

**Agenda Item No:** 6

**Report To:** Selection and Constitutional Review Committee

**Date:** 9 December 2014

**Report Title:** **Additional powers for Group Leaders to refer matters to O&S for scrutiny, and amendment to timing of Council meetings following Cabinet meetings**

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Cllr. Clarkson, Leader of the Council



**Summary:**

At its meeting in September 2014, the O&S Committee raised a concern that the Council's new capital projects were being agreed by Cabinet before O&S had had a proper opportunity to scrutinise them. It was considered that such scrutiny would give Cabinet the benefit of an extra check, with proper research exploring all the facts, before making the commitment to a major project and it was agreed to propose an amendment to the Constitution to enable Group Leaders to request such items be scrutinised by O&S before they were reported to Cabinet.

It was also agreed to propose that the timing of Council meetings to agree Cabinet decisions should be adjusted to give more time for the call-in process to take place (if instigated).

**Key Decision:** No

**Affected Wards:** None

**Recommendations:** **The Selection and Constitutional Review Committee is asked to consider the following recommendations from the Overview and Scrutiny Committee:-**

- i) **Group Leaders (or Deputy Leaders when acting for a Leader) can call matters in to O&S when the greater number of them require greater scrutiny of a project on its merit.**
- ii) **In order to ensure that Overview and Scrutiny has a proper opportunity to exercise its duties and functions, Council meetings held to approve Cabinet decisions are not less than three weeks after the Cabinet meeting, after May 2015**

**Policy Overview:** None

**Financial  
Implications:** None

**Risk Assessment** No

**Background  
Papers:** None

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**Report Title: Additional powers for Group Leaders to refer matters to O&S for scrutiny, and amendment to timing of Council meetings following Cabinet meetings**

**Purpose of the Report**

1. The Overview and Scrutiny Committee have two recommendations they wish to be considered by the Selection and Constitutional Review Committee :- 1. to propose an amendment to the Constitution to enable Group Leaders to request such items be scrutinised by O&S before they were reported to Cabinet and, 2. to propose that the timing of Council meetings to agree Cabinet decisions should be adjusted to give more time for the call-in process to take place (if instigated).

**Issue to be Decided**

2. The Selection and Constitutional Review Committee has to decide whether or not to act on the Recommendations from the O&S Committee.

**Background**

**Additional powers for Group Leaders to call matters to O&S for scrutiny**

3. At its meeting on 23<sup>rd</sup> September 2014, the O&S Committee considered the report of the Budget Scrutiny Task Group on the 'Informing the Next 5 years' report. There was broad support for the 'Informing the next 5 Years' report and this was reported to the October Cabinet meeting.
4. However, there was concern that the Council's new capital projects were being agreed by Cabinet before O&S had had a proper opportunity to scrutinise them. It was considered that such scrutiny would give Cabinet the benefit of an extra check, with proper research exploring all the facts, before making the commitment to a major project.
5. It was also agreed to propose that the timing of Council meetings to agree Cabinet decisions should be adjusted to give more time for the call-in process to take place (if instigated).
6. The O&S Committee agreed that the following recommendation be submitted to the Selection and Constitutional Review Committee for their consideration:

**That**

- i) **Group Leaders (or Deputy Leaders when acting for a Leader) can call matters in to O&S when the greater number of them require greater scrutiny of a project on its merit.**
- ii) **In order to ensure that Overview and Scrutiny has a proper opportunity to exercise its duties and functions, Council meetings held to approve Cabinet decisions are not less than three weeks after the Cabinet meeting, after May 2015**

