

## **OVERVIEW AND SCRUTINY PROCEDURE RULES**

### **1. What will be the number and arrangements for Overview and Scrutiny Committees?**

The Council will have the Overview and Scrutiny Committees set out at Article 6 and will appoint to them as it considers appropriate from time to time. Such Committees may also appoint Sub-Committees. Overview and Scrutiny Committees and Sub-Committees may be appointed for a fixed period, on the expiry of which they shall cease to exist.

The Council will have three Overview and Scrutiny Committees, which will perform all Overview and Scrutiny functions on behalf of the Council. The number of Members of each Overview and Scrutiny Committee will be set out in Article 6 of the Constitution. Overview and Scrutiny Committees and Sub-Committees may appoint co-optees.

### **2. Who may sit on Overview and Scrutiny Committees?**

All Councillors, except Members of the Executive, may be Members of an Overview and Scrutiny Committee. However no Member may be involved in scrutinising a decision in which he has been directly involved.

### **3. Visiting Members**

Visiting Members should be allowed to speak as of right at any Overview and Scrutiny Committee meeting on a given agenda item (for example where they have an interest or expertise in a particular manner) subject to the following conditions:-

- that Visiting Members can appear before the Committee but that Visiting Members limit their comments to the specified item or items; and
- that Visiting Members are not allowed to vote or to be involved in the general discussion of the Committee.

### **4. Co-optees**

Each Overview and Scrutiny Committee or Sub-Committee shall be entitled to appoint non-voting co-optees as it deems appropriate.

### **5. Meetings of the Overview and Scrutiny Committees**

There shall be at least four ordinary meetings of each Overview and Scrutiny Committee in each year. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the chairman of the relevant Overview and Scrutiny Committee, by any two Members of the Committee or by the proper officer if he considers it necessary or appropriate.

6. **Quorum**

The quorum for an Overview and Scrutiny Committee shall be as set out for Committees in the Council Procedure Rules in Part 4 of this Constitution.

7. **Who chairs Overview and Scrutiny Committee meetings?**

Chairmen of Overview and Scrutiny Committees/Sub-Committees will be drawn from among the Councillors sitting on the Committees/Sub-Committees. The Committee/Sub-Committee may appoint such person as it considers appropriate as Chairman.

The chairman and vice-chairman of each overview and scrutiny committee shall come from different political groups; in the case of a cabinet comprising members of more than one political group, the chairman and vice-chairman shall not both come from parties represented in the cabinet.

The chairman of the Corporate Services Overview and Scrutiny Committee shall come from a political group not represented on the executive, except where all political groups are represented on the executive .

8. **Work programme**

The Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own work programme and in doing so they shall take into account wishes of all Members on that Committee.

9. **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, the Member must attend the meeting and speak on the item put forward.

Furthermore any Member shall be entitled to give notice to the proper officer that he wishes an item relating to his ward, which is 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 (A Councillor Call for Action). On receipt of such a request the Chairman of the relevant Overview and Scrutiny Committee will in consultation with the proper officer then determine whether the item can be taken forward in accordance with the Councillor Call for Action Protocol. ~~In particular they should have regard to whether it is a local government matter and what matters cannot be referred to an Overview and Scrutiny Committee.~~ In putting forward such a request the Councillor must have regard to the Councillor Call for Action Protocol attached to these rules at Appendix 1 and the government guidance. The Councillor concerned will be able to make representation to the Committee or Sub-Committee, when the Committee or Sub-Committee takes an item forward for scrutiny. The Committee should consider the extent to which the Councillor has

exercised any power given to him under section 236. If the matter is a crime and disorder matter responsible authorities (CDRP Members) must be notified by the proper officer. The proper officer in consultation with the Overview and Scrutiny Chairman will also give regard to the guidance from the Secretary of State regarding matters that cannot be referred to an Overview and Scrutiny Committee as outlined in the paragraph below.

