

Part 4 – Scrutiny Procedure Rules

A p p e n d i x K

Appendix K

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1. What will be the Arrangements for Scrutiny?

A scrutiny body is one appointed to discharge the functions conferred by Section 21 (Overview and Scrutiny Committees) of the Local Government Act 2000 and any regulations made under that Section.

The Council will have the scrutiny boards set out in Article 6 of this Constitution and will appoint members to them as it considers appropriate from time to time.

2. Who May Sit on Scrutiny Boards?

- (a) All councillors, except members of the Cabinet, may be members of a scrutiny board. However, no member may be involved in scrutinising a decision which he/she has made as an individual or as a member of the relevant decision making body or in relation to which he/she has declared an interest, except where the Council as a whole was the decision making body.
- (b) The Budget and Corporate Scrutiny Management Board will comprise of the Chairs of the Scrutiny Boards and a Chair as appointed by the Council.

3. Who Chairs Scrutiny Board Meetings?

- (a) The Chair and Vice-Chairs of a particular scrutiny board will be appointed by the Council at its Annual Meeting, from amongst the elected members of that board.
- (b) In the absence of both the Chair and Vice-Chairs of a scrutiny board, or their inability to act, the board shall appoint a person to preside at that meeting or part of a meeting, from amongst those elected members present;

- (c) The Chair of the Budget and Corporate Scrutiny Management Board will be appointed by the Council at its Annual Meeting.

4. **Co-opted Members – Scrutiny Boards**

- (a) Each relevant scrutiny board dealing with education matters, will include in its membership, the following non-elected co-opted members, with voting rights on any matter with regard to education, whether in respect of schools or wider educational issues:
 - (i) 1 non-elected person representing the Church of England dioceses of Birmingham and Lichfield;
 - (ii) 1 non-elected person representing the Roman Catholic archdiocese of Birmingham;
 - (iii) 2 Parent Governor representatives.

A relevant scrutiny board in this paragraph is a scrutiny board or sub-group of a scrutiny board, where the board or sub-group functions relate wholly or in part to any education functions which are the responsibility of the authority's Executive. If the scrutiny board or sub-group deals with other matters, these representatives shall not vote on those matters, though they may stay in the meeting and speak.

- (b) A scrutiny board with responsibility within its terms of reference for the council's housing provision will include in its membership a non-elected co-opted member with no voting rights from the Tenant Review Panel.

5. **Meetings of Scrutiny Boards**

Each scrutiny board will normally meet once in each cycle of meetings in a Municipal Year. In addition, extra meetings may:-

- (a) be included in the Council's programme of meetings as determined by the Council at its Annual Meeting; or,
- (b) be called by the chair of the relevant scrutiny board or by any four members of the board; or

- (c) be called by the Proper Officer if he/she considers it necessary or appropriate.

6. **Quorum**

Although it is imperative that meetings of scrutiny bodies are conducted within the general principles of good practice for local authority committees, it is important to temper the rules of conduct with practical arrangements, so as to not to frustrate the investigative nature of the business.

The quorum for a scrutiny body will therefore be in line with the Council's Procedure Rules (Standing Orders) in Part 4 of this Constitution. It should be noted that provision is made in those Rules to enable a meeting to proceed in the event of it being or becoming inquorate. In the event of a quorum not being obtained at the commencement of, or at any point during the meeting, at the discretion of the Chair or the person presiding, the meeting may continue for the purpose of examining the business before it. However:-

- (a) no formal decisions may be made whilst the meeting is inquorate;
- (b) any recommendation, comment or advice by the members present to the Council, the Cabinet, a Cabinet Member, other committees or other persons or bodies shall be qualified by a statement clearly indicating that the recommendation, comment or advice is not that of the full board due to the meeting having been inquorate;
- (c) any notes or minutes of the meeting shall clearly record that the meeting was inquorate or the point in the record of events at which the meeting became inquorate.

7. **Work Programme**

- (a) Scrutiny boards will be responsible for drafting their own work programmes and in doing so, shall take into account the wishes of members on that body who are not members of the majority political group on the Council.
- (b) The work programme for each board will be considered and agreed by the Budget and Corporate Scrutiny Management Board to ensure appropriate use of resources and to avoid duplication.
- (c) Any requests for changes or additions to a particular scrutiny board's work programme must be agreed by the Budget and Corporate Scrutiny Management Board.

