



## Part 4, Section 5: Scrutiny Procedure Rules

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### **1 WHAT WILL BE THE ARRANGEMENTS FOR OVERVIEW AND SCRUTINY MEETINGS?**

#### **1.01 Establishment**

The Council will appoint a Scrutiny Commission and Scrutiny Panels, as set out in Article 7 (Part 2) of this Constitution and as set out below.

#### **1.02 The Scrutiny Commission**

The Scrutiny Commission will meet as set out below, and will oversee the work of two Scrutiny Panels: Community Leadership Panel and Resource and Performance Panel, as set out in Article 7(Part 2) of this Constitution.

#### **1.03 Scrutiny Panels**

- a) The Scrutiny Panels will meet as set out below.
- b) The Scrutiny Commission may appoint further Panels or sub-committees of those Panels from time-to-time or for a fixed period, on the expiry of which they shall cease to exist. Where the Commission seeks to discontinue or appoint Scrutiny Panels (or sub-committees of those Panels) other than as set out in this Constitution, it may do so provided that it has consulted with interested parties, if appropriate. The extent and nature of consultation will depend on the nature of the proposed alterations. Any change will be reported to the Chief Executive and proper Officer, and then to the next meeting of the Council by the Chairman of the Scrutiny Commission, so that the Constitution may be amended accordingly.

### **2 THE SCRUTINY COMMISSION**

#### **2.01 Terms of Reference**

The Council will have one Scrutiny Commission, which will be responsible for performance of the overview and scrutiny functions and all other functions delegated to it on behalf of the Council.

#### **2.02 Membership and Chairman.**

The Scrutiny Commission will be appointed and chaired in accordance with Article 7.07(a) (Part 2) of this Constitution.

### 2.03 Quorum

Except where authorised by a statute or ordered by the Council, the quorum shall be the nearest whole number of members equal to or above thirty-three per cent of the total membership of the Commission.

### 2.04 Meetings – when and where?

The Scrutiny Commission will meet at least four times a year and at other times to be agreed by the Chairman. The Scrutiny Commission shall meet at the Council's main offices, or at another location to be agreed by the Chairman.

### 2.05 Business of Scrutiny Commission meetings

The business of the Scrutiny Commission will be:

- a) the monitoring of Scrutiny Panels as it considers appropriate to fulfil:
  - i) those overview and scrutiny functions set out in Article 7 (Part 2) of this Constitution; and
  - ii) those functions delegated by the Council under Part 3 of this Constitution.
- b) to receive reports from the Leader and Executive at its first meeting after each annual council meeting on 'the state of the District', the Executive's priorities for the coming year and its performance in the previous year;
- c) to approve a scrutiny work plan, including the programme of any sub-committees to Panels it appoints, so as to ensure that the Commission and Panels' time is effectively and efficiently utilised;
- d) where matters fall within the remit of more than Scrutiny Panel, to determine which of those Panels and/ or sub-committees will assume responsibility for any particular issue;
- e) to put in place a system to ensure that referrals of overview and scrutiny matters to the Executive, either by way of report or for reconsideration, are managed efficiently and do not exceed the limits set out in this Constitution;

- f) in the event of reports to the Executive exceeding limits in this Constitution, or if the volume of such reports creates difficulty for the management of executive business or jeopardises the efficient running of Council business, at the request of the Executive , to make decisions about the priority of referrals made.

### **3 Scrutiny Panels**

#### **3.01 Membership and Chairman.**

The two Scrutiny Panels will be appointed and chaired in accordance with Article 7.04(b) (Part 2) of this Constitution, except where the Resource and Performance Panel is to consider a matter under Rule 5 of these Procedure Rules (“call-in”) when that part of the meeting of the Panel will be presided by, if he or she is present, the Chairman of the Scrutiny Commission.

