

1. Council Procedure Rule 15

At its meeting on 7 October 2015 (Minute CC19 refers), the Commission recommended the following revisions to the wording of Council Procedure Rule 15.6 to achieve greater clarity for councillors as to timescales and allow councillors additional time to consider a request to submit a rescinding motion:

‘When a Member intends to submit a motion to rescind a decision, notice must be given to the Monitoring Officer within 24 hours of the decision **being published** of the Member’s intention to submit a rescinding motion, in order to prevent the decision being implemented. The actual motion must be signed by at least five Members, and be submitted within five working days of the decision being ~~taken~~ **published.**’

At its meeting on 21 October 2015 (Minute CL69 refers), the Council, at the request of the Chair of the Commission, agreed to refer the matter back for further consideration by the Commission due to concerns about the application of the Procedure Rule to meetings of the Licensing and Regulatory Committees and their sub-committees.

The concern expressed regarding application of the Procedure Rule to Licensing and Regulatory Committees and their sub-committees is already addressed under Council Procedure Rule 15.4 which provides:

“No resolution will be rescinded, no action will be deferred, and no matter referred back, where it has already been acted upon, if the rescission or deferment would disadvantage a third party who has become entitled to a right as a result of the resolution.”

However, should the Commission choose, it would be possible to add greater clarity to Council Procedure Rule 15.4 by the addition of the following words:

“which includes decisions of the Licensing and Regulatory Committees and their sub-committees and the Development Control Committee and its Panel where a licence or permission has been awarded and the applicant notified of the decision.”

Should the Commission chose to make a recommendation to Council, the revisions would be as follows:

“15.4 No resolution will be rescinded, no action will be deferred, and no matter referred back, where it has already been acted upon, if the rescission or deferment would disadvantage a third party who has become entitled to a right as a result of the resolution, **which includes decisions of the Licensing and Regulatory Committees and their sub-committees and the Development Control Committee and its Panel where a licence or permission has been awarded and the applicant notified of the decision.**”

- “15.6 ‘When a Member intends to submit a motion to rescind a decision, notice must be given to the Monitoring Officer within 24 hours of the decision **being published** of the Member’s intention to submit a rescinding motion, in order to prevent the decision being implemented. The actual motion must be signed by at least five Members, and be submitted within five working days of the decision being ~~take~~ published.’”

It is understood that the review of the speaking arrangements has become part of a wider review of the operation of the Development Control Committee and its Panel, which includes consideration of the Committee’s Terms of Reference, Scheme of Delegation and Code of Conduct.

2. Referral from Executive Scrutiny Panel – 5 February 2015: Mediation Meetings

At its meeting on 7 October 2015 (Minute CC17 refers), the Commission requested officer colleagues to draft wording / options in respect of the following for consideration at the Commission’s next meeting:

1. where agreement is reached on a way forward in respect of a call-in prior to the formal meeting of the Executive Scrutiny Panel, which renders a meeting of the Committee unnecessary;
2. Procedures for call-ins referred by the Executive Scrutiny Committee to Council; and
3. Either two, or three councillors being required to call-in an executive decision.

With regard to 1. above, where the request for a review is withdrawn in writing, or there is an undertaking by the decision maker and an acceptance by the person calling in the decision for review, both given in writing, in advance of the meeting of the Executive Scrutiny Committee, it is suggested the Chair, in consultation with the Vice-Chair is able to cancel the meeting, with a report on the outcome of the call-in being reported to the next meeting of the Executive Scrutiny Committee. This provision could be added as a new clause (d) (the following clauses being re-lettered) to Overview and Scrutiny Procedure Rule 16, which would read:

- “(d) Where the request for a review is withdrawn in writing, or there is an undertaking by the decision maker and an acceptance by the person calling in the decision for review, both given in writing, in advance of the meeting of the Executive Scrutiny Committee, the Chair, in consultation with the Vice-Chair may cancel the meeting, with a report on the outcome of the call-in being reported to the next meeting of the Executive Scrutiny Committee.”

As far as 2. above is concerned, there is a legal duty for the Council’s overview and scrutiny function to be able 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 (Local Government Act 2000 – Section 21[2][a]).

