

Democratic Services

Constitution Commission

Wednesday, 14 November 2018

10:00

Council Chamber

Civic Offices

Morris (Chair)
Bradburn Marland

If you have any enquires about this agenda please contact:

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A G E N D A

1. **Apologies**
To receive any apologies of absence.
2. **Minutes** 5 - 8
To consider signing as a correct record, the Minutes of the meeting of the Commission held on 18 October 2018 (Item 2).
3. **Review of the Council's Constitution 2018/19**
To consider Item 3 (**to follow**)
4. **Power of Scrutiny Sub-Committees to Make Additional Recommendations when Reviewing Decisions Called-in** 9 - 12
Further to Minute CC10 of the Commission's meeting held on 26 September 2018 and Minute CC14 of the Commission's meeting held on 18 October 2018, to consider a briefing note (Item 4) in respect of the power of the scrutiny committees, when reviewing called-in decisions, to make additional recommendations.
5. **Dates of Future Meetings**
Future meetings of the Commission are provisionally scheduled to take place as follows:
 - (a) 5 December 2018 at 2.00 pm
 - (b) 7/8 January 2019 at 2.00 pm, depending on the availability of Councillor Marland.
 - (c) 17 January 2019 at 6.00 pm
 - (d) 28 March 2019 at 6.00 pm

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Minutes of the meeting of the CONSTITUTION COMMISSION held on THURSDAY 18 OCTOBER 2018 at 2.00 pm

Present: Councillor Morris (Chair)
Councillors R Bradburn and Miles (substitute for Councillor Marland)

Officers: K Hulatt (Principal Solicitor - Litigation), D Ngani-Oketch (Principal Solicitor - Contracts, Procurement and Governance), N Roy (Principal Solicitor), S Taylor (Senior Planning Officer), O Shiridzinodya (Trainee Solicitor) and S Heap (Committee Services and Scrutiny Manager)

Apology: Councillor Marland

CC12 MINUTES

RESOLVED -

The minutes of the meetings of the Commission held 26 September 2018 be agreed and signed by the Chair as a correct record.

CC13 REVIEW OF COUNCIL PROCEDURE RULES 2018/19

Further to Minute CC09 of its meeting held on 26 September 2018, the Commission considered an update on the review and updating of the Council's Rules of Procedure in time for the Commission's meeting in December 2018.

The Commission noted that:

(a) Contract Procedure Rules

The Contract Procedure Rules needed to be updated to cover the provisions of Public Contracts Regulations 2015, to reflect the change of the Council's financial key decision limit to £500,000 and to reflect the approved change to procedure for contracts with a value of up to £25,000.

As part of the review officers were also reviewing the Contract Procedure Rules to ensure that they were robust and comprehensive and contained provisions which enabled the use of all permitted procurement procedures, the establishment and use of Dynamic Purchasing systems, and such other matters as state aid, Contracts Finder requirements and information relating to Concession Contracts.

(b) Financial Regulations / Acquisition and Disposal of Land and Buildings Procedure Rules

There was considerable duplication between the Acquisition and Disposal of Land and Building Rules and the Financial Regulations. Therefore the Financial Regulations were being reviewed with a view to incorporating any provisions from the Acquisition and Disposal of Land and Building Rules as necessary. Officers are also looking to update the Financial Regulations in order to clarify certain other matters, including the Council acting as a guarantor in matters of pension bonds.

(c) Access to Information Rules - Procedure for the Determination of Planning Applications – Public Participation and Procedure for the Determination of Licensing Applications by the Licensing Committee

The public speaking rights for the Development Control Committee were in the process of being reviewed, the most likely significant changes were to reduce the speaking time from 3 minutes to 1 minute, remove the ability for objectors to ask officers questions at Development Control Committee meetings and remove the submission of deputations and petitions to Development Control Committee.

With regard to the procedure for the determination of licensing applications by the Licensing Committee the procedure had been reviewed to ensure that it reflected the restrictions on those who could address a Licensing Sub-Committee in line with licensing legislation and the Council was protected from any potential appeal for hearing evidence in a licensing application that breached legislation and could subject the Council to a legal challenge.