#### **3.02 Quorum**

Except where authorised by a statute or ordered by the Council, the quorum for a meeting of the Scrutiny Panels (or Sub-Committees of the Panels) shall be the nearest whole number of members equal to or above fifty per cent of the total membership of the Panel (or sub-Committee of the Panel)

#### **3.03 Meetings – when and where?**

The Scrutiny Panels will meet in accordance with the Council’s rota of, or at such other times to be agreed by both the Chairman of the Panel and the Chairman of the Scrutiny Commission. The Scrutiny Panels shall meet at the Council’s main offices, or at another location to be agreed by the Chairman.

#### **3.04 Business of Scrutiny Panel meetings**

The business of Scrutiny Panels will comprise of:

- a) the main strategies comprising the Policy Framework, which will be referred automatically to the appropriate Scrutiny Panel;
- b) items referred to them from the Executive, an Executive Committee or Executive Advisory Panel (either for preliminary examination or review);
- c) items raised at Council and referred initially to the Executive or an Executive Committee for re-examination, where either asks a Scrutiny Panel to look at them;

- d) items arising from the Scrutiny Panel calling-in or asking to review decisions which are about to be made or which have been made, respectively;
- e) items raised by any Member of the Council as a preview of a matter not obviously on the agenda of the Executive or under consideration by an Executive Committee or Executive Advisory Panel, but important because of its sudden prominence or sensitivity;
- f) items which a member of the Scrutiny Commission or Scrutiny Panel itself has requested to be included on the agenda, including items that might be drawn from the Executive's future decisions, set out in a Forward Plan; and
- g) a programme of work – the Scrutiny work plan – established by the Scrutiny Commission (or Scrutiny Steering Group to provide for flexibility within the programme to allow for unforeseen changes in circumstances), principally:
  - i) Council functions (performance reviews);
  - ii) scrutinising those functions carried out by another Panel;
  - iii) work undertaken with the assistance of the Executive and others (policy development;) and
  - iv) some work designed by the Scrutiny Panel itself, and approved by the Scrutiny Commission (or Scrutiny Steering Group).

## 4 PARTICIPATION

### 4.01 Access to meetings

- a) The public, press and, subject to the Codes of Conduct for Members and Officers in Part 5 of this Constitution, Members and Officers may attend any meeting of the Scrutiny Commission and Scrutiny Panels, as set out in the Council Rules of Procedure and the Access to Information Rules in Part 4(2) of this Constitution.
- b) Meetings of the Scrutiny Steering Group will be held in private, provided that the meeting may only take place where:
  - i) reasonable notice has been given to the Chief Executive; and
  - ii) the meeting is held in the presence of the Monitoring Officer or their nominee with responsibility for recording and publicising the decisions.

### 4.02 No review or scrutiny of one's own decisions

A Member shall not participate in a meeting of the Scrutiny Commission or a Scrutiny Panel where there is being reviewed or scrutinised the decision of a body of which he or she was a member at the relevant time, except where participation is requested or required in accordance with Rule 4.03 below.

*N.B. Members are reminded that this is a reflection of the Code of Conduct, and may be interpreted to include instances where a body (of which he or she was a member) formally advised the body which later made the decision being reviewed or scrutinised.*

### 4.03 Speakers

a) **Summoned.** A Scrutiny Panel will be entitled to require any of the following to attend before it to answer questions:

- i) a Member of the Executive;
- ii) a Member of an Executive Advisory Panel; or
- iii) an Officer

and it shall be the duty of any such Member or Officer to comply with the requirement, provided that they will not be obliged by that requirement to answer any question which he or she would be entitled to refuse to answer in, or for the purposes of proceedings in, a court of law in England and Wales.

b) **Invited.** A Scrutiny Panel may request any of the following to attend a Scrutiny Panel meeting:

- i) any Member, elected or co-opted, to attend and advise;
- ii) a representative of any outside body, whose powers or interests are relevant to the matter in hand, to give their views;
- iii) any external expert to give evidence, provided arrangements can be made within the budget to pay any expenses or fees so incurred; or
- iv) (or allow to speak) any resident of Harborough District or any person with a legitimate interest in the topic under consideration to attend and give their views.

c) **Conditions.** In applying the Scrutiny Commission and Panels' powers contained in (a) and (b) above, the proceedings of the Scrutiny Commission and Panels will be subject to the following provisions:

- i) Any requirements to attend shall be subject to not less than five clear working days' notice, except in a case of urgency;

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- ii) An Executive Member may ask the relevant chief Officer or other Officer to attend with them to assist in providing technical advice;
- iii) Where a Scrutiny Panel asks or requires an Officer to attend (who is not a chief or statutory Officer) the appropriate chief and/ or statutory Officer shall also be entitled to be heard, and the Officer required to attend may, if they wish, nominate a senior Officer to attend on their behalf;
- iv) Where someone requested or required to attend is genuinely unable to attend then, in the case of a Executive Member, another Executive Member or, at the discretion of the Leader, a member of the Executive Advisory Panel of that Executive Member's Portfolio shall attend in their place. In the case of an Officer, another Officer who is able to speak on the topic under consideration shall attend;
- v) Anyone asked to speak to a Scrutiny Panel shall be entitled to see the terms of reference of the particular matter under consideration by the Scrutiny Panel before attending to speak;
- vi) Anyone asked to speak to a Scrutiny Panel shall be entitled to see the public papers which have been made available to the Scrutiny Panel and, wherever possible, on the same timescale as for a member of that Scrutiny Panel;
- vii) Anyone asked to speak to a Scrutiny Panel shall, wherever possible, be given access to statements submitted by people from whom the Scrutiny Panel has already heard, but not those who have not yet given evidence. The Chairman of the Scrutiny Panel shall have a discretion to disclose other papers, including statements submitted by following speakers and confidential or exempt material, if he or she considers that will help the speakers to address a particular point, or will otherwise assist the Scrutiny Panel's examination of the issue;
- viii) All speakers shall respect the confidentiality of any confidential or exempt information they receive, and shall not disclose it without the authorisation of the Scrutiny Panel;
- (ix) Speakers may submit papers in advance to the Scrutiny Panel, but such papers shall be clear and succinct;
- (x) Papers for consideration by Scrutiny Panels will not be admissible less than one hour before the start of the relevant Scrutiny Panel meeting;
- xi) Speakers shall be able to bring such notes and diaries as are helpful to them in assisting the Scrutiny Panel, but shall expect to make available any such notes to the Panel, on the request of the Chairman;

- xii) Papers submitted by speakers shall become public documents once they have presented their evidence, and shall be cited as background papers to the Scrutiny Panel's published report;
- xiii) Officers and Executive Advisory Panel Members shall not be required to give personal opinion on any Executive decision which is different from the recommendation they made;
- xiv) Scrutiny Panel Members may expect to ask searching questions, but will always behave in a polite and respectful way to anyone contributing to the Scrutiny Panel's proceedings;
- xv) The Chairman of a Scrutiny Panel may specify a time limit for a contribution, in advance of the commencement of such contribution, which shall not be less than five minutes. If someone making such a contribution exceeds the time limit given the Chairman may stop them. The Chairman may also structure a discussion and limit the time allowed for questioning by members of the Scrutiny Panel;
- xvi) Speakers shall be entitled to a copy of any draft minute or other record taken of their contribution for comment. Should they feel that such record is not accurate then they shall be given the opportunity to make a written representation asking for the correction to be submitted to the next meeting of the Scrutiny Panel.

#### **4.04 Whipping of Members**

It is strictly forbidden for Members of the Scrutiny Commission, or of any meeting of the Scrutiny Commission, Panels, Task and Finish Groups or Steering Group to be subjected to the Party Whip in any way whilst in that capacity.



### 5 DELAYING THE IMPLEMENTATION OF EXECUTIVE DECISIONS (“CALL-IN”)

#### 5.01 Procedure

- a) The Resource and Performance Scrutiny Panel may, within four working days of the publication of the report that sets out an Executive decision made but not yet implemented, call-in any such decision.
- b) Call-in shall be effected by the Chief Executive, in consultation with the Chairman of the Scrutiny Commission, after receipt of a request for call-in of a specified decision:
  - i) from the Chairman, from any Member of the Scrutiny Commission or at least two other Members;
  - ii) within the time frame set out at (a) above; and
  - iii) stating, with particular regard to the criteria set out at Rule 5.02 below, the reasons for the call-in.
  - iv) in line with the extended structure of the Call-In process outlined in 5.04 below, where appropriate.

