

ANNUAL COUNCIL

Wednesday, 17 May 2017

AMENDMENTS TO THE CONSTITUTION – CLARIFICATION OF CALL-IN PROCEDURES (REP1431)

EXECUTIVE SUMMARY

1. Article 13 of the Constitution deals with the review, revision, suspension, interpretation and publication of the Constitution, and states that the Council's Audit & Governance Committee shall be responsible for monitoring and evaluating the content and effectiveness of the Constitution.
2. During 2014/15 and 2015/16 the Committee carried out a full section-by-section review of the Constitution, including a review of call-in procedures which led to some amendments (Report REP1140, 18 September 2014 refers).
3. This report provides some clarification around Call-in procedures set out at Section 3 of the Council's Constitution, and in the call-in form.

Is the report Open or Exempt?	Open
Wards Affected:	All Wards in the District
Cabinet Member:	Leader of the Council
Supporting Officer:	Hilary Slater Monitoring Officer and Head of Legal & Democratic Services (01394) 444336 hilary.slater@eastsoffolk.gov.uk

1 INTRODUCTION

- 1.1 The Constitution sets out how the Council operates, how decisions are made, who can make them and the procedures that need to be followed to deliver open, transparent and democratic governance.
- 1.2 It is good practice for the Constitution to be reviewed and updated on a regular basis, to take account of changing legislation and to ensure the Constitution continues to meet the democratic needs of the Council.
- 1.3 Article 13 of the Constitution states that the Council's Audit & Governance Committee shall be responsible for monitoring and evaluating the content and effectiveness of the Constitution, and during 2014/15 and 2015/16 the Committee carried out a full review of the Constitution, including a review of call-in procedures which led to some amendments (Report REP1140, 18 September 2014 refers).
- 1.4 This report provides some clarification around the Call-in procedures set out at Section 3 of the Council's Constitution, and in the call-in form and recommends that some minor changes are approved by Full Council.

2 CALL-IN PROCESS

- 2.1 The call-in process is a governance mechanism designed to act as a check and balance to Cabinet level decisions. It is designed to ensure that decisions of the Cabinet, a committee of the Cabinet, an individual Cabinet Member exercising delegated powers, under joint arrangements, or a Key Decision made by an officer are made within the confines of the governance framework and the law. It is therefore a safety check to ensure that any Cabinet level decision sits within the Council's policy framework, agreed budgets and budget processes, and is in accordance with the principles of good decision making. The call-in process is not designed to ensure the 'best' or 'right' decision is made by the Cabinet.
- 2.2 The call-in process is set out in the Overview & Scrutiny Procedure Rules in Section 3 of the Constitution, in paragraph 11. This section is set out at Appendix A to this report.
- 2.3 Since 2010 six call-in applications have been received, five of which were activated by Councillors and one by members of the public. None of these call-ins were accepted as valid. Whilst the public call-in was not accepted the issues referred to in the call-in documentation were successfully dealt with through an informal meeting with the call-in signatories. One of the Member call-ins regarding car park charges was addressed through the submission of a strategic report to the Overview & Scrutiny Committee.

3. ISSUES FOR CONSIDERATION

- 3.1 Deciding on the validity of a call-in
 - 3.1.1 Several tests are applied by the Monitoring Officer to determine whether a call-in is valid, including whether discussion has taken place with the Monitoring Officer or Cabinet Member (a requirement added following the Committee's 2014 review of the call-in procedure), whether it contains the requisite number of signatories,

whether it was received in time, and the evidence behind the reasons for activating the call-in set out on the call-in form.

3.1.2 However, it has been noted that the Constitution does not specify that the Monitoring Officer is responsible for deciding whether a call-in request is valid. It is therefore suggested that this is clarified in the Constitution, as set out in the highlighted areas of Appendix A to this report.

3.2 Grounds for call-in

3.2.1 The call-in request form sets out the three grounds for calling in a decision, as set out below:

- The decision was not taken in accordance with the principles of good decision-making
- The decision may be contrary to the Council's agreed policy framework
- The decision may be contrary to the Council's agreed budgetary framework.

3.2.2 The lead signatory to a call-in is required to specify which principle(s) of good decision making has/have been breached, and/or which policy or area of budget has/have not been adhered to. Information is also requested as to what action the call-in signatories would like to see the decision-maker(s) take to address the concerns outlined in the call-in.

3.2.3 The principles of good decision making outlined on the call-in form appear in a different form at Article 9 of the Constitution. Both are set out at Appendix B to this report for comparison purposes. It is suggested, in the interests of clarity, that the principles be amended on the call-in form to match those at Article 9, thus enabling cross reference to these to be made in the call-in procedure rules, again shown as proposed amendments at Appendix A to this report.

3.3 The Audit & Governance Committee considered this proposal at its meeting on 15 March 2017 and resolved to recommend to Full Council:

That the revised Terms of Reference of the Audit & Governance Committee, as set out at Appendix 1 to Report REP1409, be approved, and that the Council's Constitution be amended as appropriate.

4 FINANCIAL AND GOVERNANCE IMPLICATIONS

4.1 The Constitution is written in accordance with the provisions of the Local Government Act 2000 and subsequent legislation. It is in the Council's interest to ensure that the Constitution complies with the law and is not subject to challenge.

4.2 It is good practice to regularly review the Constitution and to ensure that the highest standards of governance are maintained by Waveney District Council. Review of the Constitution can be absorbed within current budgets and officer workloads.

