

Part 6.9

Council Bodies

Appendix: Scrutiny Commission

1 Preamble

- 1.1 Part 3 (Meeting Procedure Rules) sets out the rules and procedures that apply to all of the Council's Bodies and Sub-Bodies.
- 1.2 If there is any conflict between the wording of Part 3 and this Appendix, this Appendix will prevail.

2 Scope of Role

- 2.1 The requirement for local authorities in England to establish overview and scrutiny committees is set out in sections 9F to 9FI of the Local Government Act 2000 as amended by the Localism Act 2011.
- 2.2 The Council's Scrutiny Commission ("the Commission") will be, and will perform the functions of, its overview and scrutiny committee as required by that legislation.
- 2.3 The role of the Commission in relation to the development of the Council's Budget and Policy Framework is set out within Part [].
- 2.4 The role of the Commission in relation to matters outside the development of the Council's Budget and Policy Framework is set out within this Appendix.

3 Membership

- 3.1 The Commission shall be politically balanced and its membership will be as set out in the Bodies List and Meetings Rules Table.
- 3.2 No Executive Member may be a Member or Substitute Member of the Commission or any of its Sub Bodies.
- 3.3 No Commission Member may be involved in scrutinising a decision in which they have been directly involved. Any query about the meaning of "directly involved" will be decided by the Monitoring Officer.

4 Terms of Reference

- 4.1 The Commission has the power to review or scrutinise decisions taken by the Executive or any other part of the Council (excluding decisions made by Council). It can make reports or recommendations to the Executive or to the Council. It can also make reports or recommendations on any matters that affect the District and Residents. Its role includes both developing and reviewing policy and holding the Executive to account for their decisions and actions.
- 4.2 Although the Commission may make recommendations for changes or improvements in the way that the Council or other bodies enact their business, it does not have any direct decision-making powers, except in the way that it discharges its own responsibilities.
- 4.3 The Commission is responsible for setting its own work programme and in doing so shall take into account the wishes of Councillors.
- 4.4 The Commission has responsibility for progressing and monitoring the overall objectives of the scrutiny function and the power to:

- 4.4.1 co-ordinate and develop the scrutiny function through which the decisions taken by the Executive, Bodies or Officers are scrutinised, and their use of resources/the provision of services are reviewed;
- 4.4.2 undertake pre-decision scrutiny of items on the Executive Forward Plan;
- 4.4.3 discharge the overview function in terms of policy development activities;
- 4.4.4 monitor decisions taken by or on behalf of the Executive;
- 4.4.5 monitor the activities of Directorates;
- 4.4.6 manage the Call-In process and recommend for reconsideration any decisions made but not yet implemented by on or behalf of the Executive, Leader, Executive Members or Officers under delegated powers;
- 4.4.7 consider requests from Councillors, Officers, residents and organisations for particular topics to be scrutinised and determine the appropriate action;
- 4.4.8 take responsibility for the development and co-ordination of the overview and scrutiny of partnerships and external bodies (excluding partnerships and external bodies that fall within the remit of the Health Scrutiny Committee);
- 4.4.9 undertake scrutiny reviews, as deemed appropriate.
- 4.5 The Commission shall coordinate with (but not direct the work of) the Council's Health Scrutiny Committee, established in accordance with the Health and Social Care Act 2012 and responsible for the scrutiny of health bodies as detailed in its Appendix.
- 4.6 It will be normal practice for the Health Scrutiny Committee Chairman to be a member of the Commission.
- 4.7 The Commission shall be the Council's Crime and Disorder Committee established in accordance with s.19, Police and Justice Act 2006 (which requires the Council to have a crime and disorder committee with power (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions; and (b) to make reports or recommendations to the local authority with respect to the discharge of those functions).