The following matters may not be referred to an Overview and Scrutiny Committee or its Sub-Committees:

- a) any matter relating to a planning decision;
- b) any matter relating to a licensing decision;
- c) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
- d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

However a matter which consists of an allegation of systematic failure of an authority to discharge a function for which the authority is responsible may be referred to an overview and scrutiny committee, notwithstanding the fact that the allegation specifies matters which would otherwise be excluded by virtue of article 2.

#### **10. Policy review and development**

- (a) The role of the Overview and Scrutiny Committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules in Part 4 of this Constitution.
- (b) In relation to the development of the Council's approach to other matters not forming part of its budget and policy framework, the Overview and Scrutiny Committees may make proposals to the Executive for development in so far as they relate to matters within their terms of reference.
- (c) Overview and Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

#### **11. Reports from the Overview and Scrutiny Committee**

- (a) Once it has formed recommendations on proposals for development, the Overview and Scrutiny Committee will prepare a formal report and submit it

to the proper officer for consideration by the Executive (if the proposals are not inconsistent with the existing budget and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).

- (b) If an Overview and Scrutiny Committee cannot agree on one single final report to Council or Executive as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council/Executive with the majority report.
- (c) The Council/Executive shall consider the report of the Overview and Scrutiny Committee within one month of it being submitted to the proper officer.

**12. Protocol for Dealing with Overview and Scrutiny Policy Review Reports Submitted to the Executive**

- (a) Reports from Overview and Scrutiny Committees will be submitted to the appropriate Cabinet Member or the Cabinet as a whole if the issue is cross-cutting or requires a departure from the existing policy framework or budget strategy.
- (b) Where a report's recommendations cover the portfolio of more than one Cabinet portfolio, the Cabinet Member principally responsible (to whom the report has been sent formally for response) will assume responsibility for soliciting a response to those recommendations from any other relevant Cabinet Members and including it in the response. When a report is submitted to the Cabinet, the Leader of the Council will assume responsibility for co-ordinating the response.
- (c) If the Cabinet or the appropriate Cabinet Member substantively accepts the recommendations of the Overview and Scrutiny Committee they will respond in writing within four weeks of receiving the report. If the response period falls within or shortly after a significant holiday period or an election then the period may (with the consent of the Overview and Scrutiny Committee) be extended in order to give the Cabinet or the appropriate Cabinet Member sufficient time to consider the report.
- (d) If a Cabinet Member in considering the report does not substantively accept the recommendations the matter will be referred to the next meeting of the Cabinet for debate. The Cabinet will then debate the issue and the relevant Cabinet Member will subsequently respond immediately in writing to the Overview and Scrutiny Committee.
- (e) The Overview and Scrutiny Committee will then consider the response at its next meeting and may request the Cabinet Member to attend the meeting. It will then forward any comments it may have on the response to the Cabinet or Cabinet Member for consideration. Having considered the comments of the Committee, the Cabinet or Cabinet Member will then formally adopt their response at their next meeting.

- (f) If the recommendations of the report have a significant impact on the policy framework or budget, it will be necessary for the report of the Overview and Scrutiny Committee to be submitted to full Council together with the response of the Cabinet or Cabinet Member. The Council will then determine the issue.

**13. Rights of Overview and Scrutiny Committee Members to documents**

- (a) In addition to their rights as Councillors, Members of Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this section prevents more detailed liaison between Executive and Overview and Scrutiny Committees as appropriate depending on the particular matter under consideration.

**14. Members and officers giving account**

- (a) Any Overview and Scrutiny Committee or Sub-Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing the documentation, in fulfilling the Overview and Scrutiny role, it may require any Member of the Executive, the Head of Paid Service, and/or any senior officer to attend before it to explain in relation to matters within their remit:
  - (i) Any particular decision or series of decisions;
  - (ii) The extent to which the actions taken implement Council policy; or
  - (iii) Their performance.

And it is the duty of those persons to attend if so required.