(d) Budget and Policy Framework Procedure Rules

Work was underway to consider incorporating the Policy Framework which was currently included in Article 4 of the Constitution as part of the Budget and Policy and Framework Procedure Rules, which could also potentially be linked to the Financial Regulations.

(e) Officer Employment Procedure Rules

The Officer Employment Procedure Rules required updating to fully meet the requirements of the 1993 and 2001 Standing Orders Regulations as amended, and good employment practice, specifically:

- (i) to detail a process to review the Chief Executive and Chief Officer Terms and Conditions of Service;
- (ii) to recognise the need for the Council to establish a non-executive body that would deal with staffing

matters, such as an employment committee or similar and which would have the power to suspend the Chief Executive and take disciplinary action against JNC Chief Officers;

- (iii) to recognise the need for the Council to establish a panel of Independent Persons who would form part of the disciplinary process for the dismissal of a statutory officer;
- (iv) the need for the Council to consider the potential dismissal of a statutory officer, including consideration of representations from the Independent Persons;
- (v) to establish an appeal process for disciplinary action against a statutory officer that is unlikely to amount to gross misconduct or that will be unlikely to lead to dismissal; and
- (vi) to establish a process to allow frivolous or vexatious claims or matters that should be dealt with elsewhere to be ruled out.

The Commission specifically considered a number of issues relating to the Council Procedure Rules, Cabinet Procedure Rules and Overview and Scrutiny Procedure Rules, including comments submitted by the Leader of the Council.

RESOLVED –

1. That the work of the Officer Working Group in reviewing the Constitution and providing proposed updates in line with the external health check be noted.
2. That the progress made by officers to review and update the Contract Procedure Rules be noted.
3. That the progress made by officers to update the Financial Regulations be noted.
4. That the progress made by officers to update the Access to Information Rules, specifically, the procedure for the determination of planning applications – public participation be noted.
5.
 - (a) That the Acquisition and Disposal of Land and Buildings Procedure Rules be reviewed and retained as part of the Constitution if necessary.
 - (b) That appropriate Group representatives be consulted on the need for retaining the Acquisition and Disposal of Land and Buildings Procedure Rules.
6. That the Council, as part of the final draft Constitution, be recommend to agree the updated Procedure for the

Determination of Licensing Applications by the Licensing Committee.

7. That the Council Procedure Rules, Cabinet Procedure Rules and Overview and Scrutiny Procedure Rules be revised in line with the comments as set out in the Annex to the Minutes.
8. That the progress made by officers to update the Budget and Policy Framework Procedure Rules noted and appropriate Group representatives be consulted on the on the revisions.
9. That progress made by officers to review Officer Employment Procedure Rules noted, including that the draft Procedure Rules would be sent to members of the Joint Negotiating Committee (Employers Side) for comment.
10. That officer colleagues be requested to provide a brief summary of the changes made to each set of Procedure Rules to allow councillors to understand the main thrust of the changes and what they are intended to achieve.
11. That That a meeting a further meeting of the Commission to review any completed Procedure Rules and updated documents relating to phase one of the review process be held 14 November 2018 at 10.00am

CC14

POWER OF SCRUTINY SUB-COMMITTEES TO MAKE ADDITIONAL RECOMMENDATIONS WHEN REVIEWING DECISIONS CALLED-IN

Further to Minute CC10 of the Commission's meeting held on 26 September 2018, when a briefing note in respect of the power of the scrutiny committees to make additional recommendations when reviewing called-in decisions was requested, the Commission noted that the briefing note had still to be finalised.

RESOLVED –

That consideration of the briefing note be deferred to the next meeting.

CC15

DATES FOR FUTURE MEETINGS

The Commission noted that future meetings were scheduled as follows:

- (a) 14 November 2018 at 10.00am
- (b) 5 December 2018 at 2.00 pm
- (c) 7/8 January 2019 at 2.00 pm, depending on the availability of Councillor Marland.