5 Proceedings

- 5.1 The Commission shall respond, as soon as its work programme permits, to requests from the Council and Executive to undertake a piece of work on their behalf. Where the Commission does so, it shall report its findings and any recommendations back to the Executive or Council, which shall consider the report of the Commission at its first available Meeting unless the Monitoring Officer determines that it should be considered at a later Meeting.
- 5.2 Any Councillor shall be entitled to give notice to the Monitoring Officer that they wish an item relevant to the functions of the Commission or a Commission Sub Body to be included on the agenda for the next meeting, or referred to the Commission for inclusion in the approved work programme, and:
 - 5.2.1 in deciding whether to pursue the matter, the Commission shall consider representations from the Councillor who referred it;
 - 5.2.2 the Commission is not obliged to pursue such a matter but it must let the Councillor in question know the reasons for its decision;
 - 5.2.3 if the Commission pursues the matter it shall report its findings and any recommendations back to the Councillor who referred it.

- 5.3 Members of the public are entitled to suggest topics for scrutiny review. Suggestions can be submitted online or in writing (either by post or electronic mail) to the Monitoring Officer and must specify the name, address and contact telephone number of the member of the public (or representative) making the suggestion.
- 5.4 In order to be considered for the Commission's work programme topics must:
 - 5.4.1 relate to the business of the Council; or
 - 5.4.2 be a matter for which the Council has responsibility; or
 - 5.4.3 be related to the wellbeing of West Berkshire.
- 5.5 Submissions that do not meet the above criteria will be rejected by the Monitoring Officer.
- 5.6 The Chairman may reject an item if, in his opinion, it is not considered conducive to the Commission's Work Programme.
- 5.7 The member of the public will be notified as to whether their suggestion has been added to the Commission's Work Programme or has been rejected. The reasons for the rejection will be communicated to the individual.

6 Evidence - Documents

- 6.1 Commission and Commission Sub-Body Members have the right to access relevant documents as set out in Part [] (Access to Information Rules).
- 6.2 To facilitate effective scrutiny, more detailed liaison between the Executive and the Commission or a Commission Sub-Body may take place depending on the particular matter under consideration.
- 6.3 The Commission will be entitled to copies of any document which is in the possession or control of the Executive that relates to a matter under review and which contains material relating to:
 - 6.3.1 any business transacted at a meeting of the Executive or its Bodies; or
 - 6.3.2 any decision taken by an individual Member of the Executive; or
 - 6.3.3 any decision made by an Officer under the Executive arrangements
- 6.4 But the Commission will not be entitled to:
 - 6.4.1 any document that is in draft form;
 - 6.4.2 any part of a document that contains Exempt or Confidential Information, unless:
 - 6.4.3 that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; and
 - 6.4.3.1 the Monitoring Officer decides that it is appropriate for such Exempt or Confidential Information to be provided (in which event Commission Members shall respect the confidentiality of the information); or
 - 6.4.3.2 the advice of a political adviser or Group Executive that would be exempt under a Freedom of Information Act request.

7 Evidence – Testimony

- 7.1 The Commission or a Commission Sub-Body may require the attendance of the relevant Executive Member, or Officer at the level of Head of Service or above, to attend a meeting in order to provide advice and evidence in pursuit of a review being undertaken.
- 7.2 The Commission or a Commission Sub-Body may invite other persons relevant to an item of business or matter under review to address it and/or answer questions on a voluntary basis.

