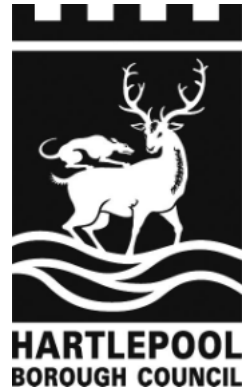


CONSTITUTION COMMITTEE AGENDA



10th October 2011

at 4.00 p.m.

in Committee Room 'C'

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors Aiken, C Akers-Belcher, S Akers-Belcher, Cook, Fenwick, James, J W Marshall, Preece, Richardson and Wells.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. ITEMS REQUIRING DECISION**
 - 3.1 Questions to the Chair of Council – *Chief Solicitor (to follow)*
 - 3.2 Call in Arrangements - *Chief Solicitor (to follow)*
- 4. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

CONSTITUTION COMMITTEE

10 October 2011



Report of: Chief Solicitor

Subject: QUESTIONS TO CHAIR OF COUNCIL

1. PURPOSE OF REPORT

- 1.1 At a meeting of the Task and Finish Group on 22nd September, 2011, there was a request that this item be placed for consideration by the Constitution Committee. It was felt that the independence of the Chair of Council could be somewhat compromised through direct questions (and any supplementary questions) to the Chair, given his constitutional status.

2. BACKGROUND

- 2.1 The role of a Chairman of a local authority has been expressed “*as a symbol of the authority, the symbol of an open society and an expression of social cohesion*” (‘Civic Ceremonial’ – P Millard). Further, it is recognised that the Chair of Council “*becomes invested with authority to regulate and control proceedings for the purposes of the meeting. The powers and duties of the Chairman are not prescribed by statute (except in certain limited respects, for example the power to give a second or casting vote) but derived from standing orders and common law. He collects his authority from the meeting*” (‘Knowles on Local Authority Meetings’ refers).
- 2.1 Article 5 of the Council’s Constitution “Chairing the Council” indicates at para 5.01 that the Chair of the Council (amongst other roles) will –
- be the first citizen of the Borough
 - promote public involvement in the Council’s activities
 - be the conscience of the Council

Although, there are other “functions” involved with the role of Chair of Council, the above examples, place emphasis both upon the impartiality and also the integrity of the individual, discharging that role.

3. QUESTIONS TO THE CHAIR OF COUNCIL

- 3.1 Under the Council's Rules of Procedure relating to Council meetings, under paragraph 11.2 i) thereof, which relates to 'Questions on notice at full Council' it is stated that;

"A Member of the Council may ask:

- *the Chair,*
- *a Member of the Executive, or*
- *the Chair of any Committee or Forum*

a question on any matter in relation to which the Council has powers or duties or which affects the Borough of Hartlepool".

Such questions must be delivered in writing or by electronic mail to the Proper Officer no later than midday on the day before the day of the meeting, unless the question relates to an urgent matter. Furthermore, the Constitution allows (para 11.2 ii)) questions to a person nominated by the Borough Council upon the Police Authority and also the Fire Authority on any matter relating to the discharge of those organisation's functions. For completeness, para 11.03 also allows a Member of the Council to ask questions;

- to the Mayor or any other Member of the Executive, or
- the Chair of a Committee of the Council

This provision allows questions without notice upon a report of the Executive or of a Committee when that item is under consideration by Council. It is therefore conceivable that the Chair of Council, as Chair of the Constitution Committee could be asked a question under this provision.

A response to a question under Rules 11.2 and 11.3 may take the form of;

- *a direct oral answer which will be open to further debate in Council*
- *where the reply cannot be conveniently be given orally a written answer would be circulated to all Members of the Council. At the discretion of the Chair the questioner may ask supplementary questions in accordance with Rule 11.2 at the next ordinary meeting of Council about issues raised in the written answer*

Whilst the Chair of Council may wish to reserve to his/her discretion the ability to reply to a question through a direct oral answer, it may also be appropriate for the Chair to respond by way of a formal written answer. This would relate to a situation where the Chair felt that there was the possibility of their role being compromised and which would impinge upon any ensuing debate. It is therefore suggested that an additional sub-paragraph could be added to Council Procedure Rule 11.4 as follows;

(iii) *At the Chair's discretion a written answer will be provided to any question directed to the Chair of Council, which would also be circulated to all Members of the Council. The Chair shall also retain the discretion to respond to any supplementary question in writing from any subsequent meeting of Council about any issue arising from the initial written answer.*

3.2 Members are reminded that any amendment to Council Procedure Rules under para 24.2 '*.....will when proposed and seconded, stand adjourned without discussion to the next ordinary meeting.....*'

4. RECOMMENDATIONS

For Members to note and discuss.

