

WILTSHIRE COUNCIL

CONSTITUTION FOCUS GROUP

24 January 2013

Overview and Scrutiny Changes

Purpose

1. To seek the views of the Constitution Focus Group on:
 - (a) the operation of the Call-in procedures;
 - (b) a revised task group protocol; and
 - (c) the consequential amendments proposed to the Constitution in the light of the revised Overview and Scrutiny (OS) arrangements determined by full Council in May 2012 and minor changes resulting from the Localism Act 2011.

Background

2. Members will be aware of the comprehensive review undertaken during 2011/12 of the OS arrangements following experience of operating overview and scrutiny in the new unitary council. The review demonstrated that there was no single model or approach that suited everyone but all recognised that change was necessary in order to provide a more consistent, focused and respected function. The Focus Group (and Standards Committee) received information and commented on the review last April.
3. Although a revised structure was adopted following amendment at Council (as set out in Appendix A), it was clear that a fresh approach in support of the structure was needed in which both the Executive and Non-Executive had responsibility and an interest in making it work.
4. In approving the revised structure, Council authorised the Solicitor to the Council to make the consequential administrative changes to the Constitution (Part 8).
6. The report presented to Council proposed to give responsibility to the new Management Committee (something supported by all during the review) for the overall management of the OS function, including the co-ordination of a single work programme, member requests and Call-in. This was evident throughout the documentation. The Management Committee was to be supported by a number of service-based sub-committees. However the proposed sub-committees were elevated back to select committees through amendment at Council - in effect retaining elements of the previous arrangements.

7. Unfortunately there was not time to explore the operational relationship between these select committees and the new Management Committee. This included how Call-in was to work within the new structure, bearing in mind it was left in the documentation as the responsibility of the Management Committee.
8. The Solicitor to the Council gave early advice that the Management Committee had the power of direction over the select committees to reflect the intention behind the decision of Council.
9. In the main, the revised arrangements, including the operational relationship between the Management Committee and select committees, have been working well due to it finding its own level through pragmatic discussion by the experienced leading members who are keen to make the new arrangements effective.

Call-in (and member requests)

10. Call-in, however, is one area that has caused concern and some disagreement. The issue is explained in the report at item 3a on the agenda. The Management Committee has taken a majority view on how this should operate, but in doing so felt that the Focus Group could usefully give an independent airing on the reasonableness of this position, bearing in mind the objections by some at the Management Committee and the subsequent press coverage.
11. In giving a view on Call-in, it would also be helpful if the Focus Group could comment on the responsibility for dealing with Member requests. This is where any member of a scrutiny committee or any 5 members of the Council can request that a matter is considered by a scrutiny committee. An item can also be requested under the Councillor Call for Action procedure (see Constitution). The area for clarification is whether all these should, in the first instance, be considered by the new Management Committee, as was the intention in the proposals reported to Council in May or whether now, with retention of the select committees, requests should go direct to the relevant committee? It is important to remember that a member request is simply to have an item on the agenda of the relevant scrutiny committee to ask whether it would be prepared to undertake a review on a particular matter. It will be for the Committee itself to decide whether to agree to the review or not. This is documented in sections 11-15 of Part 8 of the Constitution.

Task Group Protocol - Refresh

12. The Task Group Protocol is a document setting out some general principles and giving practical guidance on how OS task groups should operate. It covers evidence gathering techniques, the role of members and officers, approach to task group meetings and guidance on the production of final reports. The Protocol is received at the first meeting of every task group in order that these principles are adopted and guidance understood at the start of every review.

13. Some recent task group reviews in the Children's Services Select Committee arena have highlighted issues that are not adequately addressed within the current Protocol. The issues that need clarifying relate to working with outside agencies and the use of evidence from witnesses including:
 - the differing roles of Scrutiny, the Executive and the Council;
 - whether an outside agency has the opportunity to view or influence the final report;
 - arrangements for circulating/publishing the final report;
 - guidance on the checking of evidence prior to publication of the final report; and
 - the treatment of confidential evidence given by witnesses.
14. As well as these issues, the current Protocol was written pre-unitary and no longer fully reflects the corporate style, culture or review outcomes. Officers have, therefore, drafted a refresh of the Protocol, including the specific issues raised above for consideration. The opportunity has also been taken to remove repetition in the text and generally sharpen its content. Although the protocol is very much an operational guide and does not form an appendix to the Constitution, the Management Committee felt it important that the Focus Group be given the opportunity to comment prior to the revised version being submitted to the meeting of the OS Management Committee on 28 February for adoption. The refreshed protocol is circulated under item 3b of the Focus Group's agenda.

Amendments to the Constitution – Articles and Part 8

15. As mentioned in paragraph 4, the revised OS arrangements agreed by Council in May 2012 need to be reflected in amendments to the Constitution. Given the subsequent discussions that took place on the practical operation of the new arrangements, and in particular the Call-in procedure, the Solicitor to the Council felt that it would be sensible to take these back through the Focus Group (and Standards Committee).
16. The proposed changes are highlighted in red in the extracts (Article 6 and Part 8) circulated under item 3c of the agenda and may need further refinement depending on the view taken on Call-in and member requests.
17. Schedule 2 of the Localism Act 2011, consolidates existing scrutiny legislation by the insertion of a new part in the Local Government Act 2000 under which the requirements relating to overview and scrutiny were first introduced. This has necessitated some tidying up of some of the sections.
18. We are also waiting for regulations and guidance from Central Government on Health Scrutiny functions following the Health and Social Care Act 2012, which are also likely to require some changes to the Constitution. These are promised by 1 April 2013 and will be picked up in the report to the new Council in May.

Matters for Consideration

19. At the request of the Overview and Scrutiny Management Committee, the Focus Group is asked to give its views on:
 - (i) the reasonableness of the Management Committee's interpretation of the Council's intention regarding the operation of the Call-in procedure (item 3a);
 - (ii) the revised Task Group Protocol (item 3b); and
 - (iii) amendments to the Constitution (item 3c).

20. The views of the Focus Group will be taken back through the OS Management Committee and on to the Standards Committee and Council as appropriate.

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