- 7.3 The Commission may consider evidence in open or confidential session as the Chairman thinks appropriate following advice from the Monitoring Officer.
- 7.4 Where the Commission or a Commission Sub-Body conducts a scrutiny review, the Commission will ask people to attend to give evidence at meetings which will be conducted in accordance with the following principles:
- 7.4.1 that the meeting is conducted fairly and all Members of the Commission or the Commission Sub-Body are given an opportunity to ask questions of attendees and speak;
- 7.4.2 that those assisting the Commission by giving evidence are treated with respect and courtesy; and
- 7.4.3 that the meeting is conducted so as to maximise the efficiency of the review.
- 7.5 Where a petition to Hold an Officer to Account is referred to the Commission under the Council's Meeting Rules:
- 7.5.1 it will be reported to the next convenient meeting of the Commission unless the matter is deemed urgent, in which case an extraordinary meeting may be convened;
- 7.5.2 in advance of the Commission meeting, the Petition Organiser will be invited to submit a list of questions they would like to put to the Officer at the meeting, and:
- 7.5.2.1 the questions will be provided to the Chairman and Vice Chairman of the Commission, who will decide whether they are appropriate, and
- 7.5.2.2 (if they are deemed appropriate) they will be provided to the Officer concerned in advance of the meeting.
- 7.5.3 the Officer named in the petition and any other relevant Officers will be required to attend the Commission;
- 7.5.4 the Officer will be provided with the petition and any questions submitted by the petition organiser;
- 7.6 Where any Member or Officer is required or requested to attend the Commission or a Commission Sub-Body under this provision:
- 7.6.1 the Chairman of the Commission will inform the Monitoring Officer;
- 7.6.2 the Monitoring Officer shall inform the Member or Officer in writing giving at least five Clear Working Days' notice of the meeting at which they are required to attend;
- 7.6.3 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 Commission or Commission Sub-Body; and
- 7.6.4 where the account to be given to the Commission or Commission Sub-Body will require the production of a report, then the Member or Officer concerned will be given sufficient notice to allow for the preparation of that documentation.
- 7.7 Where Officers below the level of Head of Service attend the Commission or a sub-Body, they will usually be accompanied by a senior manager.
- 7.8 At the meeting of the Commission, the Chairman will invite the Petition Organiser to address the Commission for a maximum of five minutes on the issue. The relevant Officer will then be asked to respond to the Commission on the subject matter of the petition. The Commission may question the Officer and the Chairman may invite questions from the Petition Organiser to be put to the Officer through the Chairman.

8 Reports

- 8.1 Following any review, the scrutinising body shall prepare a draft report, with recommendations as appropriate, for publication and submission to the Commission. The Commission will agree or amend the report and direct it to the Monitoring Officer. In cases where the Scrutiny Commission is the scrutinising body, the agreed report will be directed to the Monitoring Officer. The Monitoring Officer will then refer the report, via the Chief Executive and S151 Officer, to check for factual errors and consideration of any financial implications, to:
- 8.1.1 the Council (if the recommendations would require a departure from, or a change to, the agreed Budget or Policy Framework);
- 8.1.2 the Executive (if the proposals are consistent with the Budget and Policy Framework) or other Body as they deem appropriate for a formal response to the report's recommendations.
- 8.2 Reports with implications for outside bodies shall be passed to the appropriate person at those outside bodies.
- 8.3 The body receiving the report will be requested to consider and respond within eight weeks of it being submitted to the Monitoring Officer, or such longer timescale as the Chairman of the Body may agree.
- 8.4 The response to a recommendation from a decision-maker should consist of:
- a clear commitment to delivering the measure within a timescale set out;
 - a commitment to be held to account on that delivery;
 - where it is not proposed that a recommendation be accepted, the provision of detailed, substantive reasons why not.
- 8.5 It is the Commission's responsibility to monitor and evaluate recommendations once they are implemented.

9 Minority Report

- 9.1 If the Commission or a Commission Sub-Body cannot agree on one single report to the Executive or to Council or to a named external organisation as appropriate, then up to one minority report may be prepared and submitted for consideration with the majority report.

10 Report to Council – Key Decision

- 10.1 The Scrutiny Commission can require a report if it thinks that a Key Decision has been taken which was not:
- 10.1.1 treated as being a Key Decision; or
- 10.1.2 included in the Forward Plan; or
- 10.1.3 the subject of the general exception procedure; or
- 10.1.4 the subject of an agreement with the Scrutiny Commission Chairman, or the Chairman/Vice-Chairman of the Council.
- 10.2 The Scrutiny Commission may then require the Executive to submit a report to the Council within such reasonable time as the Scrutiny Commission specifies. The power to require a report rests with the Commission, but is also delegated to the Monitoring Officer, who shall require such a report on behalf of the Scrutiny Commission when so requested by the Chairman or any five Members. Alternatively the requirement may be raised by resolution passed at a meeting of the Scrutiny Commission.

11 Decisions of the Executive

- 11.1 The Monitoring Officer shall publish all decisions taken by the Executive, Individual Executive Members or Officers under delegated powers to all Members of Council normally within three Clear Working Days of the decision, but generally by 17:00 on the day after the meeting.
- 11.2 Where a decision taken is one to which the Call-In procedure does not apply (see below), the reasons shall be stated in the notice of decision.