## **Present arrangements.**

### **Putting items on the O&S agenda**

7. (See O&S Procedure rules in the Council's Constitution (Part 4 Rules of Procedure)) Apart from items such as scrutinising the Council's draft budget, which the Constitution requires the O&S Committee to do every year; the O&S Committee sets its own work programme for the year. Some items recur on a regular basis e.g. the yearly update from the Community Safety Partnership and the quarterly Business Plan performance report; others are of a 'one-off' nature.
8. Any Member of an Overview and Scrutiny Committee or Sub-Committee shall be entitled to give notice to the Proper Officer that he wishes an item relevant to the functions of the Committee or Sub-Committee to be included on the agenda for the next available meeting of the Committee or Sub-Committee. On receipt of such a request the Proper Officer will ensure that it is included on the next available agenda.
9. In practice this means that Members of the O&S Committee are able to suggest items to put on the Committee's agenda – such items must represent a Borough wide perspective and provide the opportunity to influence, to improve services or contribute to policy development. Items can also be put on the O&S agenda following a request from Cabinet or another Committee (e.g. Audit).
10. Any such item will be put to the Committee for Members to decide if they wish to add it to the work programme.
11. **Call-in** (for full details please see Appendix 1 which is an extract from the council's constitution) – a decision made by the Cabinet can be called in for scrutiny by the O&S committee if a request is made to the Proper Officer, within five working days of the decision being published, by the Chairman of O&S plus two other O&S members, or by any five O&S members. Within five days of the decision to Call-in, the Proper Officer shall call a meeting of the O&S Committee, on a date to be determined in consultation with the O&S Chairman.
12. It can be seen from the brief summary above that there is no provision to 'Call-in' something to O&S unless a decision has been made by Cabinet.
13. Cabinet can request that O&S give their views on a report/document to help Cabinet decide how to proceed (e.g. the 'Informing the next 5 years' report referred to above), sometimes such requests come from Members who are attending a Cabinet meeting and are then agreed by Cabinet.
14. At their September meeting the Portfolio Holder for Finance, Budget and Resource management advised members of O&S that, if there was an item on the forward plan that O&S wished to review then Cabinet would consider holding that item in abeyance to a future Cabinet or full Council meeting (see minute No 152/09/2014). He further advised that Members of the O&S

Committee, and all other Members, could attend any of the working group meetings and their input would be welcomed.

15. It should also be noted that during the early stages and evolution of Capital projects there may be discussions of a confidential or commercially sensitive nature which would not be appropriate to be scrutinised in a public meeting such as O&S.
16. The Selection and Constitutional Review Committee are requested to consider adding a paragraph to the Overview and Scrutiny Procedure Rules in the Constitution under paragraph 8 Agenda items – this to go between the current first and second paragraphs of that section – as follows (and as shown in Appendix 2) :

*Additionally, Group Leaders (or Deputy Leaders when acting for a Leader) can refer matters to Overview and Scrutiny when the greater number of them require greater scrutiny of a Capital project on its merit, prior to any Cabinet decision on the matter.*

### **Timetabling of meetings**

17. The second recommendation from O&S was:-

**In order to ensure that Overview and Scrutiny has a proper opportunity to exercise its duties and functions, Council meetings held to approve Cabinet decisions are not less than three weeks after the Cabinet meeting, after May 2015**

18. The timetable for meetings is agreed each year at the full Council meeting in February. The timetable endeavours to spread the load of meetings out so that the business of the Council can be properly conducted (for example Planning Committee and Cabinet would not normally be timetabled in the same week).
19. Ordinarily Cabinet meetings take place on the second Thursday of the month, O&S meetings take place on the fourth Tuesday and full Council meetings take place five times a year (on the Thursday after that cycle's last Cabinet meeting) - the Annual Meeting (Mayor making) in May, and meetings in July, October December and February.
20. When the minutes of a Cabinet meeting held the week before the Council meeting are considered, the decision of the Council when approving the Cabinet minutes makes it clear that they are not effective until the expiry of the Call-in period. An example of how they are minuted is shown below:-

#### **Resolved:**

**That subject to the expiry of the period by which decisions arising from the meeting of the Cabinet held on the xx date may be called in i.e. nn date**

- (i) **The Minutes of the meeting of the Cabinet held on the xx date be received and noted with the exception of Minute Nos. ....**

