

# Taunton Deane Borough Council

## Full Council – 24 June 2010

### Review of the size of Committees

#### Report of the Legal and Democratic Services Manager and Councillor Bryan Denington (Chairman of the Constitutional Sub-Committee)

(This matter is the responsibility of the Leader of the Council, Councillor John Williams)

#### 1. Executive summary

To approve the changes to the size of the various Committees following a review in light of the change of administration.
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#### 2. Background

- 2.1 Approximately three years ago changes were made to increase the size of some of the Committees in light of the scrutiny pilot scheme. This was proposed due to the concern that some Members would not have a sufficient workload in light of the abolition of the Review Panels.
- 2.2 During this period the scrutiny pilot came to an end and a new structure for scrutiny was established resulting in two Scrutiny Committees, namely Corporate and Community Scrutiny with task and finish groups being set up.
- 2.3 In addition there has been a slight change in the political make up of the Council due to one Member of the Liberal Democrat Group moving to the Independent Group. Therefore the political make up of the Council means that there are currently 25 Conservatives, 25 Liberal Democrats, 5 Independents and 1 Labour.
- 2.4 Sections 15 and 16 of the Local Government and Housing Act 1989 provides a duty on authorities to review the proportionality of its Committees to ensure that it reflects the political make up of the Council.
- 2.5 Following a change in leadership at the Annual Council meeting on 13 May 2010, a review has been undertaken and a special meeting of the Constitutional Sub-Committee held to debate the proposed changes to the size and composition of the various Committees. The changes outlined in Appendix 1 are recommended by the Constitutional Sub-Committee.
- 2.6 In Appendix 2 of this report are the relevant changes to the procedure rules set out in Part 4 of the Constitution.

#### 3. Finance comments

- 3.1 There is a saving of a Special Responsibility Allowance due to the reduction in the number of Members sitting on the Executive.

#### **4. Legal comments**

4.1 There are no legal implications other than those already mentioned in this report.

#### **5. Links to corporate aims**

5.1 There are no specific links to the corporate aims.

#### **6. Environmental and community safety implications**

6.1 There are no implications for the environment or community safety.

#### **7. Equalities impact**

7.1 An impact assessment is not required in respect of this report.

#### **8. Risk management**

8.1 There are no risks attached to this report.

#### **9. Recommendations**

9.1 Members are recommended to approve the changes to the size of the various Committees as detailed in Appendix 1 to this report.

9.2 Members are recommended to approve the changes to the procedure rules set out in Part 4 of the Constitution.

#### **Contact**

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# Review of the size of Committees – Appendix 1

## Executive Committee

- Councillor Williams – Leader of the Council
- Councillor Edwards – Deputy Leader – (Planning and Transportation)
- Councillor Mrs Lewin-Harris (Communications and Community Leadership)
- Councillor Cavill (Economic Development and the Arts)
- Councillor Hayward (Environmental Services)
- Councillor Ms Herbert (Sports, Parks and Leisure)
- Councillor Mrs Court-Stenning (Housing Services)
- Councillor Hall (Corporate Resources)

## Political make up

Conservatives	25	44.6%
Liberal Democrats	25	44.6%
Independents	6	10.75%
	<b>56</b>	<b>99.95%</b>

Committee	Conservatives	Liberal Democrats	Independents
Corporate Governance	5	5	1
Licensing	7	7	1
Planning	7	7	3
Corporate Scrutiny	5	5	1
Community Scrutiny	5	5	1
	<b>29</b>	<b>29</b>	<b>7</b>
%	<b>44.6</b>	<b>44.6</b>	<b>10.8</b>

## Chairs

<b>Conservatives</b>	3
<b>Liberal Democrats</b>	2

Vice-Chairmen will be selected by their respective Committees.