CONSTITUTION COMMITTEE

10 October 2011



Report of: Chief Solicitor

Subject: 'CALL IN' ARRANGEMENTS

1. PURPOSE OF REPORT

- 1.1 A request has been made for clarification upon the 'call in' arrangements relating to the meeting to discuss a 'call in' as outlined within the Overview and Scrutiny Procedure Rules (paras 16(b) and 17(h) refer). The Constitution Committee are also reminded that any "changes to Executive arrangements" (for the avoidance of doubt this includes Article 6 (Overview and Scrutiny) and the Overview and Scrutiny Procure Rules) will require the explicit written consent of the Elected Mayor. This reflects the changes introduced under the Local Government and Public Involvement in Health Act, 2007, which amended the provisions of the Local Government Act, 2000 relating to changes to Executive arrangements. Consequently, where Council approve any changes to those parts of the Constitution which relate to "Executive arrangements" as set out within Schedule 2 to Part 2 of that document, then the consent of the Mayor will be required. It should also be noted, that Article 15.02(c) does not presently reflect these statutory amendments, in relation to the final sentence of that particular paragraph. As part of its work looking at the review of the Council's Constitution, the Task and Finish Group will need to be alerted that the final sentence of Article 15.02(c) should effectively be deleted. This sentence indicates;

"This does not apply to changes relating solely to the operation of overview and scrutiny - these only require the approval of the Council".

2. BACKGROUND

- 2.1 Section 37(1) of the Local Government Act, 2000, requires a local authority in operating its Executive arrangements, to prepare and keep up to date a Constitution. Further, under Section 38(1) local authorities must have regard, to any guidance issued through the Secretary of State. That guidance is that contained within the document "New Council Constitutions: Guidance to English Authorities" (December, 2000).

- 2.2 By virtue of Section 21 of the Local Government Act, 2000, as amended, authorities operating Executive arrangements *“must include provision for the appointment by the authority of one or more Committees of the authority (referred to in this Part as Overview and Scrutiny Committees).”* Article 6 of the Council’s Constitution details how the overview and scrutiny function of this Council is to be discharged. Accordingly, the power to “call in” Executive decisions, relates to those Executive decisions made but not yet implemented to be reviewed or scrutinised and for recommendations that the decision be reconsidered by the persons who made it.
- 2.3 As per the guidance and as reflected within the Council’s Constitution, “call in” should only be used in exceptional circumstances (para 13 of the Overview and Scrutiny Procedure Rules refer). This will obviously cover a situation where there is evidence which suggests that either a key decision or an Executive decision did not accord with the principles set out in Article 13 (Decision Making) or that the decision falls outside the Council’s budget and policy framework. There are also statutory provisions within the Council’s Constitution, which signifies a limitation upon the use of call in (ie 12 decisions/proposed decisions per municipal year) and where a decision is “urgent” which would obviate the use of the call in procedure.
- 2.4 The Council’s Constitution, therefore specifies two categories of call in;

Category 1 – Where the principles of decision making may not have been followed.

Category 2 – Where the decision or proposed decision may fall outside the budget and policy framework.

There are defined procedures associated with this process including the notification of the desire to call in a decision which must be given to the Proper Officer “not later than 4 clear working days after the publication of the decision (which shall not take place on a Saturday). (After which the decision becomes effective ie on the fifth clear working day)’. Thereafter, there is a second requirement relating to both categories of ‘call in’ as noted under paragraphs 16(b) and 17(h) relating to the meeting of the Co-ordinating Committee to discuss the call in notice.