- (b) Where any Member or officer is required to attend an Overview and Scrutiny Committee under this provision, the chairman of that committee will inform the proper officer. The proper officer shall inform the Member or officer in writing giving at least 5 working days notice of the meeting at which he is required to attend. The notice will state the nature of the item on which he is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that document.
- (c) Where in exceptional circumstances the Member or officer is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the Member or officer arrange an alternative date for attendance, to take place within a maximum of 21 days from the date of the original request.

- (d) It should be noted that if a Member is requested or chooses to submit written evidence to an Overview and Scrutiny Committee containing information which he has received from an Officer, or he has obtained from elsewhere by virtue of being a Member of an Overview and Scrutiny Committee, he will submit the information to the Overview and Scrutiny and Policy Manager in order that he may then circulate it to all Members of the Overview and Scrutiny Committee at least three days before the date of the meeting which will consider the evidence.

## **15. Attendance by others**

An Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 14 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers of other parts of the public sector and shall invite such people to attend. Attendance is entirely optional.

## **16. Call in**

When a decision is made by the Executive, an individual Member of the Executive, or a Councillor with delegated Executive authority 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, including where possible by electronic means, and shall be available at the main offices of the Council, normally within 2 working days of it being made. All Members of each Overview and Scrutiny Committee will be sent copies of the records of all decisions within the same time scale, by the person responsible for publishing the decision.

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.

During that period, the proper officer shall call in a decision for scrutiny by the Committee if so requested by any two Members of the Council not serving on the Executive and shall then notify the decision taker of the call in. He shall call a meeting of the Committee on such date as he may determine, where possible after consultation with the chairman of the Committee, and in any case within ten days of the expiry of the call-in period. At that meeting, the councillors calling in the decision should make themselves available for questioning and will be able to take part in the debate as non-voting members of the Committee. If there is significant background or technical information to be considered, the councillors calling in the decision should submit a short written statement to the proper officer outlining their reasons for call-in at least 24 hours prior to the meeting.

If having considered it, the Overview and Scrutiny Committee is still concerned about the executive decision, 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 decisions or not, before adopting a final decision (which shall not be subject to call in).

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 the five days period from the decision to call in the matter.

If the matter was referred to full Council the Council meeting should be convened within five days of that referral. If 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. However, if the Council does object, it has not locus to make decisions in respect of Executive decisions 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 Committee of it, a meeting will be convened to reconsider within five working days on the Council request. Where the decision was made by an individual, the individual will reconsider within five days of the Council request.

If the Council does not meet, or if it 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.

#### **17. Exceptions**

In order to ensure that call in is not abused, nor cause unreasonable delay, a limitation is to be placed on its use. That is that a notice to call in a decision must be signed by at least two Members of the Council not serving on the Executive.

#### **18. Call in and urgency**

The call in procedure set out in the paragraphs 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 interests. 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 Mayor in consultation with the Head of Paid Service, and the chairman of the relevant 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 Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the Head of Paid Service or his nominee's consent shall be required. 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.

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 where necessary.

## 19. **The Party Whip**

The party whip is defined as follows:

“Any instruction given by or on behalf of a political group to any Councillor who is a Member of that group as to how that Councillor shall speak or vote on any matter before the Council or any Committee or Sub-Committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he speak or vote in any particular manner.”

When considering any matter in respect of which a Member of an Overview and Scrutiny Committee is subject to a party whip, the Member must declare the existence of the whip, and the nature of it before the commencement of the Committee’s deliberations on the matter. The declaration and the details of the whipping arrangements shall be recorded in the minutes of the meeting.

## 20. **Procedure at Overview and Scrutiny Committee meetings**

(a) Overview and Scrutiny Committees and Sub-Committees shall consider the following business:

- (i) Minutes of the last meeting;
- (ii) Declarations of interest (including whipping declarations);
- (iii) Consideration of any matter referred to the Committee for a decision in relation to call in of a decision made by the Executive

(iv) Responses of the Executive to reports of the Overview and Scrutiny Committee;

~~(iv)~~(v) Any items referred to the Committee by a Member; and

~~(v)~~(vi) The business otherwise set out on the agenda for the meeting.