**(ii) Minute Nos. .... be approved and adopted.**

21. As can be seen from the above, the fact that the Council meeting is normally one week after the last Cabinet meeting in a cycle does not mean that any Cabinet decision to which O&S objects/has concerns is exempt from being called-in. Indeed the majority of Cabinet meetings take place several weeks before a Council meeting. Accordingly the moving of a Council meeting to three weeks after a Cabinet meeting is not necessary to allow O&S to properly exercise its functions.
22. The change proposed by O&S would move Council meetings to the 5<sup>th</sup> Thursday of the month (if there was one) or the 1<sup>st</sup> Thursday of the next month. This would, however, result in a delay in Council approving any items recommended by Cabinet.
23. This could have a serious effect on the timing of meetings for some important Council decisions for example the setting of Council tax.
24. Working backwards – the Council starts to collect the year's Council tax on 1<sup>st</sup> April, Council Tax bills are sent out to residents in mid March; the Council meeting to agree the Council Tax is in February, one week after the Cabinet meeting to agree the budget.
25. If the Council meeting was moved 3 weeks on from the Cabinet meeting then there would be insufficient time for the R&B team to get all the council Tax bills out to residents (the council has to give 14 days notice of the bill being due and council Tax is due from 1<sup>st</sup> April). Alternatively, if the Cabinet meeting was moved back 3 weeks from the Council meeting this would mean the Cabinet meeting would be in mid January. The work of the Budget Scrutiny Task Group and its report to O&S would have to take place before Christmas when the required information from central government was unlikely to have been made available.
26. Time critical decisions such as those on consultations with the public and the adoption of development plan documents could also be delayed.

**Timetable of events following a Call-in**

27. The Call-in of a Cabinet decision by O&S has to happen within five working days of the decision being published. Once called-in the decision cannot be implemented until it has been reconsidered.
28. Once the Call-in has been received the Proper Officer shall call a meeting of the O&S Committee on such a date as he shall determine, where possible after consultation with the O&S Chairman, this date to be agreed within five days of the decision to Call-in. This does not mean that the Call-in meeting itself has to happen within five working days of the Call-in being received, indeed this would not be possible because five working days notice has to be given of the meeting.

29. The date of the Call-in meeting will be influenced by several factors including the time of year, the appropriate venue being available, the need to produce additional papers for the meeting, Officer and Member availability and also the availability of internal and external witnesses, should they be required. So there could be quite a time lag between the Cabinet meeting and the Call-in meeting.
30. If, having considered the original decision at the Call-in meeting O&S have concerns about it, then it may be referred back to the original decision making body for reconsideration i.e. for a Cabinet decision, to the next Cabinet meeting to which the O&S report can be made available. O&S can also refer the matter to full Council.
31. Alternatively, if, having considered the matter further, O&S decides not to refer the matter back to the decision making body, then the decision shall take effect from the date of the O&S Call-in meeting.
32. The final decision of the Cabinet – to amend the original decision, or not; shall not be subject to Call-in.

## **Conclusion**

33. **As can be seen from the above, the provisions already in place for putting items on an O&S agenda and the current arrangements of how meetings are timetabled do not prevent or inhibit O&S from being able to fulfil its functions. Nevertheless, the Selection and Constitutional Review Committee is asked to consider the recommendations of the O&S Committee for Group Leaders to be able to request Capital projects be scrutinised by O&S before they are reported to Cabinet and for the change to the timetabling of Cabinet and Council meetings:**

**That:**

- i) **Group Leaders (or Deputy Leaders when acting for a Leader) can call matters in to O&S when the greater number of them require greater scrutiny of a project on its merit.**
- ii) **In order to ensure that Overview and Scrutiny has a proper opportunity to exercise its duties and functions, Council meetings held to approve Cabinet decisions are not less than three weeks after the Cabinet meeting, after May 2015**

