the expiry of five clear working days from the date the decision was made, unless an objection is received which requests that the decision be ‘called-in’ in accordance with Rules 14.3 – 14.7.
- 14.3 Call-in shall only be used in exceptional cases. To prevent the privilege being abused, only three in each 3 month period in a municipal year can be called in. Call-in shall be effected by the Chief Executive, or his designated nominee in consultation with the Chairman of the Scrutiny Committee, on receipt of a written request (which may be in electronic form) for call-in of a specified decision from at least four members of the Scrutiny Committee. The members (which must not include the Chairman - because of the initial consultation on call-in and the power to exercise a casting vote at the meeting in the event of an equal number of votes for and against). The request must set out the reasons why the decision is being called in, which can only be because the decision falls into any of the following categories:
- (i) it was made without due process being followed, or
 - (ii) it was not made in accordance with one or more of the general principles set out in Article 12.02 of the Constitution
 - (iii) it fails to represent natural justice, or
 - (iv) it falls outside the agreed budget, or
 - (v) it represents a significant change in council policy

The call-in must include details of the issues which the Scrutiny Committee members believe the appropriate policy committee did not fully address.

14.4 In effecting the 'call-in' in accordance with 14.3 above, the Chief Executive will notify the members of the appropriate policy committee directly and will call a meeting of the Scrutiny Committee to be held on such date as he may determine within ten working days of the date on which he effects the decision to call-in and the decision shall not be implemented until after the recommendations of the Scrutiny Committee meeting on the matter have been considered.

14.5 The Scrutiny Committee at the meeting called in accordance with the procedure set out in paragraph 14.4 above may resolve

(a) To recommend that the appropriate policy Committee reconsider the decision, in which case the matter shall be referred back to the policy committee for further consideration in the light of the Scrutiny Committee's concerns to amend the decision or not, before adopting a final decision;

or

(b) To refer the decision (if it is considered to be contrary to the policy framework or not in accordance with the budget), to the full Council to confirm or otherwise, in which case a meeting of the Council shall be called for the purpose within ten working days.

14.6 *The chairman of the appropriate policy committee (or other committee member nominated by the chairman) shall have the right to attend the Scrutiny Committee and shall take responsibility for presenting a report on the reasons for making the decision(s) and answering questions thereon (rather than an officer of the council). The chairman of the Scrutiny Committee (or committee member nominated by the chairman) shall exercise a similar right and responsibility when the policy committee or full council reconsiders the issues.*

14.7 *Once the Scrutiny Committee has met to consider the call-in, the Leader, Deputy Leader and chairman of the appropriate policy committee shall be notified of the conclusions of the Scrutiny Committee at the earliest possible opportunity (which may be in the form of an agreed draft minute) and the other members of the policy committee shall also be informed.*

14.8 If, following a request to call-in a decision, the Scrutiny Committee does not meet in the period set out above or does meet but does not refer the

matter back to the decision making body, or to the full council, the decision shall take effect on the date of the Scrutiny Committee meeting or the expiry of that further ten working days whichever is the earlier.

- 14.9** If the matter is 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 on the date of the Council meeting.

14.10 Urgency

The “call-in” procedure set out above will not apply where the decision taken by the policy committee 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 interest. The record of the decision shall state that in the opinion of the committee, the decision is an urgent one and not subject to “call-in”.

- 14.11** The Chairman of the Scrutiny Committee and the Chief Executive must agree that the decision proposed is reasonable in all the circumstances and is to be treated as a matter of urgency. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 14.12** The operation of the provisions relating to “call-in” and urgency shall be monitored annually and a report submitted by the committee to the Council with proposals for review if necessary.

Part 5.7 – Code of Practice for Licensing Procedures

Training

Section 11

37. All Members of the Licensing Committee shall receive training in licensing procedures. A commitment to undertake training will be a prerequisite of membership of a Licensing Panel. All Members and reserve Members of a Panel will be offered training within six months of appointment and at least annually thereafter. ***All members of the committee will be expected to attend the training offered, especially in view of the need for panel members to be fully aware of changes in legislation, and to avoid any difficulties that may arise at appeal hearings.*** This training will cover subjects as may be determined from time to time by officers in consultation with Members. Failure to undertake the initial training offered or persistent failure to undertake any further training by Members of the Committee will result in disqualification from the Committee and a Licensing Panel.