THE CHAIR CLOSED THE MEETING AT 3.25 PM

POWER OF SCRUTINY SUB-COMMITTEES TO MAKE ADDITIONAL RECOMMENDATIONS WHEN REVIEWING DECISIONS CALLED-IN**Purpose**

To address the request from the Commission's meeting held on 26 September 2018 (Minute CC10 refers), for a briefing note setting out the legal position, a theoretical example and potential options in relation to the power of scrutiny committees, when reviewing decisions called in, to make additional recommendations.

Legislation / Overview and Scrutiny Procedure Rules

The Local Government Act 2000, s21(3) provides:

- (3) The power of an overview and scrutiny committee under subsection (2)(a) to review or scrutinise a decision made but not implemented includes power—
 - (a) to recommend that the decision be reconsidered by the person who made it, or
 - (b) to arrange for its function under subsection (2)(a), so far as it relates to the decision, to be exercised by the authority.

For information subsection (2)(a) is set out below:

- (2) Executive arrangements by a local authority must ensure that their overview and scrutiny committee has power (or their overview and scrutiny committees have power between them):
 - (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive.

In summary the legislation gives the Council's scrutiny function the power to review a decision made by the executive, which has still to be implemented, and which has been called-in. Having conducted the review the scrutiny body may only take no action which means that the decision may be implemented unchanged, recommend that the decision be reconsidered by the decision maker, or referred to the Council which then assumes the powers of the scrutiny body. The Council then has the options to take no action which means that the decision may be implemented unchanged, or recommend that the decision be reconsidered by the decision maker, provided those recommendations do not put any caveats on a decision to not refer back.

The legislation does not give the scrutiny body, or the Council, when acting as the scrutiny body, the power to add any caveats to its decision.

Overview and Scrutiny Procedure Rule 16(e) references the scrutiny sub-committee referring a decision back to the decision maker or to the Council setting out the in writing the nature of its concerns, whereas Overview and Scrutiny Procedure Rule 16(f) makes reference to the scrutiny sub-committee not referring the decision back which suggests that the Procedure Rules do not envisage not referring back and making recommendations to the decision taker, it does not preclude it.

Recommendations from the Scrutiny Body

While the scrutiny body cannot caveat its decision to take no action, refer back to the decision maker, or refer to the Council it is not precluded from making separate recommendations as long as they do not add any conditions to the response to the decision on the actual call-in.

Theoretical Example

Cabinet Decision:	To demolish 5 flats at 18 Nowhere Street.
Call-in Reason:	That in coming to its decision to demolish the flats the Cabinet had not undertaken sufficient and appropriate consultation.
Scrutiny Body Finding:	That the consultation undertaken was in line with the Council's Consultation Policy.
Scrutiny Body Decision:	That the decision be not referred to either the Cabinet or to the Council for further decision.

The Scrutiny Body does however have concerns that the Council's Consultation Policy is not fit for purpose and therefore decides to make a separate recommendation to Cabinet as follows:

“That, in light of potential deficiencies in the Council's Consultation Policy, highlighted by the Cabinet's decision to demolish 5 flats at 18 Nowhere Street, the Cabinet be requested to undertake an in depth review of the Consultation Policy.”

What the Scrutiny Body cannot do is to make a decision along the following lines:

“That the decision be not referred to either the in the Council's Consultation Policy Cabinet or to the Council for further decision, subject to the Cabinet agreeing to review and amend in the Council's Consultation Policy.”

Putting caveats or even observations onto the decision to not refer back potentially raises expectations from the public that the decision maker will only make the decision on the basis of dealing with the observations when in fact the decision to not refer back means the decision stands immediately as of the date of the call in meeting [Overview and Scrutiny Procedure Rule 16(f)].

So the decision maker, under the Procedure Rules, could not take on board any of the caveats to the decision not to refer back made by the Scrutiny Sub-Committee, even if the decision maker agreed with the caveat as the decision stands as of the date of the call in meeting.

Recommendation

That the Scrutiny Management Committee be advised of the ability of scrutiny bodies, when reviewing decisions called in, to make additional recommendations.