That duty includes the power for overview and scrutiny to recommend that the decision be reconsidered by the person who made it, or arrange for the powers conferred by Section 21[2][a] in respect of the decision to be exercised by the authority (the Council).

The Council has decided to appoint the Executive Scrutiny Committee to undertake the review of executive decisions, except those which are recommendations to Council, and therefore it is the Executive Scrutiny Committee that has the power to refer matters for review by the Council. The Council has no additional powers to those of the Executive Scrutiny Committee, it can only decide to either recommend that the decision be reconsidered by the person who made it, or not.

The Constitution Commission has called for a protocol on matters that can be referred by the Executive Scrutiny Committee to the Council. As it is a matter for the discretion of the Executive Scrutiny Committee as to what should be referred to Council any protocol; can only act as a guide as to what items should be referred to the Council and is not enforceable.

Therefore, should the Commission wish to proceed with a protocol it is suggested that it relates to the significance and Borough-wide nature of the matter under review.

An indication from the Commission as to the types of decision the Executive Scrutiny Committee should be limited to referring to Council is requested from the Commission.

With respect to 3 above, Overview and Scrutiny Procedure Rule 16(c) refers to 'any Member of the Council' being able to request the call-in of a decision. Should the Constitution Commission consider that the number of councillors required to subscribe to a call-in should be increase it would be a matter of amending the wording of the Procedure Rule to read:

"... ~~any~~ Members of the Council"

3. Substitutions of Cabinet members to Quasi-Judicial Committees

At its meeting on 7 October 2015 (Minute CC23 refers), the Commission added a review of Council Procedure Rule 23 to its work programme after Councillor Marland expressed concern that Cabinet members were prevented from substituting for councillors, other than for other Cabinet members, at meetings of the Council's quasi-judicial committees. A copy of the relevant part of Council Procedure Rule 23 is set out below:

"Substitution on Committees, Sub-Committees and Overview and Scrutiny Committees

The Monitoring Officer, or his / her authorised representative at a meeting of a body, is authorised to agree substitutions for Members of bodies submitted in writing by appropriate Group Leaders, Deputy Group Leaders, the Chair or Group Spokesperson of the body concerned before the scheduled start time of the meeting at which the substitution is to apply. Substitutions may only be made in accordance with the total number of seats allocated to each political group and the agreed balance of seats between the political groups on the body, and appointed substitutes must not be Members of the Cabinet, except,

where a Cabinet member is appointed to a committee they may be substituted by another Cabinet Member.

No member of the Cabinet may be substituted to an overview and scrutiny committee.”

This approach was adopted by the Council at its meeting on 19 February 2014 (Minute CL105[2] refers). Should the Commission decide to recommend a change to Council to allow Cabinet members to substitute for any member of their political group, then the words ‘and appointed substitutes must not be Members of the Cabinet, except, where a Cabinet member is appointed to a committee they may be substituted by another Cabinet Member’ should be deleted from the Procedure Rule.

For the Commission’s information, membership of the Audit Committee by a member of the Cabinet is covered by Council Procedure Rule 1.

4. Schedule of Council Meetings

At its meeting on 7 October 2015 (Minute CC21 refers), the Commission agreed:

1. That members of the Commission be requested to consult with their Groups on the following options for the Annual meetings of the Council, in order that the Commission could make a final decision at its next meeting as to whether to recommend a change to the Council:
 - (a) Have two Annual meetings on following weeks (current arrangement);
 - (b) Have two Annual meetings during the same week (avoiding half-term week); or
 - (c) Have one Annual meeting, with a gap between the ceremonial element and the business element.
2. That the Commission consider amendments to Council Procedure Rule 1 when considering feedback from the political groups with a view to including the appointment to the Thames Valley Police and Crime Panel and providing clarity around when the Leader’s Scheme of Delegation is submitted to the Council when the Leader is elected at the Annual Council meeting.

Members of the Commission are requested to report the outcomes of their Group discussions. A revised Council Procedure Rule 1 reflecting the changes set out at 2 above and updated inline with current legislation and practice is attached at Item 11 (**Pages to**).