

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Constitution Review Working Party

22 July 2010

AUTHOR/S: Chief Executive / Corporate Manager, Community and Customer Services

CLARIFYING SCRUTINY PROCEDURE AND RELATED DEFINITIONS

Purpose

1. To seek the Working Party's endorsement of four draft amendments to the Constitution aiming to clarify scrutiny procedure and the definition of "whip" and "decision". This is not a key decision.

Recommendations and Reasons

2. That the Working Party recommends to Council that the Constitution be amended as recommended at paragraphs 6, 8, 10 and 12 of this report.

Considerations

3. As a result of a scrutiny call-in during 2009/10 officers identified the need to clarify the following:

Definition of 'Whip'

4. Members of the Scrutiny and Overview Committee are required by the Constitution to declare the existence of any whip, but it provides no definition of this term. Research indicates that there could be room for interpretation and so Members may agree the need to add a definition.
5. Officers recommend that in the first section, *Definitions*, the definition of a whip be added as follows: ***"Any instruction given by or on behalf of a political group to any councillor who is a member of that group as to how that councillor shall speak or vote on any matter before the Council or any committee or sub-committee, or the application or threat to apply sanction by the group in respect of that councillor should he/she speak or vote in any particular matter"***

Definition of a Decision

6. In deciding whether to proceed with call-in of a decision, it is necessary to have a clear definition of what a decision is. There has been some question as to whether a decision to recommend a policy or action, is actually a decision.
7. Officers therefore recommend that in the first section, *Definitions*, the definition of a decision be added as follows: ***"A decision is when an issue is ultimately decided by the appropriate decision-maker. A recommendation is not a decision."***

Scrutiny Procedure

8. Paragraph 12.1 of Scrutiny Procedure Rules states that "Call-in ... can relate only to executive decisions made *or to be made* by the executive decision takers

- 9. However, call-in of a decision not yet made is not practicable. Officers therefore recommend **deletion from paragraph 12.1 of Scrutiny Procedure Rules of the words “or to be made”**.
- 10. Paragraph 12.9 of Scrutiny Procedure Rules states:
 12.9 If, having considered the decision, the Scrutiny and Overview Committee is concerned about it or agrees that the decision is a departure, it may take one of the following courses:
 12.9.1 refer the decision back to the executive decision taker for re-consideration, setting out in writing the nature of its concerns. If referred back, the executive decision taker shall then re-consider within five working days, amending the decision or not, before adopting a final decision. If the decision had been made before call-in, it may be implemented immediately;
 12.9.2 refer the matter to Council, *unless the executive decision-taker has indicated a preparedness to reconsider the matter*; or
 12.9.3 not refer the matter back or to Council, in which case the decision if made may be implemented immediately following the Scrutiny and Overview Committee meeting
- 11. Officers recommend clarification of paragraph 12.9.1 as follows: **“If referred back, the executive decision taker shall then re-consider within five working days, amending the decision or not, before adopting a final decision which may be implemented immediately.”**
- 12. Officers further recommend **deletion of the words “unless the executive decision-taker has indicated a preparedness to reconsider the matter” at paragraph 12.9.2 of Scrutiny Procedure Rules.**
- 13. This is because scrutiny committees have a statutory right to refer a matter to Council if they wish; removing this right if the decision-taker so chooses, does not reflect the powers set out in legislation.

Options

- 14. Members may decide to leave the Constitution unchanged on the first two points raised in this report but this would risk some ongoing uncertainty for Members regarding the term “whip”; and may necessitate the Monitoring Officer periodically revisiting discussions regarding the term “Decision”.
- 15. Members may decide not to endorse officers’ recommendation at paragraph 10 above with no effect; however, this would be to perpetuate a statement that is known to be impracticable.
- 16. Members may decide not to endorse officers’ recommendation at paragraph 12 above; however, this would leave the Council open to challenge regarding the legality of paragraph 12.9.2 of Scrutiny Procedure Rules.

Implications

17.

Financial	None
Legal	As described within the report
Staffing	None
Risk Management	As described within the report
Equal Opportunities	None
Climate Change	None

Consultations

18. The recommendations within this report were developed in consultation with the Leader, the 2009/10 Chairman of the Scrutiny and Overview Committee and the Chief Executive. All supported the recommendations.

Effect on Strategic Aims

19. The recommendations in this report do not directly impact on the Council's strategic aims. However they do address the Council's governance obligations.

Conclusions / Summary

20. Officers have identified draft amendments to the Constitution; this report enables the Constitution Review Working Party to decide which ones, if any, it would like to recommend to Council.

Background Papers: the following background papers were used in the preparation of this report:

South Cambs District Council's Constitution

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