8. **Agenda Items**

Relating to requests from members for items to be included on the agenda for a scrutiny body:

- (a) Subject to (c) below, any member of a scrutiny board or sub-group is entitled to give notice to the Proper Officer that he/she wishes an item to be included on the agenda for the next available meeting of that board or sub-group. On receipt of such a request the Proper Officer will satisfy him/herself that it is an appropriate item for that board before including it on the agenda for the next available meeting.
- (b) Subject to (c) below any member of the Council may also give notice to the Proper Officer that they wish an item to be included on the agenda of a scrutiny board.

If the Proper Officer receives such a notification, he/she will consult with the Chair of the Budget and Corporate Scrutiny Management Board as to which scrutiny board(s) or sub-group(s) should consider the matter in question and include the item on the first available agenda for that scrutiny board/sub-group.

The member requesting the item shall be entitled to attend the meeting and speak on the item.

- (c) A matter will not be included on an agenda for a particular meeting where the Proper Officer considers it to be:
- (i) frivolous, of mischievous intent, in breach of any statute, regulation or directive or of personal gain to the requestor;
 - (ii) relating to a matter outside those functions set out in the Local Government Act 2000 as amended;
 - (iii) relating to a licensing or planning decision;
 - (iv) relating to an individual body to which there is already a statutory right to a review or appeal (other than to the Local Government Ombudsman).

Relating to requests from the Executive to place an item on the agenda of a scrutiny body:

- (d) A scrutiny body must respond to requests from the Council and/or the Executive to review particular areas of Council activity, within three months of the request, or at the nearest available programmed meeting where the Proper Officer considers this reasonable.

The scrutiny body must report its findings and any recommendations back to the Executive and/or the Council. The Council and/or the Executive must consider the report of the scrutiny body within one month of receiving it, or at the nearest available programmed meeting where the Proper Officer considers this reasonable.

- (e) Nothing within (d) above shall require the Executive and/or the Council to have concluded its consideration of any matter referred to it under the provisions of (d) within the specified one month period where the Executive or an individual cabinet member and/or the Council finds it necessary to call for further information.

9. **Policy Review and Development**

- (a) The role of the scrutiny boards in relation to the development of the Council's budget and policy framework, is set out in detail in the Budget and Policy Framework Procedure Rules.
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, scrutiny boards may make proposals to the Executive for developments in so far as they relate to matters within their terms of reference.
- (c) Scrutiny boards may hold inquiries and investigate the available options for future direction in policy development and may choose advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration.

10. **Report from Scrutiny Bodies to the Executive**

- (a) Once it has formed its final recommendations on proposals for development, the scrutiny body will prepare a formal report and submit it to the Proper Officer for consideration by the Executive. Where the recommendation(s) of the scrutiny body would require a departure from or a change to the agreed budget and policy framework, the Executive will refer the matter to the Council, together with its recommendations.
- (b) Where a scrutiny body has completed a scrutiny review on a particular issue and has referred its report on its findings and recommendations to the Executive or an individual Executive member for consideration, the Proper Officer shall ensure that the report is placed on the agenda of an Executive meeting in accordance with the Executive Procedure Rules, as appropriate, and subject to compliance with the Access to Information Rules contained in part 4 of the Constitution.

Before doing so, however, the Proper Officer will satisfy himself/herself that any procedural steps which he/she deems to be necessary in respect of the review report have been implemented. The Proper Officer will also liaise with the Leader, or in his absence, the Deputy Leader, as to the date of the first appropriate Executive meeting to which the review report may be taken. There may only be up to three such items presented at any one time and where there are more than three items their consideration or deferral to a subsequent occasion shall be at the discretion of the Leader or in his/her absence the Deputy Leader.

- (c) If the individual Executive member does not accept the recommendations of the scrutiny board then he/she must then refer the matter to the next available meeting of the Executive for consideration before exercising his/her decision-making power.

And/or

Where the Executive has referred a recommendation to an individual Executive member and he/she does not accept the recommendations of a scrutiny board either fully or in part, and if required by the chair of the scrutiny board, the member will attend a meeting of the scrutiny board to discuss the response in accordance with arrangements under Section 16 of the Scrutiny Procedure Rules.

- (d) Individual recommendations of a review which require a further report to a cabinet member will be tracked and monitored by the relevant service director.
- (e) Scrutiny boards will receive reports on the tracking and monitoring of scrutiny review recommendations.
- (f) Scrutiny boards will have access to the statutory notice of key decisions to be made by the Executive to decide whether they wish to give advance consideration to any matter.

11. Rights of Scrutiny Members to Documents

- (a) In addition to their rights as councillors, members of scrutiny bodies have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the Executive and scrutiny bodies as appropriate depending on the particular matter under consideration.

