

Constitution – Amendments to the Constitution, Scrutiny Procedure Rules and Voting Rights.

Report of the County Solicitor

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

1. Summary

The Committee is asked to note the remedial action to be taken in updating the Constitution (Scrutiny Procedure Rules) and also future working practices, as outlined in section 5 below, in line with the delegated powers of the Monitoring Officer (Article 15(a)(i)) and in light of recent events and subsequent investigation into the proceedings of the Health and Adult Care Scrutiny Committee.

This Report is intended to update the Procedures Committee on a required amendments to the Constitution (Scrutiny Procedure Rules) and future working practices in relation to Committee Allocation Schedules, in order to provide clarity on voting rights of Co-opted Members serving on Scrutiny Committees. Should any other constitutional issues arise from the aforementioned investigation these will be reported at the meeting.

2. The Issue

The matter of Co-opted voting Members on scrutiny committees came into sharp focus following the Health and Adult Social Care Scrutiny Committee on 25 July 2017. Questions were raised as to the voting power of Councillor Diviani as the Districts representative co-optee. It had been put to the County Solicitor that Councillor Diviani's appointment was flawed. It was argued that the Scrutiny Procedure rules in particular Rule 3.1, "A Scrutiny Committee is entitled to recommend to the Council the co-option of one or more persons as **non-voting** members of the committee" was not followed and further, not only did the Scrutiny Committee itself not appoint Councillor Diviani but if they did then he should have been appointed as a non-voting member.

The County Solicitor has considered this point and whilst on the face of it the argument is very persuasive it is necessary to look more closely at the hierarchy of Rules of Procedures and the actions of the full Council.

The overriding powers in relation to appointments to committees lies within Part 4 Constitution Rules of Procedure for County Council Meetings and Committees (commonly known as the Standing Orders) The Scrutiny Procedure rules lies below. If the Scrutiny Procedure rules are in conflict with the Standing Orders the Standing Orders take precedent.

Standing Order 21 (Appointment and Membership of Committees) states that all committees (including any Statutory Committee) will be appointed by the Council and the Council will decide on the size of each committee and how many voting or non-voting members it will have.

The Constitution also allows that a Scrutiny Committee is entitled to recommend to the Council the co-option of one or more persons as non-voting members of the Committee, but in line with the above, the power to appoint resting with the full Council. The application of rule 21 is effected by the appointments process at the Annual Meeting where Councillor Diviani

was listed as a member of the Health and Adult Social Care Scrutiny Committee. His voting status was not mentioned because it was assumed. For other Committees, members who were not voting members were specifically noted as such. The practice is that a member is voting unless specifically excluded (see paragraph 4 below).

The Council's Constitution is absolutely clear on the voting rights of the Co-opted Members of the Children's Scrutiny Committee, (Scrutiny Procedures Rules – 4.0 the Council's de-facto voting scheme), but neglected to afford the same level of clarity to the District Council Co-optee of the Health and Adult Care Scrutiny Committee, appointed in 2013, replacing 8 non-voting District Council representatives with a single voting representative. In other words, the Constitution was not fully up to date.

3. Legal Position

Under Schedule 1, paragraph 12 Local Government Act 2000, as amended by the Local Government Act 2003 (S115), a local authority in England may permit a co-opted member of an overview and scrutiny committee of the authority to vote at meetings of the committee.

4. Previous Practice

At the Council's Annual Meeting, the Council is asked to approve (amongst other things) that additional Members of Scrutiny Committees, Highways and Traffic Orders Committees, the Standards Committee and the Farms Estate Committee (as outlined in the 'Committee Allocations Schedule') be appointed for the period expiring at the date of the next annual meeting.

In the case of the Health and Adult Care Scrutiny Committee, the schedule reflected the District Council representative and named him accordingly, but gave no detail of his voting rights.