3. MEETING TO DISCUSS CALL IN

- 3.1 Broadly the provisions contained under paras 16(b) and 17(h) requires the Co-ordinating Committee to *“meet not later than 7 working days after the call in notification has been received by the Proper Officer”*. It is also stipulated that in relation to matters under category 2, ie that a decision could be outside the budget or policy framework, the Co-ordinating Committee must seek the advice of the Monitoring Officer and/or the Chief Finance Officer. If the Co-ordinating Committees fails to meet within this timescale then the decision becomes effective ie on the eighth day. For the avoidance of doubt,

the Executive should meet to consider the Co-ordinating Committee's comments/recommendations "*as soon as practicable*" after they are received by the Proper Officer. It is also incumbent upon the Executive in a "Category 2 call in" to meet within 7 working days to consider any report of the Monitoring Officer and/or the Chief Finance Officer and to respond to the Co-ordinating Committee's referral. This will also allow the Executive to review its decision prior to any referral to Council.

Previously the advice of Counsel was sought in relation to the process of 'call in' and whether it could extend beyond the timescale to meet (ie beyond the 7 working days) of the Scrutiny Co-ordinating Committee. It was the advice of Counsel that the Overview and Scrutiny Procedure Rules are drafted in terms that assume the decision will be reviewed at a meeting of the Scrutiny Co-ordinating Committee within 7 days of a 'call in' notification. This accords with the requirement to proceed in an expeditious manner and the limitations upon the Co-ordinating Committee to "review" rather than to 're-determine' the decision in question. Counsel therefore concluded that in his opinion "*the Committee ought to be able to carry out a review at a meeting within a 7 day period*". The Council's Scrutiny Officer has made some enquiries with other local authorities as to how they operate the process of convening the meeting to discuss the call in. The outcome of these enquiries is tabulated below.

Local Authority	Completed within one meeting?	Dated completed
Stockton	Yes	Call in has to take place within 6 days (or as soon as reasonably practicable) of their acceptance.
Middlesbrough	Scrutiny could have more than one meeting if it so wished provided all complete within 17 days however, call ins have always been completed in the one meeting.	Call ins have to be undertaken within 17 days of the publication of the decision (not from acceptance of the notice).
Newcastle	Yes	Call ins have to take place within 7 days of their acceptance.
Sunderland	Yes	Call ins have to be undertaken within 5 days of acceptance of the call in.
North Tyneside	Yes	Call ins have to be undertaken within 10 days of acceptance of the call in.

It is of note, that Newcastle City Council, made changes to their 'call in' arrangements to specify the date and time that such a meeting should take place ie "*the meeting must go ahead at 5.00 pm on the seventh working day after the call in deadline*". It is therefore recognised that the Scrutiny Co-ordinating Committee should endeavour to carry out a review within the current prescribed timetable ie not later than 7 working days after the call in notification has been received. However, in order to have regard to any

exceptional or extraneous situation, it is suggested that the following working, might assist in relation to both categories of call in as specified under paras 16(b) and 17(h), as follows;

‘If it is not reasonably practicable to convene a meeting within this period, through exceptional circumstances, then the date and time of the meeting may be altered through mutual agreement between the Chair of the Scrutiny Co-ordinating Committee (or in his/her absence the Vice-Chair of the Committee) and the Elected Mayor (or in his/her absence the Deputy Mayor). The agreement will also specify the date and time at which the meeting must take place. If such an agreement is not forthcoming then the meeting to discuss call in must proceed not later than 7 working days after the call in notification’.

4. SUMMARY

- 4.1 Whilst recognising the exceptional nature of the ‘call in’ process, and that all matters relating thereto should be proceed in an expeditious manner, it is also recognised that there may be exceptional circumstances which might require some flexibility but which should emanate from agreement between the Scrutiny Co-ordinating Committee and the Executive. It is therefore suggested, that Members consider the contents of this report and more so the suggested wording to assist in the overall governance of ‘call in’ arrangements.

5. RECOMMENDATIONS

1. To note the contents of this report.
2. For the Committee to agree a suggested form of words to be incorporated within paras 16(b) and 17(b) of the Overview and Scrutiny Procedure Rules.
3. That the express written consent of Elected Mayor be obtained prior to approval by Council of the Committee’s recommendations.