12. Members and Officers Giving Account

- (a) Any scrutiny board or sub-group may scrutinise and review those decisions made or actions taken in connection with the discharge of any Council functions, which fall within its remit.

As well as reviewing documentation, in fulfilling its scrutiny role, a scrutiny body may require any member of the Executive, Committee Chair or Vice-Chair, the Head of the Paid Service and/or any chief officer, to attend before it to assist in the understanding of:

- (i) any particular decision or series of decisions;
 - (ii) the extent to which the actions taken implement Council policy; and/or
 - (iii) the performance of an elected member of the Executive.
- (b) Where a member or officer is required to attend a scrutiny body under this provision, at least 10 working days notice of the meeting at which he/she is required to attend must be given, unless the individual agrees to a shorter period of time.

The attendee should be advised of the nature of the item on which he/she is required to attend and whether any papers are required to be produced for the scrutiny body. Where a report is required, then the member or

officer concerned will be given sufficient notice to allow for preparation of that documentation.

- (c) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the chair of the scrutiny body shall, in consultation with the member or officer, arrange for them to attend the next available meeting, or, at the scrutiny body's discretion, an alternative meeting called within 21 days.

13. **Attendance by others**

A scrutiny body may invite people other than those people referred to in paragraph 16 above to address it, to discuss issues of local concern and/or answer questions.

The attendance of a citizen or member of the public at a meeting of a scrutiny body, other than by direct invitation as a participant, does not grant the individual an automatic right to address the meeting or submit representations.

14. **Call-in**

Decisions of Individual Cabinet Members

- (a) Any member of the Council, or any co-opted member of a board with voting rights, may refer for scrutiny any formal decision of an individual Cabinet member made under Part 4 of the Executive Procedure Rules.

The member may do so either verbally at the time the decision is made or in writing to the Proper Officer within 3 working days from the day on which the decision was taken (but not including the day of the decision), by:-

- (i) declaring his/her wish to refer the matter; and
- (ii) providing a clear reason or reasons why the matter should be referred.

The Proper Officer, in consultation with the Chair of the Budget and Corporate Scrutiny Management Board will determine which board will consider the referral, however, matters relating to crime and disorder issues must be referred to the Safer Neighbourhoods and Active Communities Scrutiny Board.

The Proper Officer will notify the chair of the board, the relevant cabinet member and chief officer(s) of the referral and of the identity of the member making the referral.

- (b) The Proper Officer may reject a referral where he/she considers it to be frivolous, of mischievous intent, in breach of any statute, regulation or directive or of personal gain to the requestor.
- (c) Where a decision is referred under (a) above, the scrutiny board will meet within 10 working days of the receipt of the referral notice, to consider the matter. If the board does not meet within this time, the decision of the cabinet member will automatically take effect at the end of the period.
- (d) With the approval of the Leader of the Council and the appropriate cabinet member, and where the matter does not require immediate determination, the 10 working days referred to above may be extended if this would facilitate not having to call an additional meeting of the scrutiny board.
- (e) The member who has referred the item for scrutiny will be expected to attend the meeting of the scrutiny board at which the item will be considered. If he/she is unable to attend, he/she must appoint another member of the Council to act as his/her representative and should notify the Proper Officer of the name of the representative prior to the meeting.

In the event of the member or his/her representative failing to attend the meeting, at the discretion of the person presiding, the item will be withdrawn from the

agenda without discussion and the decision of the Executive member will automatically take effect.

- (f) If, having considered the decision, the scrutiny board has concerns about it, then it may refer it back to the cabinet member who made the decision, for reconsideration, setting out in writing, the nature of the concerns. Within a further 10 working days, the cabinet member (or in his/her absence the Leader of the Council) must reconsider, amending the decision or not, before adopting a final decision.

If the matter is a strategic matter that requires the consent of the Cabinet or the Council, and the cabinet member elects not to amend his recommendation to that body, the chair of the scrutiny board may reserve the right to address the Cabinet or the Council, as appropriate, on behalf of the scrutiny board to present the views of the board.

- (g) If the matter was referred to the Cabinet and subsequently full Council and neither the Cabinet or the Council object to a decision which has been made, then no further action is necessary and the decision will be effective at the close of the relevant meeting.

However, if the Council does object, (it has no locus to make or overturn decisions in respect of an Executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget), it will refer any decision to which it objects back to the cabinet member making the decision, together with the Council's views on the decision.

The cabinet member shall reconsider the matter, within 10 working days of the Council request and choose whether to amend the decision or not before reaching a final decision and implementing it.

- (h) If the scrutiny board does not refer the matter back to the cabinet member the decision will take effect at the close of the scrutiny meeting.