5 CONSULTATION

- 5.1 The Monitoring Officer has delegated authority, in consultation with the Chairman of the Audit & Governance Committee, to make minor legislative and administrative changes to the Constitution that do not affect the meaning or level of delegations contained therein. Other substantive changes to the Constitution can only be approved by the Full Council after consideration of a proposal by the Monitoring Officer and the recommendations of the Audit & Governance Committee. Any proposed changes or recommendations made by the Audit & Governance Committee in respect of the Call-in procedure will therefore need to be referred to Full Council for consideration.
- 5.2 A copy of the latest version of the Constitution is available to view on the Council's website and intranet.

6 OTHER OPTIONS CONSIDERED

- 6.1 None. It is good practice for continual review of the Constitution to take place. If no such review occurred, the Constitution could become outdated which could allow standards of governance to fall.

7 REASON FOR RECOMMENDATIONS

- 7.1 The Constitution must be regularly reviewed to ensure it continues to support the decision making process at Waveney and is fit for purpose. The Council's Audit & Governance Committee considered this proposal and have recommended it to Council for approval

RECOMMENDATIONS

1. That the call-in process set out at Section 11 of the Overview & Scrutiny Procedure Rules at Part 3 of the Council's Constitution be amended as shown highlighted at Appendix A to this report, in order to clarify that the Monitoring Officer is responsible for deciding on the validity of a call-in request.
2. That the call-in form be amended so that the Principles of Good Decision Making mirror those set out at Article 9 of the Constitution, as shown in Appendix B to this report.

APPENDICES

Appendix A	Paragraph 11 of the Overview & Scrutiny Procedure Rules from Part 3 of the Council's Constitution, with suggested amendments.
Appendix B	Excerpt from Article 9 of the Council's Constitution – Decision Making – Principles of Good Decision Making, and the same section in the current Call-in form.

BACKGROUND PAPERS - None

Appendix A – Constitution Part 3, Section 11, Overview & Scrutiny Procedure Rules, Call-in

Suggested amendments shown highlighted

11. CALL-IN

- 11.1 When a decision is made by the Cabinet, a committee of the Cabinet, an individual Cabinet Member exercising delegated powers, under joint arrangements, or a Key Decision is made by an officer, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 working days of being made (this being 'the date of publication' for the purposes of paragraphs 11.3 and 11.4 below).
- 11.2 All Members of the Overview & Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.
- 11.3 That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the date of publication of the decision, unless it is 'called in' by the Overview & Scrutiny Committee or the public.
- 11.4 Within five working days of the date of publication of a decision any 5 Members of the Council, any 5 members of the public, or a minimum of 7 of any combination of Councillors and public, may 'call-in' the matter for review of the decision by the Overview & Scrutiny Committee.
- 11.5 Any Member of the Council wishing to initiate a call-in must first make contact with the relevant Cabinet Member and/or the Monitoring Officer to discuss the issue.
- 11.6 It is the responsibility of the Monitoring Officer to decide whether a 'call-in' request is valid, taking into account the requirements of the Council's Constitution, including the Principles of Good Decision Making set out at Article 9 of the Council's Constitution.
- 11.7 On receipt of such a valid 'call-in' request, the Chairman of the Overview & Scrutiny Committee will determine the most appropriate arrangements for consideration of the matter. The relevant Cabinet Member(s), all the signatories to the 'call-in', the relevant Director(s), Head(s) of Service and report author of the 'call-in' will immediately be notified of the 'call-in' arrangements. All action to implement the decision which is the subject of the 'call-in' shall be suspended.
- 11.8 Following the meeting of the Overview & Scrutiny Committee all Members of the Council, relevant officers and interested members of the public will be notified as soon as possible of the outcome of the meeting (including any recommendations from the Committee).
- 11.9 Having considered the 'call in' the Overview & Scrutiny Committee may refer the decision back to the Cabinet for reconsideration, setting out in writing the nature of its concerns.
- 11.10 If so referred the Cabinet shall then reconsider the decision within 10 working days, amending the decision or not, before proposing a final decision. The Chairman or any other member of the Overview & Scrutiny Committee shall be entitled to attend the Cabinet meeting and speak to the matter, but not vote.
- 11.11 If the Cabinet's proposed final decision is consistent with the views of the Overview & Scrutiny Committee then that decision, once taken, is released for immediate implementation and cannot be subject to further 'call-in'.

11.12 If the Cabinet is unable to agree in whole or in part with the conclusions of any recommendations of the Overview & Scrutiny Committee, the original Overview & Scrutiny report and the Cabinet report shall stand referred to the next available meeting of the Council for further consideration and decision. In reaching a decision the Council shall pay careful regard to the extent to which in whole or in part the proposed decision accords with the Council's existing budgetary and/or Policy Framework. The decision of the Council shall be final.

Appendix B – Constitution Article 9 – Decision Making

Principles of good decisions making

- Action taken will be proportionate to the desired outcome.
 - Due internal and external consultation will be undertaken and professional advice sought from officers.
 - Human rights, including issues of equality and diversity, will be fully considered and respected.
 - There will be a presumption in favour of openness.
 - Through its strategies, objectives and Forward Plan of Key and Exempt Decisions the Council will seek to achieve and maintain clarity of aims and desired outcomes.
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Principles of good decision making as set out in the current call-in form

- The decision does not comply with the Council’s Constitution
- The decision was not reasonable within the common meaning of the word, ie rational, based on sound judgement
- The decision was not reasonable within the legal definition of ‘reasonableness’, ie was everything relevant taken into account, and was everything irrelevant disregarded
- The decision was not proportionate, ie the action was not proportionate to the desired outcome
- The decision was not taken on the basis of due consultation
- The decision was not taken on the basis of professional advice from officers
- Human Rights were not respected and/or the decision will give rise to Human Rights implications
- When the decision was taken, there was no presumption in favour of openness