(b) Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development) the Committee may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:

- (i) That the investigation be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;



- (ii) That those assisting the Committee by giving evidence be treated with respect and courtesy; and
  - (iii) That the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the Committee/Sub-Committee shall prepare a report, for submission to the Executive and/or Council as appropriate and shall make its report and findings public.

**21. Matters in remit of more than one Overview and Scrutiny Committee**

From time to time, matters may arise which fall within the remit of more than one Overview and Scrutiny Committee. In such instances, one of the relevant Committees may decide to establish a working group which can be made up of representative from the appropriate committees. The Report will be considered by the appropriate committee following the opportunity of all other appropriate committees to comment, before it is forwarded to the Executive for a response.

Before submitting its findings to the Executive and/or Council for consideration, the report of the reviewing Overview and Scrutiny Committee shall be considered by the other Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration.

If a single committee decides to examine an issue that falls within the remit of another committee, its report shall be passed to the other relevant committee(s) for comment before its findings are submitted to the Executive and/or Council for consideration. Those comments shall be incorporated into the report which is then sent to that body for consideration.

**22. National Health Service Overview and Scrutiny**

The Protocol for National Health Service Scrutiny is attached as Appendix 2 to these procedure rules.

**23. Crime and Disorder Reduction Partnership Overview and Scrutiny**

The Protocol for Crime and Disorder Reduction Partnership Overview and Scrutiny is attached as Appendix 3 to these procedure rules.

### Maidstone Borough Council, Councillor Call for Action Protocol

#### 1. Introduction

- 1.1 Councillor Call for Action (CCfA) seeks to strengthen the role of the Ward Councillor, encouraging them to resolve local problems on behalf of residents. The Act allows ward councillors to place Councillor Calls for Action onto scrutiny agendas for resolution and action. The legislation introduced under the Local Government and Public Involvement Act 2007 and subsequently amended under the Localism Act 2011 extends the power of overview and scrutiny in two ways:
  - so that any Member of the Council can refer any local government matter providing it falls within the Committee's terms of reference to O&S committees; and
  - that matters which can be referred include matters which the council and its partners are delivering through the Local Area Agreement and "local crime and disorder" matters.
- 1.2 The CCfA Best Practice guidance released by CfPS and the IDeA refers to the importance of concentrating on outcomes rather than process when dealing with CCfAs this protocol is therefore a light touch approach.
- 1.3 The protocol outlines what constitutes a CCfA, what should be excluded and the process for dealing with a CCfA. The protocol applies to CCfAs related to crime and disorder matters as well as local government matters.

#### 2. What is Councillor Call for Action

- 2.1 Councillor Call for Action has been introduced by the government under the Local Government and Public Involvement in Health Act 2007, to strengthen the role of the ward councillor. The CCfA is a process for a Councillor to act on behalf of residents to resolve a local issue of concern, acting as a last resort for people who cannot get issues resolved through any other means; this can include crime and disorder matters. Such matters could include issues relating to the Council's partners.

**Local Government Matter**—under section 21A, a CCfA needs to relate to a "local government matter". ~~This could be interpreted narrowly, to mean only those issues under the direct control of the authority. However, to give full effect to CCfA the interpretation of "local government matter" needs to be broader. This includes issues relating to the Council's partners, in line with the area focus of Comprehensive Area Assessment (CAA), and the fact that an authority's duties increasingly impact on other organisations, and involve partners within and outside the Local Strategic Partnership (LSP).~~

### **3. Matters that can not be raised as a Councillor Call for Action**

3.1 The following matters have been excluded under section 21A of the Local Government Act 2000, introduced under section 119 of the Local Government and Public Involvement in Health Act, 2007.

