

SCRUTINY COMMITTEE – CHANGE TO TERMS OF REFERENCE

Council - 1 October 2013

Report of the: Chief Officer Legal and Governance

Status: For Decision

Key Decision: No

Also considered by: Governance Committee– 19 September 2013

Portfolio Holder Cllr. Fleming

Contact Officer(s): Vanessa Etheridge Ext: 7199

Recommendation to Governance Committee: That the revisions to Part 5 and Appendix H of the Council’s Constitution as set out in Appendices A and B to this report, be RECOMMENDED to Council for agreement.

Recommendation to Council: That the revisions to Part 5 and Appendix H of the Council’s Constitution as set out in Appendices A and B to this report, be approved.

Reason for recommendation: The current Scrutiny Committee terms of reference could lead to a breach of political proportionality rules.

Introduction

- 1 At Annual Council on 14 May 2013 the new governance structure was agreed along with the requisite terms of reference and memberships of all council committees. In preparation of the first meeting of the Scrutiny Committee on 18 July 2013 it became apparent that under the current terms of reference a breach of the rules of political proportionality could arise.
- 2 The terms of reference are drafted in such a way that 9 members are called from a pool of 15, and it is the mechanics of this process that could lead to a breach. In order to avoid this for the first meeting, all members of the Committee were invited to attend. However it is necessary to make changes to the terms of reference prior to the next meeting in order for the committee to legally and effectively fulfil it’s scrutiny function.

Issue

- 2 The current terms of reference state that:

4.1 The Scrutiny Committee will comprise a permanent Chairman and Vice Chairman, neither of whom sit on Cabinet Advisory Committees and a pool of 15 members 3 drawn from each of the Cabinet Advisory Committees, none of whom may be members of the Cabinet or be their Deputies.

4.2 *When a meeting is called 9 ordinary members and the Chairman and Vice Chairman will be called to form the committee. No Members will be called from the Cabinet Advisory Committee where a decision being scrutinised was formulated.*

- 3 The political proportionality rules currently require one Labour and one Liberal Democrat to be a member of the Committee.
- 4 However, as there is only one Labour member and one Liberal Democrat member within the Scrutiny Committee pool, when para. 4.2 above is applied it will eventually lead to a breach of political proportionality rules as at some point one or both of them would have to be excluded due to their involvement with an Advisory Committee.

Use of Substitute Members

- 5 It has long been the policy of this Council not to have substitute members, however it would be the most practical solution to this issue. A sensible way to approach this would be to have a prescribed list, or 'substitute pool' of minority party members derived from the Advisory Committees in order to maintain the general spirit of the terms of reference. Therefore if a minority party member was excluded, an alternative member from the same party could be chosen from the substitute pool. The benefits of a pool would be that the substitute members would also undergo scrutiny training and be aware of the possibility of them being called to attend. Members of the public would also be aware, making it a clear and transparent process.

Committee Formation

- 6 The current terms of reference do not clearly state how the 9 ordinary members are to be called to form the Committee.
- 7 It is proposed to make this clearer by specifying within the terms of reference that the Chairman (or Vice Chairman in the Chairman's absence) be the one to call the members.

Other Options Considered/Rejected

- 8 It is possible to agree that the Committee not be politically proportionate and that no changes be made (other than the Chairman picking members from the pool) as long as no member of the Council votes against.

Key Implications

Financial

- 9 None.

Legal, Human Rights etc and Risk Assessment

- 10 It is a statutory requirement under the Local Government (Committees and Political Groups) Regulations 1990, that unless there is a decision to the contrary taken with no votes against, the Council must ensure that appointments to fill seats on: an ordinary committee or sub committee of the authority; an advisory

committee and any sub committee appointed by an advisory committee; and a number of prescribed bodies (as detailed in the Local Government & Housing Act 1989, Sch.1. para. 2) where at least three seats have to be filled by the relevant authority; are allocated in the same proportion as that in which the Council as a whole is divided. There is an exception for joint local and area committees established between county and district councils.

Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

Conclusions

- 11 It is therefore proposed that in order to avoid any likely breach of political proportionality rules, the Council agree to the use of a pool of substitute members and that the Chairman be given delegated authority to call members to form the Committee. The amended wording necessary to enact these changes has been highlighted in the attached appendices, A and B, to this report. Council is therefore asked to agree this course of action and approve the amendments to the Constitution.

Appendices

Appendix A – Part 5 - Scrutiny Function (amended)

Appendix B – (extract) Appendix H (amended)

Background Papers:

Local Government and Housing Act 1989

The Local Government (Committees and Political Groups) Regulations 1990

Knowles on Local Authority Meetings (5th Edition)

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