Collective Executive Decisions (Cabinet Decisions)

- (a) A Chair, on behalf of a scrutiny board, or in his/her absence a Vice-Chair, may refer for scrutiny, a decision of the Cabinet made on any item within the strategic items part of the Cabinet agenda.

Any member of the Council, or any co-opted member of a scrutiny board with voting rights, may refer for scrutiny, a decision of the Cabinet made on any item within the business items part of the Cabinet agenda.

The member may do so either verbally at the time the decision is made or in writing to the Proper Officer within 3 working days from the day on which the decision was taken (but not including the day of the decision), by:-

- (i) declaring the board's wish to refer the matter; and
- (ii) providing a clear reason or reasons why the matter should be referred.

The Proper Officer, in consultation with the Chair of the Budget and Corporate Scrutiny Management Board will determine which board will consider the referral, however, matters relating to crime and disorder issues must be referred to the Safer Neighbourhoods and Active Communities Scrutiny Board.

The Proper Officer will notify the chair of the board, the Leader of the Council and chief officer(s) of the referral and of the identity of the board making the referral.

- (b) The Proper Officer may reject a referral where he/she considers it to be frivolous, of mischievous intent, in breach of any statute, regulation or directive or of personal gain to the requestor.

- (c) Where a matter is referred under (a) above, the scrutiny board will meet within 10 working days of the receipt of the referral notice, to consider the matter. If the board does not meet within this time, the decision of the Cabinet will automatically take effect at the end of the period.
- (d) With the approval of the Leader, and where the matter does not require immediate determination, the 10 working days referred to above may be extended if this would facilitate not having to call an additional meeting of the scrutiny board.
- (e) The member who has referred the item for scrutiny will be expected to attend the meeting of the scrutiny board at which the item will be considered. If he/she is unable to attend, he/she must appoint another member of the referring scrutiny board to act as his/her representative and should notify the Proper Officer of the name of the representative prior to the meeting.

In the event of the member or his/her representative failing to attend the meeting, at the discretion of the person presiding, the item will be withdrawn from the agenda without discussion and the decision of the Cabinet will automatically take effect.

- (f) If, having considered the decision, the scrutiny board has concerns about it, then it may refer it back to the Cabinet for reconsideration, setting out in writing, the nature of its concerns. Within a further 10 working days Cabinet must consider, amending the decision or not, before adopting a final decision.

If the matter is a strategic matter that requires the consent of the Council, and the Cabinet elects not to amend its recommendation to the Council, the chair of the scrutiny board may reserve the right to address the Council on behalf of the scrutiny board to present the views of the board.

- (g) If the decision was 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 at the close of the Council meeting.

However, if the Council does object, (it has no locus to make decisions in respect of an Executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget), it will refer any decision to which it objects back to the Cabinet together with the Council's views on the decision.

The Cabinet shall reconsider the matter, within 10 working days of the Council request and choose whether to amend the decision or not before reaching a final decision and implementing it.

- (h) If the scrutiny board does not refer the decision back to the Cabinet, the decision shall take effect at the close of the scrutiny meeting.

Exceptions to Call-In

- (a) Decisions may not be called in for scrutiny where they are urgent. A decision is considered urgent where a delay would prejudice the Council's or the public interest.

With the exception of items considered urgent under Part 4 - Budget and Policy Framework Procedure Rules 4(a), the declaration of a decision as urgent is subject to the written agreement of the Chair of the relevant scrutiny board or in his/her absence the Vice-Chair of the relevant scrutiny board.

Decisions taken in this way, as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for the urgency.

- (b) Where the Leader has exercised his right to review the decision of an individual Cabinet member or an Executive body, the call-in procedure referred to in both paragraphs (a) above will automatically lapse. Following the Leader's review, his/her decision will be subject to the relevant call-in procedure.
- (c) Once a particular decision has been called in for scrutiny and that decision has been considered and a final decision made under any of the call-in principles, it shall not be called in again.

15. **Call for Action**

- (a) Any member of the Council who wishes to refer, for scrutiny, a Call for Action, may do so by submitting a completed Call for Action Request form.

The Proper Officer will then determine:-

- (i) if the Call for Action meets the relevant criteria;
- (ii) in consultation with the Chair of the Budget and Corporate Scrutiny Management Board, which board will consider the Call for Action. However, matters relating to crime and disorder issues must be referred to the Safer Neighbourhoods and Active Communities Scrutiny Board.

The Proper Officer will notify the Chair of the board, the relevant Executive member(s) and chief officer(s) and, where appropriate, partner organisation(s) of the referral and of the identity of the person making the referral.