- (a) any matter relating to a planning decision;
- (b) Any matter relating to a licensing decision;
- (c) Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review of right of appeal conferred by or under any enactment;
- (d) Any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

### **4. CCfA Process**

4.1 In accordance with the national best practice guidance Overview and Scrutiny should be the last stop for a CCfA. The expectation will be on the Ward Councillor to have tried to resolve an issue using all available mechanisms (including partnership working when appropriate) prior to referring the matter to the Overview and Scrutiny Committee. When a matter is referred to the Overview and Scrutiny Committee it will be up to the relevant Overview and Scrutiny Chairman and the Proper Officer whether the matter is progressed and taken forward by Scrutiny. The process of determination by the Overview and Scrutiny Chairman with the Proper Officer represents a sifting process to determine if the matter is a local government matter and to determine whether the matter is excluded under paragraph 3 above. The possible reasons for rejecting a CCfA are outlined at paragraph 4.2 below. If the CCfA relates to a crime and disorder matter than this must be referred to the Crime and Disorder Scrutiny Committee which in Maidstone Borough Council is the External Overview and Scrutiny Committee.

#### **4.2 Referral to Scrutiny**

The Chairman of the relevant O & S Committee will then determine with the Proper Officer whether to take the CCfA forward. The proper officer will inform the Ward Councillor whether they will accept the CCfA within 5 working days. If the CCfA is a crime and disorder related matter then responsible partners must be notified (CDRP Members).

Reasons a Chairman may not take the CCfA forward to Committee could include:

- Not enough information has been provided;
- More could be done to resolve the issue at a local level, e.g. key people have not been contacted;
- The CCfA is, or has stemmed from, a vexatious discriminatory or unreasonable complaint;

- The matter has recently been examined by O&S (though the Ward Councillors may argue that certain aspects were not sufficiently covered hence a need for a CCfA);
- The matter is the subject of an ombudsman complaint or other official complaints procedure;
- The matter falls under any other excluded matters (see paragraph 3 above).

If a CCfA is rejected for consideration by scrutiny the ward councillor will be notified in writing within 5 working days of lodging the CCfA. Where it is a Crime and Disorder CCfA all responsible partners (CDRP Members) must be notified. Ward Councillors will have the opportunity to reply to the Chairman perhaps with further information to substantiate the CCfA.

If the CCfA is accepted, the relevant Cabinet Members, Officers and/or partners will be notified by the Chairman.

#### **4.3 Ward Councillor Process for resolution of a CCfA:**

- (a) Public request for action or issue identified by local ward councillor.
- (b) Discuss with other ward councillors is a multi-member ward and agree action.
- (c) Take steps to resolve the issue through existing mechanisms such as liaising with partners, county and parish councillors or raising with officers.
- (d) If unresolved and the matter can be taken no further by the ward councillor then refer to the relevant Overview and Scrutiny Committee by completing “the councillor call for action form” and submit this to the Proper Officer (the Overview and Scrutiny Manager) for action.
- (e) Overview and Scrutiny Committee either:
  - Rejects the CCfA and notifies the Councillor who in turn should inform the public;
  - Accepts the CCfA and arranges to consider the CCfA, notifying partners as appropriate. Following which they will determine their response and relay this to the Councillor and partners as appropriate.

#### **5. Process for Dealing with a CCfA by a Scrutiny Committee**

- 5.1 The Chairman and Proper Officer will determine if a special meeting outside the calendar of meetings is required and call a meeting, if not then the CCfA will be dealt with at the next available meeting of the Committee.
- 5.2 The Chairman in consultation with the Ward Councillor and Scrutiny Team when considering the meeting should give consideration to:
  - Witnesses
  - Notifying and Inviting Partners
  - Evidence required
  - Key questions
  - Timescales, and
  - Aims and objectives for the meeting.

5.3 In a similar fashion to the call-in process at the meeting the committee will be expected to reach a decision on whether to:

1. Take no action; or
2. Refer the matter to the Executive/Council/Partner Organisations with recommendations; and/or
3. Carry out a full scrutiny investigation.

Any report and recommendations arising from the Committee meeting will be made available and sent to all agencies involved with the CCfA within 5 working days of the meeting, in the case of a crime and disorder matter, reports and recommendations will be sent to the responsible authorities as listed in the Police and Justice Act 2006.