In determining whether to call-in a proposal in response to a request, the Chief Executive shall have regard to the criteria set out below.

- c) Where the Chief Executive calls in a proposal, he or she will:
  - i) notify the decision-taking body directly;
  - ii) arrange that a meeting of the relevant Scrutiny Panel is held:
    - 1) within seven clear working days of the receipt by the proper officer of the request for Call-in where he or she considers that any further delay could prejudice the public interest or the interests of the Council; or
    - 2) at such other time as the Chief Executive, in consultation with the Chairman of the Scrutiny Commission, considers appropriate, but which shall be no later than the next ordinary meeting of that Scrutiny Panel

and that decision shall not be implemented until the end of the meeting of the Scrutiny Panel.

- d) At the meeting to consider the called-in decision, the Scrutiny Panel shall:

- i) consider that item of business before any other ordinary business of the meeting; and
  - ii) the Chairman of the Scrutiny Commission shall preside for the consideration of that item or, if he or she is not present, a Panel Member (other than the Panel Chairman) appointed to do so by those present shall preside for the consideration of that item.
- e) The Scrutiny Panel can, at its meeting, resolve as follows:
- i) to make a recommendation to the decision-taker to alter the decision, or reconsider any part of it. In this case, the implementation of the initial decision shall be delayed until such a recommendation has been considered;
  - ii) to make no recommendation to the decision-taker. In this case, the initial decision shall be implemented at any time after the end of the meeting of the Scrutiny Panel;
  - iii) to make recommendation(s) to the Council or Executive in terms of improvement(s) to services or procedures (unless the initial decision is solely based on improvements to services or procedures, in which case either i) or ii) above or iv) below shall be applied). In this case, the initial decision shall be implemented at any time after the end of the meeting of the Scrutiny Panel; or
  - iv) to defer consideration of the proposal for further reports. In this case, the Scrutiny Panel must set a date and time for such deferred consideration, and the decision shall not be implemented until the end of that subsequent meeting unless the decision-taker uses the urgency procedure in respect of the proposal.
- f) On consideration of a proposal, the Scrutiny Panel may recommend to the decision-taker, the Executive or to the Council that a function be discharged in a different manner, or that a relevant policy, plan or strategy be prepared, amended or withdrawn. Such a recommendation, as opposed to a recommendation under e) (the above), shall not cause any deferment of any implementation of a decision.
- g) After consideration of the recommendation of the Scrutiny Panel, the decision-taker may resolve to:
- i) confirm the decision with or without amendment;
  - ii) not to confirm the decision; or
  - iii) to refer the decision as a proposal to the Council for decision.

### 5.02 Criteria for Call-In:

In administering the Call-in procedure, the Chief Executive shall have regard to the following criteria to enable a Call-in to be effected:

- a) Does the proposal affect more than one Portfolio?
- b) Does the proposal affect more than one Ward?
- c) Is the proposal one against which the Council has received substantial public representations?
- d) Are there significant legal, financial or propriety issues relating to the proposal?
- e) Has the decision-taker failed to seek or to take into account any views previously expressed by the relevant Scrutiny Panel?
- f) Is the decision likely to cause significant concern or distress to the local community or prejudice to individuals within it?
- g) Has more than one Member of Scrutiny or more than two other Members requested the Call-in?
- h) Is the issue one which has not been the subject of significant consultation?
- i) Will any damage to the interests of the Council from delay in taking or implementing the decision be insignificant?

### 5.03 Extended Structure of the Call-In Process

The Scrutiny Call-In process shall be effected over a three-tier structure in instances where a decision is Called-In more than once. This shall take place in instances where, under the terms and criteria set out in 5.01, 5.02 and 5.03 above, an Executive decision relating to an item (whether or not the decision(s) and/ or recommendation(s) is different) is Called-In more than once.