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## 15. Call-In

- (a) When a decision is made by the Executive or an individual Member of the Executive or a Committee of the Executive, or a key decision is made by an Officer with delegated authority from the Executive, or an Area Committee or under Joint Arrangements, the decision shall be published and shall be available at the main offices of the Council in hard copy and on the website normally within 3 working days of being made.
- (b) 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 five working days after the publication of the decision, unless an Overview and Scrutiny Committee objects to it and calls it in.
- (c) During that period, the Proper Officer shall call-in a decision for scrutiny by the Overview and Scrutiny Committee if so requested by the Chairman of that Committee and two other Members or any five Members of the Overview and Scrutiny Committee, and shall then notify the decision-taker of the call-in. He shall call a meeting of the appropriate Overview and Scrutiny Committee on such date as he may determine, where possible after consultation with the Chairman of that Committee, and in any case within 5 days of the decision to call-in. Five clear working days notice of the meeting must be given.
- (d) If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to Full Council. If referred to the decision maker they shall then reconsider within a further five working days, amending the decision or not, before adopting a final decision (which shall not be subject to call-in).
- (e) If following an objection to the Executive decision, the Overview and Scrutiny Committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the Overview and Scrutiny meeting or at the expiry of that further five working day period from the decision to call in the matter.
- (f) If the matter is 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 in accordance with the provision below. If the Council does object, however, 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. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Executive as a whole or a Committee of it, a meeting of the Executive or the Executive Committee as the case may be will be convened to reconsider the original decision within five working days of the Council request. Where the decision was made by an individual, the individual will reconsider within five working days of the Council request.



- (g) If the Council does not meet, or if it does but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.
- (h) Where an Executive decision has been taken by an Area Committee, then the right of call-in shall extend to a group of at least half the total number of voting Members of another Area Committee if they are of the opinion that the decision, made but not implemented, will have an adverse effect on the area to which their Committee relates. In such cases, those Members may request the Proper Officer to call-in the decision. He shall call a meeting of the Overview and Scrutiny Committee on such a date as he may determine, where possible after consultation with the Chairman of the Committee, and in any case within five days of the decision to call-in. All other provisions relating to call-in shall apply as if the call-in had been exercised by Members of the Overview and Scrutiny Committee.

## **Exceptions**

- (i) The Council has not adopted a procedure to avoid abuse of the 'call-in system' but will monitor its operation with a view to adopting a control procedure if the call-in provision is abused to the extent that it prevents the effective operation of the Executive.
- (j) The call-in procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Chairman of the Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman of the Overview and Scrutiny Committee, the Mayor will be asked if s/he considers the decision urgent. In the absence of the Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the Proper Officer or his nominee's consent shall be required, and in the absence of the Overview and Scrutiny Chairman, his nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (k) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

## Extract from Overview and Scrutiny Procedure Rules

### 8. Agenda Items

Any Member of an Overview and Scrutiny Committee or Sub-Committee shall be entitled to give notice to the Proper Officer that he wishes an item relevant to the functions of the Committee or Sub-Committee to be included on the agenda for the next available meeting of the Committee or Sub-Committee. On receipt of such a request the Proper Officer will ensure that it is included on the next available agenda.

***Additionally, Group Leaders (or Deputy Leaders when acting for a Leader) can refer matters to Overview and Scrutiny when the greater number of them require greater scrutiny of a Capital project on its merit, prior to any Cabinet decision on the matter.***

Furthermore, Councillors are entitled to give notice to the Proper Officer that they wish an item relating to their Ward, which is relevant to the functions of the Overview and Scrutiny Committee of which they are not a Member, to be included on the Agenda for the next available Meeting of the Overview and Scrutiny Committee as a Councillor Call for Action (CCfA). On receipt of such a request the Chairman of the Overview and Scrutiny and Proper Officer (Head of Legal and Democratic Services) will determine whether to take the CCfA forward. If it is agreed that the item is to be progressed then the Proper Officer will ensure it is included on the next available Agenda in accordance with the CCfA protocol. In putting forward such a request the Councillor must have regard to the CCfA protocol (Appendix A(i), attached to the Overview and Scrutiny Procedure Rules) and government guidance. The Councillor concerned will be able to make representation to the Committee when it considers whether to take the item further. If the matter is a Crime and Disorder issue, responsible authorities (Crime and Disorder Reduction Partnership Members) must be notified by the Proper Officer. (See Appendix A(ii): Additional Procedure Rules of the Overview and Scrutiny Committee when acting as the Crime and Disorder Committee).