

Council – 6 January 2020

Implementing new Scrutiny guidance: Recommendations from the Scrutiny Overview Committee to make amendments to the Constitution

Service: Legal and Democratic Services

Wards: All

1. Aim

Following the publication of the new guidance on overview and scrutiny in May 2019 the Scrutiny Overview Committee (the Committee) has reviewed the requirements and made recommendations on how to implement it. At its last meeting on 25 November 2019 the Committee agreed several recommendations to amend the Constitution to include a new Co-option Scheme and amend Part 4.5 'Overview and Scrutiny Procedure Rules' and the 'Member Code of Conduct' to reflect suggested actions from the guidance.

2. Recommendations

- 2.1 That the draft Co-option Scheme be approved and included in the Constitution as a new protocol;
- 2.2 That the amendments to the Constitution in Part 4.5 'Overview and Scrutiny Procedure Rules' and "Member Code of Conduct' be approved.

3. Report detail – know

- 3.1 New guidance for overview and scrutiny was released by the Ministry for Housing, Communities and Local Government in May 2019. It provides advice for senior leaders, overview and scrutiny committee members and support officers.
- 3.2 This is statutory guidance which all councils 'must have regard' to. This means it does not need to be followed in every detail but that it should be followed unless there is a good reason not to.

Co-option Scheme

- 3.3 The guidance recognises the value that co-opted members and technical advisors can add to the work of scrutiny committees. In order to facilitate this the guidance states that all Local Authorities **must establish a co-option scheme to determine how individuals will be co-opted onto committees.**
- 3.4 This is the only must do in the guidance. Co-option is something which all OSCs can do already. The draft scheme set out in the **Appendix** is recommended for approval as an additional protocol in the Constitution.

Member interests

3.5 The new guidance suggests amending the Member Code of Conduct to manage the following issues:

- To ensure that Cabinet assistants do not sit on scrutiny committees for the portfolios they assist;
- It is strongly recommended that the Chair of a scrutiny committee does not oversee the scrutiny of a relative;
- How to manage the situation where members stand down from the executive and move in a scrutiny role and vice-versa.

3.6 To take these suggestions forward draft amendments to the Constitution are as follows:

(a) **Part 4.5 'Overview and Scrutiny Committee Procedure Rules'** has been amended to clarify the role of Cabinet Assistants:

2. **Membership**

All Councillors, except Members of the Executive, may be members of an Overview and Scrutiny Committee. *Further to this any Members who are appointed to assist individual Cabinet Members in the discharge of their role should not sit on the Overview and Scrutiny Committee that relates to the portfolio they are assisting.* However, no Member may be involved in scrutinising a decision in which he/she has been directly involved.

The membership of each Overview and Scrutiny Committee shall be determined by the Council, taking into account of the provisions to ensure political balance, together with, in the case of a Committee or Working Group, to deal with education matters, education representatives on the basis outlined below.

(b) **Part 5 1 'Members' Code of Conduct'** has been amended to reflect that Members should not scrutinise relatives and additional advice on how to manage situations when Members stand down from the executive and move into a scrutiny role and vice versa:

5.0 Disclosure of interests at Overview and Scrutiny meetings

5.1 If you are the Chair of an Overview and Scrutiny meeting you should not preside over the scrutiny of a relative. Section 28(10) of the Localism Act defines a relative as:

- (a) *a spouse or civil partner,*
- (b) *someone you are living with as husband and wife or as if you were civil partners,*
- (c) *a grandparent,*
- (d) *a lineal descendant of a grandparent,*

- (e) *a parent, sibling or child of a person within paragraph (a) or (b),*
- (f) *the spouse or civil partner of a person within paragraph (c), (d) or (e), or*
- (g) *living with a person within paragraph (c), (d) or (e) as husband and wife or as if they were civil partners.*

5.2 *Scrutiny has a role to play in holding decision makers accountable therefore if you were previously a Cabinet Member you should not scrutinise decisions that were taken when you were a part of the Cabinet. This means you should leave the room during the discussion of the item. This is particularly pertinent upon the initial changing of roles but, depending on the issue, can still have significance after a substantial period of time. A discussion with the Monitoring Officer should be sought if there is an item on an Overview and Scrutiny Committee agenda that you think you may have an interest in.*

4. Decide

The guidance is statutory guidance and all councils 'must have regard' to it. This means it does not need to be followed in every detail but that it should be followed unless there is a good reason not to. The only 'must' do in the guidance is the Co-option Scheme.

5. Respond

5.1 Subject to approval of Members the amendments to the Constitution will contribute to the development of the governance arrangements for Overview and Scrutiny Committees.

5.2 The amendments to the Part 4.5 'Overview and Scrutiny Procedure Rules' and 'Member Code of Conduct' are not mandatory requirements of the guidance so Council could choose not to accept the recommend changes.

6. Review

It is suggested that the SOC review the success or otherwise of the changes proposed in this report in six and 12 months' time.

Background papers

None.

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22 - Co-option scheme for Overview and Scrutiny Committees protocol

1.1 Section 9FA(4) of the Local Government Act 2000 provides the provision for Overview and Scrutiny Committees to appoint co-opted members. Statutory Guidance on Overview and Scrutiny in Local Authorities and Combined Authorities, issued in May 2019, requires all Councils to create a co-option scheme.

1.2 Co-opted Members can provide scrutiny committees with knowledge, experience and skills that has been developed outside of a local authority setting which can inform the work of scrutiny and supplement the role of councillors.