1. first stage:

The Call-In shall be handled by the Scrutiny Panel, as outlined in 5.01 above.

2. second stage:

The second Call-In shall be handled by a special meeting of the Scrutiny Commission:

- i) convened within seven clear working days of the receipt by the proper Officer of the request for Call-In where it is considered that any further delay could prejudice the public interest or the interest of the Council; or
- ii) convened at such other time as is considered appropriate.

### 3. third stage:

The third Call-In shall be referred to the next meeting of full Council for final decision:

- i) consideration of the Call-In shall be a separate item on the Council Agenda, to be considered immediately after the report of the Chairman of the Scrutiny Commission.
- ii) the Chairman of the Scrutiny Commission and one of the Members who Called-In the decision in question shall present (for not more than five minutes in total) a summary of the reasons for the Call-In.
- iii) the Leader, or their representative, shall then be given not more than five minutes to offer any input from the Executive or decision-making body that took the decision in question.
- iv) the Chairman shall then declare debate on the matter closed, and call for a vote on whether or not the final decision taken in respect of the item in question should be approved.
- v) if approved, the decision shall be implemented immediately after the end of the meeting of full Council.
- vi) If not approved, the item must not be discussed, or have a decision taken on it, again within the next six months.

## 6. COUNCILLOR CALL FOR ACTION (CCfA) PROCEDURE

The expectation is that only the most persistent issues, which Councillors have not been able to resolve, will be referred to Scrutiny by means of a CCfA. In considering the referral, the relevant Scrutiny Panel will want to be assured that Councillors have made every effort to try to find a local resolution.

The powers are limited to issues affecting single Council Wards, and the process is dealt with through the Council's scrutiny function. It is designed to sit alongside existing mechanisms already at the Council's disposal to resolve local issues, and should be regarded as a "last resort" way of resolving an issue of concern, i.e. when

all other attempts at a resolution have failed. It is not designed to provide an immediate solution, but offers a chance to bring an issue to a wider audience to discuss.

### 6.1 Limitations

It is important to recognise that CCfA is not guaranteed to solve a given problem. CCfA can provide a method for discussing such problems and, through discussion, trying to overcome them.

### 6.2 Issues excluded from referral as a CCfA

The Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 excludes the following matters from referral as a CCfA:

- Individual complaints concerning personal grievances or commercial issues.
- Any matter relating to an individual or entity where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman), for example:
  - Planning and licensing applications and appeals
  - Council Tax/Housing Benefits complaints and queries
  - Issues currently under dispute in a court of law.
- Any matter which is vexatious, discriminatory or not reasonable to be included on the agenda for, or to be discussed at, a meeting of the relevant scrutiny committee or any of its sub-committees.

A referral, provided it is not an Excluded Matter (see above), will ensure that the matter is included on the agenda of the relevant scrutiny Panel. It is then up to the members of the Panel to decide whether or not to take the matter further.

### 6.3 Steps to be taken, prior to making a CCfA

Prior to a councillor referring a matter as a CCfA to the relevant Scrutiny Panel, a Councillor should have tried to resolve the issue themselves using all mechanisms and resources available to them at ward level. For example:

- If it is a local crime and disorder matter, raise the issue through the Community Safety Partnership.
- Ensure that all relevant partner organisations have been informed of the issue and given enough time to resolve the issue (for example, through formal letters written on behalf of constituents, discussion at Have Your Say meetings, petitions, communication with local MPs and councillors in other authorities, etc).

- Ensure that all relevant internal routes to solution have been followed (for example, informal discussions with officers and/or members).
- Ensure that this is not an issue which is being pursued through the Council's corporate complaints procedure, or which should be pursued through the corporate complaints procedure.
- Ascertain whether the matter is being investigated through any other form of local Scrutiny (e.g. Leicestershire County Council's Scrutiny function).

### 6.4 How to make a CCfA

If the issue has not been resolved, the Councillor can refer it to the relevant Scrutiny Panel (i.e. Panel whose remit the issue falls within) as a "Councillor Call for Action".