12 Non-Implementation of Decisions pending possible Call-In

- 12.1 Except where the Call-In procedure does not apply (see above and below), Executive decisions shall not be capable of implementation until either:
 - 12.1.1 the time for a Call-In request has expired without such a request being made; or
 - 12.1.2 the Call-In procedure in the following rules has been followed.

13 Call-In – Application and Process

- 13.1 By 17:00 on the fifth Clear Working Day following the publication of the decision, any five Councillors (excluding any Councillor involved in making the original decision) may give notice in writing to the Monitoring Officer requesting that the decision be Called-In to be reviewed by the Commission.
- 13.2 The Call-In notice shall give reasons for the request together with a proposal for an alternative course of action and stating whether or not those Councillors believe that the decision is contrary to the Budget and Policy Framework or contrary to or not wholly in accordance with the budget.
- 13.3 The Call-In procedure shall not apply if any of the following applies:
 - 13.3.1 the item is due to be referred to Council for final approval (eg the budget);
 - 13.3.2 the S.151 Officer or Monitoring Officer has certified that if there were a delay in implementing the decision it could have serious financial implications for the Council or could compromise the Council's position;
 - 13.3.3 the item has been considered by the Commission, or has been the subject of a review undertaken by another Body, within the preceding six months;
 - 13.3.4 the item in question was a report that did not require a decision and was for information only;
 - 13.3.5 the item is classed as an Urgent Key Decision.
- 13.4 In the event of a dispute over whether a decision is capable of Call-In or not, a decision of the Monitoring Officer or S.151 Officer (as the case may be) shall be final.

14 Call-In - Review

- 14.1 There are three options available to the Commission when considering a Call-In:
 - 14.1.1 to let the decision stand;
 - 14.1.2 to state its views on the matter and refer the decision back to the decision maker;
 - 14.1.3 to refer the decision to Council if the Commission considers that the decision is contrary to the Budget and Policy Framework.

15 Call-In - Procedure

- 15.1 When a notice requesting that a decision be reviewed is made, the Monitoring Officer shall inform the Leader and the Commission Chairman and shall, in consultation with the Chairman, convene a special meeting of the Commission as soon as reasonably practicable for the purpose of reviewing the decision, unless the matter can conveniently be reviewed at the next scheduled meeting of the Commission.
- 15.2 If a notice requesting that a decision be reviewed states that the reason for it being called in is that the decision is outside the Budget or Policy Framework it will be referred to the Monitoring Officer and S.151 Officer who shall decide if this is the case.

16 Review of Decision

- 16.1 Any Councillor who has signed a notice requesting that a decision be reviewed may attend the meeting of the Commission when the decision is reviewed and may speak to that item of business.
- 16.2 The Commission may not overturn the decision which it is reviewing but may either concur with the decision (in which case it will take immediate effect) or refer it back to the next scheduled or an Extraordinary Meeting of the Executive for further consideration.
- 16.3 If the Commission is of the opinion, having taken advice from the Council's Monitoring Officer and S.151 Officer, that a decision is outside the Budget and Policy Framework approved by the Council, the Commission may refer the decision to the Council.
- 16.4 In the case of a Called-In decision being referred to Council:
 - 16.4.1 if Council decides that the Called-In decision was contrary to the Budget and Policy Framework it shall decide on the issue in question;
 - 16.4.2 if the Council decides that the Called-In decision was not contrary to the Budget and Policy Framework then no further action is necessary and the decision will take effect on the date of the Council meeting.

17 Referral Back to Executive

- 17.1 The Commission will produce a report with its findings to the next meeting of the Executive (ie the meeting following the Call-In request) unless there are exceptional circumstances why this cannot be achieved. In these circumstances the Chairman of the Commission and the Leader of the Council will agree a revised timetable.
- 17.2 The report will either confirm the original decision or propose amendments to it in any way it thinks fit and shall give reasons for its final decision.
- 17.3 If the Commission upholds the Executive decision, the original decision of the Executive shall take immediate effect.
- 17.4 If the Commission does not uphold the Executive decision, it is for the Executive to decide how it wishes to proceed (provided the decision is within the Budget and Policy Framework) having had regard to the recommendations of the Commission.
- 17.5 Any matter which has been the subject of a Call-In request may not be the subject of a further Call-In request.