1.2 The purpose of this scheme of co-option is to:

- Formalise the appointment of co-opted Members
- Outline the role and expected contribution of co-opted Members
- Clarify the induction to be provided to co-opted Members and the support and training to be made available
- Provide Overview and Scrutiny Committees with the opportunity to appoint further co-opted Members

2. Statutory Co-opted Members

2.1 In Walsall, there are seven co-opted Members required by statute to sit on the Overview and Scrutiny Committee with responsibility for education: These include:

- Three voting Parent Governor representatives;
- One voting representative from the Church of England diocese
- One voting representative from the Roman Catholic archdiocese;
- Two non-voting co-opted Members to represent primary and secondary school teachers
- Representatives of other faiths or denominations as appropriate.

2.2 The Parent Governor representatives and the arch/diocesan representatives on the Overview and Scrutiny Committees exercising education functions are required by law (The School Standards and Framework Act 1998 for Parent Governors and the Education Act 1996 for Diocesan representatives). The legislation explains that these co-opted Members have full speaking and voting rights for any decisions relating to education and school matters. Parent Governor representatives are elected by the Borough's parent governors, but once co-opted their role is to be an apolitical voice for all parents in the area. The Church of England and Roman Catholic representatives are nominated by the Lichfield Diocese and Archbishop of Birmingham respectively. Co-opted Members have the same rights of access to information as councillors, and are required to comply with the same Code of Conduct.

3. Non-statutory Co-opted Members

- 3.1 In addition to statutory co-opted members, Overview and Scrutiny Committees, and Sub-Committees, can also seek the consent of Council to appoint non-statutory co-opted Members. These non-statutory co-opted Members do not have voting rights and are co-opted at the discretion of Council, following a recommendation from an Overview and Scrutiny Committee. Council can also rescind the appointment if it feels it is necessary.
- 3.2 Overview and Scrutiny Committees, or Sub-Committees, have the power to recommend additional co-opted Members for appointment if they will be beneficial to the committee in carrying out its work. Before recommending the appointment of any additional co-opted Members, the committee, or sub-committee, should demonstrate that it has considered the composition of the local community to ensure it is as representative as possible. An over-representation of any particular specialist area should be avoided and the elected Members of the committee should always have a majority over co-opted Members.
- 3.3 Non-statutory co-opted Members can be appointed by an Overview and Scrutiny Committee to its working groups. These non-statutory co-optees do not have voting rights and co-opted at the discretion of the Overview and Scrutiny Committee which can also rescind the appointment if it feels necessary.
- 3.3 Non-statutory co-opted Members will usually (but not exclusively) be representatives of specific organisations relevant to the work of the scrutiny committee. The appointing Overview and Scrutiny Committee should invite the organisation to make an appropriate nomination, although a vacancy can be advertised more widely if the committee agrees it would be beneficial. Anyone who lives, works (including voluntary work) and/or studies in Walsall is eligible to be a non-statutory co-opted Member, except if they are a Walsall Council Elected Member. In recommending an appointment, the Overview and Scrutiny Committee will be mindful of the potential for any ongoing prejudicial interests between, for example, the co-opted Member's paid employment and the work of the committee.

4. Terms of Office

- 4.1 Co-opted Members will be appointed for a term of office of a municipal year. Towards the end of a term of office, the appointing committee will consider whether that non-statutory co-opted post is still required. If it is, the existing co-opted Member will be asked whether they wish to continue in their role. At this time, the committee may also decide to advertise the vacancy more widely.
- 4.2 Non-statutory co-opted Members can be disqualified during their term of office if they do not attend a meeting of the committee to which they have been co-opted to for six months; or if they are elected as a Member of Walsall Council. If they have been appointed on the basis of representing a particular organisation, then their term of office will also end if they resign or are disqualified from being a Member of that organisation, or if that organisation ceases to exist.

4.3 It is the responsibility of the co-opted Member to inform the Council if a circumstance arises that they believe disqualifies them from continuing in their term of office. Co-opted Members can also resign during their term of office if they feel that they can no longer fulfil the requirements of the role.

5. Powers and responsibilities

5.1 Statutory and non-statutory co-opted Members will:

- Be entitled to speak on any matter that is discussed by the committee to which they have been appointed
- Be encouraged to contribute to the development of the scrutiny work programme and propose agenda items for future meetings
 - Have full voting rights on all education matters (excluding any non-statutory co-opted Members)
 - Be eligible to chair a scrutiny committee, sub-committee or working group
 - Be required to comply with the Members' Code of Conduct and register and declare disclosable pecuniary interests as required
 - Be expected to attend all meetings of the committee to which they have been appointed having read the agenda papers
 - Bring an external perspective to the work of scrutiny by utilising their specialist knowledge and experience
 - Be expected to represent the whole community and not just one sector or viewpoint
 - Act independently of party politics and lobbying interests
 - Be responsible for keeping the organisation or interest they were appointed to represent informed and engaged in scrutiny
 - Be expected to treat other committee Members, officers and external witnesses with respect
 - Be required to recognise that they may encounter sensitive information and to act with discretion

6. Support for Co-opted Members

6.1 All co-opted Members will be provided with a comparable level of support to the elected Members. This will include:

- All agendas and committee reports will be sent to co-opted Members at the same time as elected Members and will comply with the public access to information regulations

- An induction will be provided for new co-opted Members that will outline their expected contribution to scrutiny and familiarise them with the Members' Code of Conduct
- Co-opted Members will be invited to attend Member training sessions that relate to their role on scrutiny
- Co-opted Members will not receive an allowance or salary but will be eligible to claim for travel and sustenance.

7. Why co-opt

Co-option is a way of ensuring that under represented voices are represented on Council committees. The Equality Act 2011 (section 149 places a public sector equality duty (section 146) on the council. The duty requires the Council to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; Having "due regard" to the need to advance equality of opportunity involves having due regard, in particular, to the need to encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.