- (b) A Call for Action will not be included on an agenda for a particular meeting where the Proper Officer considers it to be frivolous, of mischievous intent, in breach of any statute, regulation or directive or of personal gain to the ward member.

- (c) Matters referred by a Call for Action during the period between a Notice of Election being issued and the date of that Election will not be considered until after that Election.
- (d) Where a Call for Action is referred under (a) above, the scrutiny board will consider the matter at its next scheduled meeting, unless the matter is deemed to be of a time-critical nature or its consideration at that meeting would be detrimental to the board or board's established work programme. In these instances, with the agreement of the Chair of the board, an additional meeting of the board may be called to consider the matter.
- (e) The member who has referred the Call for Action for scrutiny will be expected to attend the meeting of the scrutiny board at which the item will be considered. If he/she is unable to attend, he/she must appoint another member of the Council to act as his/her representative and should notify the Proper Officer of the name of the representative prior to the meeting.

In the event of the member or his/her representative failing to attend the meeting, at the discretion of the person presiding, the item may be withdrawn from the agenda without discussion.

- (f) If, having considered the Call for Action, the scrutiny board makes recommendations about it, then it will refer them to the relevant person or body for consideration and inform the member of the course of action taken.
- (g) If a decision on the Call for Action is required to be taken by the Cabinet, cabinet member(s) or a health body this must be taken within two calendar months starting from the date on which they receive the recommendations.

Other partner organisations must 'have regard to' the recommendations of scrutiny in exercising their function and will be encouraged to also respond to any recommendations made within two calendar months.

- (h) If the scrutiny board does not make recommendations about the matter, it will inform the member that no action will be taken.
- (i) Where Calls for Action have been received by the Council, the appropriate scrutiny board will receive a quarterly report summarising the issues.

Exceptions to Call for Action

Matters may not be referred by a Call for Action if they are:-

- (i) any matter relating to a planning decision;
- (ii) any matter relating to a licensing decision;
- (iii) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
- (iv) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of a scrutiny board;
- (v) any matter not relating to the ward of the referring member.

16. Petitions

- (a) The Council or members of the Executive may, under the Council's petitions scheme, refer consideration of a petition to scrutiny. Those petitions which request a senior officer to give evidence on a particular matter would also be dealt with at a meeting of the appropriate scrutiny board. If the scrutiny board decides that another senior officer is more appropriate to respond to the petition it may call that person to attend instead. The scrutiny board may also request a relevant councillor to attend the meeting.

- (b) If a petition organiser believes that the Council has not dealt with their petition in accordance with the Council's petitions scheme, they can request the Budget and Corporate Scrutiny Management Board, to review the procedural steps that the Council has taken in respect of the petition. Any such request for a review must be accompanied with a written statement to explain which parts of the petitions scheme the petition organiser alleges have not been complied with. The request for review will be referred to the next available meeting of a scrutiny board. Should the board determine that the Council's petition scheme was not followed, it may choose to further investigate the matter, make recommendations to the Executive or arrange for the matter to be considered at a meeting of the full council.

17. The Party Whip

When considering any matter in respect of which a member of a scrutiny board is subject to a party whip, the member must declare the existence of the whip and the nature of it before the commencement of the board's deliberations on the matter. The declaration and the detail of the application of the whip arrangements shall be recorded in the minutes of the meeting.

18. Order of business and Procedure at Scrutiny Meetings

- (a) As a general rule the order of business and procedure at scrutiny bodies shall be:-
- (i) to confirm the minutes of the last meeting;
 - (ii) to receive declarations of interest, including declarations in relation to the application of any political whip;
 - (iii) consideration of any matter referred to the body for a decision in relation to call in of a decision;
 - (iv) response of the Executive to reports from scrutiny.

- (b) Where the scrutiny body conducts investigations, it may also ask people to attend to give evidence at meetings in accordance with the following principles:
 - (i) that the investigation be conducted fairly and all members of the body be given the opportunity to ask questions of attendees and to contribute and speak;
 - (ii) that those assisting the body by giving evidence be treated with respect and courtesy;
 - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, scrutiny boards/sub-groups shall report to the Executive and/or the Council as appropriate and shall make its report and findings public.

19. Matters Within the Remit of More Than One Scrutiny Board

Where a matter for consideration by a scrutiny board also falls within the remit of one or more other scrutiny boards, the decision as to which scrutiny board will consider it will be resolved by the Chair of the Budget and Corporate Scrutiny Management Board and in his/her absence or inability to act, the Vice-Chair.