# **COMMITTEES INCLUDING OVERVIEW AND SCRUTINY – POWERS AND PROCEDURE RULES**

## **Procedure Rules for overview and scrutiny**

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### **1.0 What will be the arrangements to carry out the 'overview and scrutiny' function?**

The Council will establish the overview and scrutiny committees as detailed in Article 9, part II of this constitution and will appoint thirteen members as set out in 5.0 below or such number as it considers appropriate from time to time. Such committees may appoint sub-committees and/or task and finish groups for specific tasks. Council may also appoint overview and scrutiny committees for a fixed period, on the expiry of which they shall cease to exist.

#### **1.1 Terms of Reference of the overview and scrutiny committees**

These are set out in Article 9 of the Constitution.

#### **1.2 Roles and Terms of Reference of the Task and Finish groups**

These are set out in Article 9 of the Constitution.

### **2.0 Who may sit on the Overview and Scrutiny committees and Task and Finish groups**

- (a) Any councillor except a member of the Executive may be a member of one of the overview and scrutiny committees or task and finish group. But, no member may be involved in reviewing a decision in which he/she has been directly involved.

### **3.0 Co-opted Members**

Each task and finish group shall be entitled to recommend to the relevant overview and scrutiny committee the appointment of people to their membership as non-voting co-optees.

### **4.0 Meetings of the overview and scrutiny committees**

The overview and scrutiny committee shall each meet once a month. Other meetings may be called from time to time as and when its business

requires or where the committee deem appropriate to look at a particular issue.

## 5.0 The party whip

Whilst the “party whip” can play a proper part in the political environment of local government, it is acknowledged that any “whipping” arrangements do not readily have a place where “overview and scrutiny” are concerned.

A party whip shall not apply to the overview and scrutiny business of either the committees or the task and finish groups.

## 6.0 Size, Substitutions and Quorum

- (a) The membership of each of the overview and scrutiny committees shall each consist of ~~pro-rata to the number of elected members~~ who must not be members of the Executive.
- (b) the membership of any task and finish group will be no more than 7 and no less than 4 members.
- (c) The allocation of seats on each overview and scrutiny committee shall be on the basis of the ‘proportionality rules’ in the 1989 Local Government and Housing Act.
- (d) Each party/group - to whom seats have been allocated on any overview and scrutiny committee or task and finish group may - by giving formal notice to the Democratic Services Officer - substitute different members for those seats - either on a temporary or permanent basis. Such formal notice must be given to the Democratic Services Officer not later than the beginning of the meeting concerned, and such substitution will last for the whole of that meeting.
- (e) The quorum for the overview and scrutiny committees and task and finish groups shall be 4 of its members.

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## 7.0 Who chairs meetings?

- (a) The chairmanship and vice-chairmanship of each of the overview and scrutiny committees shall not be a member of the controlling administration.
- (b) The chairmanships of the task and finish groups shall be decided by the ~~relevant group leaders~~.
- (c) Appointments to the chairmanships of the overview and scrutiny

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committees will be made [according to section 16.2](#).

- (d) If the chairman and vice-chairman are absent from a meeting of the committee then its members shall appoint one of their number to chair that meeting.

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## 8.0 Co-ordinating Scrutiny Committee **(informal)**

- (a) The membership of the Co-ordinating Scrutiny committee is set out in Article 9 to this constitution.
- (b) The purpose of this committee is to manage the forward plan for both committees to ensure an even distribution of work. Where a matter for consideration by an overview and scrutiny committee also falls within the remit of another overview and scrutiny committee the decision as to which committee deals with matter will be resolved by this committee in consultation with the Proper Officer.
- (c) Any member shall be entitled to give notice to the chair of the relevant overview and scrutiny committee with a copy to the Democratic Services Manager for an item to be included on the forward plan/agenda that is relevant to that committees functions.
- (d) The Co-ordinating Scrutiny Committee will consider this request at the next available meeting unless the Chair of the relevant committee deems that the matter should be dealt with more quickly.
- (e) If the matter should be dealt with more expeditiously then the Chair of the relevant scrutiny committee will notify the Chair of the other scrutiny committee and the Democratic Services Manager accordingly.

## 9.0 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 (Part 4C)
- (b) The overview and scrutiny committees may make proposals to the Executive for development of policies on other matters which fall within their terms of reference.
- (c) Within any budget which the Council makes available to the overview and scrutiny committees to fund external costs, task and finish groups may make funding requests to the relevant committee to allocate expenditure in carrying through this role. This can include holding inquiries; looking at available options for future policy development and appointing advisers and assessors to

assist them in this process where they believe this is necessary. They may ask witnesses to attend to address them on any matter which forms part of this work and may pay reasonable fees and expenses for doing so to any advisers, assessors and witnesses

#### 10.00 **Excluded Matters**

(a) Certain matters are excluded from the remit of the overview and scrutiny committees and these are:-

- (i) any matter relating to a planning decision
- (ii) any matter relating to a licensing decision
- (iii) 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;
- (iv) 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.

(b) This rule will not apply if there is an allegation or complaint of a systematic failure of an authority to discharge a function for which the authority is responsible and the overview and scrutiny committee will be able to review this process. However it will not be able to alter an individual decision.

#### 11.0 **Requests from Members**

Any member who requests an item is placed on the agenda for overview and scrutiny must include representations as to why it would be appropriate for the committee to deal with this matter.

#### 12.0 **Reports from Overview and Scrutiny committees**

- (a) Once it has formed recommendations, the relevant scrutiny committee will prepare a formal report and submit it to the Democratic Services Manager for consideration either:-
- (i) by the Executive (if the proposals are consistent with the existing Budgetary and Policy Framework), or
  - (ii) to the Council (if the recommendation would require a departure from or a change to the agreed Budget and Policy Framework).



- (b) The Executive (or the Council as appropriate) shall, where possible, consider the committee's report at its next available meeting.
- (c) If a matter has been referred to the overview and scrutiny committee by a member, a copy of any report or recommendation made by the committee shall be sent to that member.

### 13.0 **Reports from overview and scrutiny committee to the Executive and the Council**

- (a) if the overview and scrutiny committee publishes its report or recommendations the committee must in writing **require** the Executive or Council to:-
  - (i) consider the report or recommendations;
  - (ii) respond to the overview and scrutiny committee indicating what (if any) action the Executive/Council proposes to take;
  - (iii) if the overview and scrutiny committee has published the report or recommendations to publish the response;
  - (iv) if the overview and scrutiny committee provided a copy of the report or recommendations to a member of the Council, to provide the member with a copy of the response.
- (b) The Executive or Council must do so within two months beginning with the date on which it receives the report or recommendations from overview and scrutiny.

### 14.0 **Rights of scrutiny committee members to documents**

In addition to their rights as councillors, members of overview and scrutiny and task and finish groups have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules of this Constitution (Part 4B).

### 15.0 **Members and officers giving account**

- (a) Each scrutiny committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions within that committee's Terms of Reference as detailed in Article 9.

It may review any documents and/or require the Leader and any member, the Head of Paid Service and/or any senior officer to attend before it to explain matters within their remit which about:-

- i) any particular decision or series of decisions they have taken;
- ii) the extent to which any such actions taken assist in implementing Council policy; and/or
- iii) the members' or officers' performance.

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

- (b) Where any member or officer is required to attend a scrutiny committee under this provision, the chair of that committee will notify the Democratic Services Manager, who shall inform the member or officer in writing giving at least 5 working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she 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 its preparation.
- (c) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Democratic Services Manager shall consult with the member or officer so as to make alternative arrangements for attendance.

#### 14.0 **Attendance by others**

A scrutiny committee may invite people other than those referred to in paragraph 13 above to address it, discuss issues of local concern and/or answer questions.

#### 15.0 **CALL-IN**

##### 15.1 **Types of Decisions which are affected by the Call-in mechanism**

The call-in mechanism set out below shall apply to the following types of decision:-

- (a) To any decision made by:-

- \$ the Executive, or
- \$ an individual member of the Executive, or
- \$ by any committee of the Executive,
- \$ an area committee, or

§ under joint arrangements  
§ any ward member  
and

(b) To any *Key Decision* \* - by whomever it is made.

[\* a Key decision is defined in Article 13 as a decision which will have a significant impact within the administrative borough, an operational impact on the community of more than one electoral ward, or involves a significant level of expenditure to be incurred by the Council relating to the discharge of a specific Council function (rather than solely staff related), e.g. where the aggregate expenditure is £50k or more (but not to include any expenditure included in a budget which has been approved in a framework policy).

## 15.2 Decisions which are not subject to call-in

These include:-

- § any non-Executive decision – ie: those listed in Part 3 of the Constitution as ones which will not be taken by the Executive - such as Planning, Licensing and Staffing issues
- § decisions made by full Council
- § all decisions taken by officers within the Scheme of Delegations - unless they are '*key decisions*'
- § decisions of the Executive to confirm a previous decision - following a request from the overview and scrutiny committee as part of this call-in procedure
- § decisions to which the urgency mechanism has been applied under paragraph 15.9

## 15.3 Publication of Decision

- (a) With the exception of meetings of the Executive itself, a written record of any decision made - of the types and/or by any of those bodies or people listed in paragraph 15.1 - shall be compiled by the decision-taker and immediately e-mailed (or otherwise forwarded) to the Legal and Democratic Services Manager for publication.
- (b) The record shall be in such standard form as s/he prescribes (the 'decision record') and it (including the minutes of meetings of the Executive) must contain the following details provided by the decision-maker:-

- ! the decision,
- ! the reasons for the decision,
- ! any alternative options considered at the time but

- rejected,
  - ! any conflict of interest on the part of any Executive Councillor involved in or consulted about the decision
  - ! a note of any dispensation which has been granted in relation to such a declared interest
  - ! a note of any report considered when reaching that decision, and
  - ! a list of any "Background Papers" taken into account by the decision-taker.
- (c) By 5pm on the 2<sup>nd</sup> working day after the decision has been accepted, the Legal & Democratic Services Manager shall publish it in the following ways:-
- (i) the record shall be made available for public inspection at the Deane House
  - (ii) a copy shall be dispatched by email (unless a request has been made for it to be sent by ordinary post) to every councillor,
  - (iii) a copy shall be posted on the Council's Web site
  - (iv) it shall be included in the Council's 'Weekly Bulletin'
- (d) The decision record will be dated and will show the date on which the decision will become effective - unless written notice (as described below) calling in the decision is received. That right of call-in will expire at 12 noon on the 5<sup>th</sup> working day after the decision has been published. (The call-in period of decisions included in the 'Weekly Bulletin' therefore expires at noon on the Wednesday following its publication). If the Legal and Democratic Services Manager is not satisfied that the decision record does not contain sufficient detail, then s/he shall not accept it and shall return it to the decision-taker for further clarification.
- (e) Any decision listed in paragraph 15.1 shall:-
- (i) not be implemented for 5 working days unless it has been subject to the special urgency mechanism set out in paragraph 15.9
  - (ii) not be capable of being implemented unless and until it has been published as prescribed in this paragraph

#### 15.4 **Call-in procedure**

With each decision record being taken, a standard 'call-in request form' will be included for every councillor to complete if they wish to challenge a

decision. The form will require the decision to be identified and for the detailed reasons justifying the call-in to be described.

The 'detailed reasons' shall relate to the merits of that decision only, when those calling it in have evidence which would result in a different decision being made.

On receipt of 2 such completed call-in request forms - in respect of the same decision and within the prescribed call-in period - the Monitoring Officer is authorised to call in that decision. In consequence, the Democratic and Legal Services Manager shall then immediately:-

(a) give notice of the call-in and its consequences to the following:-

- ! the decision taker,
- ! the Executive Councillor holding the relevant service portfolio,
- ! those councillors who have challenged the decision and to
- ! the Director and/or Service Manager primarily affected, and
- ! the Leader of the Executive and the Head of Paid Service,
- ! the Chair of the relevant overview and scrutiny committee.
- ! [the next weekly bulletin](#)

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- (b) include the call-in request - together with the detailed justification given by the challengers - on the agenda for the next ordinary meeting of the relevant overview and scrutiny committee together with a copy of the report which gave rise to the challenged decision.
- (c) if no overview and scrutiny committee meeting is programmed within 14 days, and the committee's chairman believes that an earlier decision would be in the Council's best interests, then s/he may instruct the Legal and Democratic Services Manager to convene a special meeting.

## 15.5 The Role of the overview and scrutiny committee

- (a) It is the function of the overview and scrutiny committee to consider both the views of the challengers and of the decision-taker(s). Each shall have the right to attend and address the committee. Having done so the committee shall decide whether it wishes to pursue the challenge further. The committee's options are:-
- (i) to support the challenge and to refer the decision to the Executive for further consideration (stating the grounds justifying that request)

- (ii) to take no further action on the call-in, or
  - (iii) to ask the Executive to consider the decision (under the Council referral process in paragraph (b) below).
- (b) Where the committee certifies those substantial reasons which it believes would justify the issue being brought before full Council for its advice or decision, then it can adopt the following exceptional course of action - a 'Council Referral' resolution. The resolution will be in two parts:-
- (i) to ask the Executive to re-consider the decision; and
  - (ii) if the Executive is not prepared to reverse or modify its decision in the way that the Committee requests, then the Referral resolution will require that the Executive's decision is immediately referred to an meeting of the full Council.
- (c) A 'Council Referral' resolution can only be agreed at an overview and scrutiny committee meeting when at least 7 of its 13 members vote for that option. The Referral shall be taken to the full Council in the names of those councillors who have voted for it and they shall be deemed to have requisitioned any Special Council meeting which is required under paragraph 15.6 (below).

#### 15.6 Council Referral Procedure

- (a) Where the overview and scrutiny committee passes such a valid Council Referral resolution, then if the Executive is unwilling to substantially accede to the committee's request to reverse or modify its decision, the matter will be automatically referred to full Council as follows:-
- (i) If the Referral can be taken to an ordinary meeting of the Council within 14 days of the Executive meeting, then it will be reported to that meeting;
  - (ii) If such an ordinary meeting of the Council is not thus available then the Legal and Democratic Services Manager will treat the committee's Referral resolution as a requisition for a Special Meeting of the Council to be held within two weeks of the Executive meeting
- (b) Full Council's role will be to consider one of the following:-
- (i) to give its advice on the matter

if the decision challenged is one which, only the Executive can determine, then the Council will be asked to give its advice on how the matter should be dealt with; or

(ii) to decide the issue itself

This alternative will apply in two instances - either:-

- (a) where the decision challenged is one which, under the Act, only the Executive can determine, but the Monitoring Officer has nevertheless certified that the decision being challenged is one which is contrary to the Policy Framework, or contrary to or not wholly consistent with the Budget, or
- (b) where the matter is not one reserved under the Constitution to the Executive.

(iii) to take no action on the Referral

If such a resolution is passed then the decision which was challenged shall become immediately effective.

- (c) Recommendations under paragraph 15.5(b) shall be taken to Council in the name of the overview and scrutiny committee chairman. The report will either seek the advice of the Council on the matter, or will propose the decision to be taken.

#### 15.7 **The effect of a Call-in**

The effect of any call-in is that implementation of the decision is 'frozen' until such time as:-

- (a) the councillors who requested the call-in withdraw their request; or
- (b) 14 days elapse without the notice convening an overview and scrutiny committee being given for a meeting of the committee resolving to pursue the call-in further; or
- (c) the meeting of the committee has decided (under 15.5 (ii) ) to take no further action on the call-in.
- (d) the decision-taker (whether the Executive, an Executive Councillor or an Officer) - on considering the report of the overview and scrutiny committee or the Council - decides to proceed with implementing the previous decision, whether modified or unmodified.
- (e) a decision by the Council under the Council Referral mechanism has been made under either 15.6(b)(ii) or (iii).

#### 15.8 **Exceptions and Limitations on Call-In**

- (a) To ensure that call-in is not abused, nor causes unreasonable delay through the freeze upon implementation which it brings about, certain further limitations are placed on its use. These are:
  - (i) any decision may only be called in once.
  - (ii) any recommendation from the Executive to full Council or to the overview and scrutiny committee shall not be subject to the call-in mechanism.
- (b) Whilst every effort will be made to circulate all councillors with such Executive decisions (whether as draft minutes or as an individual "decision records") there may be exceptional circumstances where this proves to be impossible. In such cases:-
  - (i) These procedure rules shall be interpreted so as to ensure that no Executive decision shall be frozen for any longer than the periods described in 15.7
- (c)
  - (i) Whilst the above limits apply to the full call-in mechanism, members may instead request that any decision (and the consequences found to result from it) is subsequently reviewed at a future meeting of the overview and scrutiny committee.
  - (ii) Requests to include such later reviews on a overview and scrutiny committee agenda will be dealt with under paragraph 8.0 above. Such requests will therefore not bring about any freeze upon the implementation of the decision referred to.

#### 15.9 **Call-in and Urgency**

- (a) The call-in procedure set out above shall not apply where the decision is certified under this paragraph as urgent. The factors to be taken into account as to whether a decision is urgent will include whether any delay caused by the call in process would be likely to seriously prejudice the Council's or the public's interests.
- (b) Urgency Certification and Dispute Resolution

Certification will work as follows:-



- (i) The matter must first be identified as being urgent at or before the time the decision is made.
- (ii) The written record of the decision (under paragraph 15.3 above) shall thus state that - in the opinion of the decision making body or person - the decision is an urgent one, and therefore cannot reasonably be subject to call-in.
- (ii) If it is intended that the decision should be carried out immediately after it is taken then the decision-maker must first obtain the agreement of both the chairman of the relevant overview and scrutiny committee - or (in his/her absence the vice-chairman of the relevant overview and scrutiny committee) - and the Leader before that decision is implemented. Such agreement shall be confirmed in writing or e-mail.
- (iv) If the approval of both is given, then the Legal and Democratic Services Manager shall publish a copy of that decision record (in the same manner prescribed under paragraph 15.3). A copy of the decision record shall also be included for information on the next full Council agenda.
- (v) If such approval is refused by either, then those called upon to make that decision under paragraph (iii) above, shall sign and endorse the written record of the decision with his/her reasons for so deciding. This shall be subject to publication and reporting as in (iv) above.
- (vi) Where the Head of Paid Service believes that, in all the circumstances, this rejection is unreasonable and that the interests of the Council are significantly threatened, then s/he may convene a meeting of the chairmen of the relevant overview and scrutiny committee or (in their absence) their vice-chairman - together with the Leader and the Chair of the Co-ordinating Scrutiny Committee. That meeting shall be convened with the minimum legal notice and shall review that rejection. The meeting shall have the power to confirm, modify or overturn that rejection and their decision shall not be subject to any further review but shall be reported to the next ordinary Council meeting for its information.

## 16. OTHER COMMITTEES

- 16.1 the total number of seats which are allocated to each political group bears the same proportion to the number of all the seats as is borne by the number of members of that group to the membership of the Authority;
- 16.2 the number of seats on the ordinary committees of the Authority that are allocated to each political group should bear the same proportion to the total of all the seats on the ordinary committees of the Authority as is borne by the number of members of that group to the membership of the Authority..
- 16.3 Chairmen (including Scrutiny) are similarly pro-rata and nominated by the group leaders. A member of the ruling party cannot be chairman of the Scrutiny committees.
- 16.4 Vice Chairman are elected by the respective committees. A member of the ruling party cannot be vice chairman of the Scrutiny committee
- 16.5 Members of the Executive cannot sit on Scrutiny, Licensing or Planning Committees.
- 16.6 Committee meeting agendas are drawn up by officer and agreed at an agenda setting meeting held before the agenda is issued and attended by the Chairman and Vice Chairman.
- 16.7 At the Annual meeting (Mayor Making) or at such other time as may be appropriate the total size of the committees and their composition will be agreed.