The Schedule has historically been constructed to show that where a member of a Committee is a non-voting member, then that fact is made clear (for example, three members of the Investment and Pension Fund Committee, the non-voting Member of the Devon Pension Board and also Devon Association of Local Council (DALC) representatives on the Highways and Traffic Orders Committees).

It is accepted that it could have been made clearer, whether any Co-opted Member is a voting or non-voting Member of the relevant Committee.

5. Lessons Learned and Way Forward

The County Solicitor accepts the fact the Scrutiny Procedure Rules were not aligned with the Standing Orders and so to ensure its Constitution and Procedures are transparent and democratic and accessible to all wishes to report to the Procedures Committee the following actions;

- a) **Amendments to the Constitution** – will read as follows:

Scrutiny Procedure Rules

2.0 MEMBERSHIP OF SCRUTINY COMMITTEES

2.1 All councillors except **the Chairman of the Council and** members of the Cabinet may be members of a Scrutiny Committee. However, no member may be involved in scrutinising a decision of another committee in which he/she has been directly involved.

3.0 CO-OPTees (Voting Scheme)

3.1 A Scrutiny Committee is entitled to recommend to the Council (which shall appoint committees in accordance with Standing Order 21) the co-option of one or more persons as voting or non-voting members of the Committee.

4.0 OTHER REPRESENTATIVES

4.1 The Children's Scrutiny Committee (or any successor committee dealing with education matters) shall include in its membership the following voting representatives:

- (a) 1 Church of England diocesan representative;
- (b) 1 Roman Catholic diocesan representative; and
- (c) 1 parent governor representative representing primary, secondary and special schools in the county.

who shall vote only on matters relating to the Council's functions as a Local Education Authority and not on other matters considered by the committee although they may remain in the meeting and speak to those other items.

4.2 The Health & Adult Care Committee (or successor committee) shall include in its membership 1 voting representative of City, Borough and District Councils in the administrative County of Devon.

b) Committee Allocation Schedules for Council Annual Meeting:

- i) That future recommendations before the Council will read.....
 - *that in accordance with Standing Order 21 the County Council appoints those Committees, Joint Committees and Working Parties/Panels as shown in the Appendix circulated at the meeting with terms of reference set out in the Council's Constitution or set out therein for the period expiring at the date of the Annual Meeting of the Council in 2018;*
 - *that, as required by section 16(1) of the Local Government and Housing Act 1989, Members of the Council be appointed as voting members to those Committees, Joint Committees, Joint Consultative Committees and Working Parties/Panels referred to at (a) above in accordance with the names notified to the Chief Executive by each of the Political Groups represented on the Council, to give effect to the proposed allocation of seats as between political party groups and set out for the time being in the Appendix circulated at the meeting;*
 - *(c) that, and in accordance with the Council's Scrutiny Procedure Rules, the County Council appoints the total numbers of voting (v) or non-voting (nv) members to those Committees, Joint Committees and Working Parties/Panels referred to (a) above as thus denoted in the Appendix (the Council's voting scheme) circulated at the meeting for the period expiring at the date of the Annual Meeting of the Council in 2018;*
- ii) That the 'Committee Allocations Schedule' will be reflected in line with above denoting voting (v) or non-voting (nv) against every Co-opted Member to be appointed by the Council.
- iii) The provisions in relation to the voting co-optees are outlined in the Scrutiny Procedures Rules which form the Voting Scheme. The Council will refresh that voting scheme as is best practice from time to time, in line with the requirements of the Act.

c) Future Updating of the Constitution:

The Monitoring Officer will undertake to review the Constitution in its entirety within the next three months to ensure its compliance with the Council's current working practices.

6. Financial considerations

No financial implications have been identified.

7. Risk management considerations

In view of the matter being identified and remedial action taken, there are no further risks.

8. Equality, Environmental Impact and Public Health Considerations.

No equality, environmental impact or public health implications have been identified.

JAN SHADBOLT

Electoral Divisions: All

Local Government Act 1972: List of Background Papers:

None

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