To do this the councillor should:

1. Complete a CCfA Request Form.
2. A Democratic Officer will receive the Request Form, inform SMT, and, in consultation with the Head of Legal Services, check it to ensure that the issue is not an Excluded Matter and that it meets with the basic requirements. The Councillor who submitted the CCfA will be informed whether or not their request has been successful.
3. If the CCfA request is successful then a Democratic Officer will formally inform the Chairman of the Scrutiny Commission and the Chairman of the relevant Scrutiny Panel about the CCfA. The Democratic Officer will then identify, in consultation with the relevant Head of Service/SMT member, the relevant officer to prepare a brief report within 20 working days for consideration by the Scrutiny Panel alongside the CCfA Request Form.
4. The report will be placed before the next meeting of the appropriate Scrutiny Panel or at a specially convened meeting within 25 working days of the officer report being completed (whichever is sooner).

A successful request will ensure that the CCfA will be placed on the next available agenda of the relevant Scrutiny Panel, to which the Councillor submitting the CCfA will be invited. It is then up to the members of the Panel to decide whether or not to take the matter further.

A Scrutiny Panel will not consider a CCfA during any purdah (election) period).

### 6.5 Decision of the Panel whether to take the matter further

In deciding whether or not to take the request further the Panel will consider:

- Anything that the Councillor has done in relation to this matter
- Any additional information provided within the officer report
- The CCfA Request Form submitted by the Councillor; and
- Representations made by the councillor as to why the Panel should take the matter up.

The criteria that the Panel will use to decide whether or not to take the matter further may include:

- Is the Panel satisfied that all reasonable attempts have been made to resolve the issue by the ward Councillor?
- Do the responses received by the referring Councillor demonstrate that the matter is not being progressed?
- Any evidence showing public support for the matter
- Has the Panel considered a similar issue recently – if yes, had the circumstances or evidence changed?
- Is there a similar or related issue which is the subject of a review on the current Scrutiny Workplan? It may be more appropriate to link the new issue to an existing review, rather than hold a separate CCfA hearing. Relevant time pressures on resolving the CCfA should be taken into account.
- Have all relevant service areas or partner organisations been informed and been given enough time to resolve the issue? What response has the Councillor received?
- Is this a case that is being or should be pursued via a corporate complaints procedure?
- Is the issue part of an individual's own personal agenda (an issue of genuine local concern should have an impact on the local community).
- Is this an issue currently being looked at by another form of local Scrutiny, e.g. Leicestershire County Council?
- As with all Scrutiny, does the matter referred have the potential for Scrutiny to produce recommendations which could realistically be implemented and lead to improvements for anyone living or working in the referring member's ward?

In considering the CCfA, the Scrutiny Panel may invite the relevant Portfolio Holder, Chief Executive, Head of Service, Council Officer, or external organisation to discuss the issue with the Panel and answer any questions, if the Panel considers this appropriate.

### 6.6 Potential outcomes

If the Panel decides not to accept the CCfA referral it must inform the Councillor in writing and provide reasons.

If the Panel decides to accept the CCfA referral, it must decide how it intends to take the matter forward and include the CCfA in its Workplan. The range of options open to the Panel is the same as for standard Scrutiny agenda items; examples of this include:

- Asking the service area(s)/partner organisation(s) to respond to the CCfA in more detail.
- Setting up a research group to undertake a more in depth review.
- Asking for further evidence and/or witnesses to be brought to a future meeting.
- Referring the matter, with recommendations to the Executive, Full Council, or other relevant regulatory committee.

It should be pointed out that discussions at Scrutiny will not necessarily resolve the issue immediately, but may allow members and officers and/or partners to overcome the problem.

Once the Panel has completed its work on the CCfA request, the Councillor who made the request will receive a copy of any report or recommendations made. The report will also be published on Harborough District Council's website.

Finally, Scrutiny Commission will receive a report twice a year which will detail any CCfA requests received and determine whether they have been resolved.

**6.7** The following flow chart outlines the Councillor Call for Action process adopted at Harborough District Council:



