

CITY COUNCIL - 13 JULY 2009

**JOINT REPORT OF CHAIR OF OVERVIEW AND SCRUTINY AND
THE LEADER**

**REVISIONS TO THE CONSTITUTION - STANDARDS COMMITTEE
TERMS OF REFERENCE AND OVERVIEW AND SCRUTINY CALL-IN
PROCESSES AND COUNCILLOR CALL FOR ACTION**

1 SUMMARY

- 1.1 This report seeks to amend the terms of reference of the Standards Committee to reflect recent changes in the granting of exemptions from political restriction and the Overview and Scrutiny processes for Call-In and Councillor Calls for Action.

2 RECOMMENDATIONS

2.1 IT IS RECOMMENDED:

- (1) that the terms of reference of the Standards Committee are amended to include the following remit:

- ‘Granting and supervising exemptions from political restriction.’

- (2) that the procedures and protocols relating to the Call-In and Councillor Call for Action elements of the Overview and Scrutiny function be amended in accordance with the report.

**3 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES
OF CONSULTATION)**

- 3.1 To comply with the law and refresh Overview and Scrutiny procedures relating to Call-In.

4 BACKGROUND AND PROPOSALS

4.1 Standards Committee

4.1.1 The Local Government and Housing Act 1989 (the Act) defines certain posts within the Council as politically restricted and prohibits officers that occupy a politically restricted post from engaging in certain political activities. Section 3A of the Act allows some postholders to apply for an exemption from the restrictions.

4.1.2 The list of politically restricted posts within the Council is set out in the Red Book and is reviewed and updated annually. It includes the Chief Executive, Chief Officers, Deputy Chief Officers, the Monitoring Officer, Political Assistants, any post where the salary exceeds scp 44 and certain other posts where the duties involve advising committees or speaking to journalists regularly (politically sensitive posts).

4.1.3 Staff that hold a politically restricted post are prohibited from doing certain things such as:

- Announcing an intention to stand for election to the House of Commons, the European Parliament or a local authority;
- Continuing to hold office if they give notice of their resignation in order to stand for election to the House of Commons;
- Acting as an election agent;
- Holding office in a political party if the office is involved with general management of or acting on behalf of the party;
- Canvassing on behalf of a political party; speaking to the public with the apparent intention of affecting support for a political party;
- Publishing or causing to be published written work or other material if intended to affect public support for a political party as opposed to, for example, displaying a poster on private property.

4.1.4 The Act allows a person whose post is classified as politically restricted because the salary level of the post exceeds the threshold set by the Secretary of State (currently scp 44) or because on the face of it the duties of the post fall within section 2(3) of the Act (i.e. politically sensitive duties) to apply for an exemption from political restriction. An exemption must be granted where it is decided that the duties of the post do not in fact fall within Section 2(3) of the Act as set out below.

“(3) The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say –

(a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented or where the authority are operating executive arrangements, to the executive of the authority, to any committee of that executive, or to any member of that executive who is also a member of the authority;

(b) speaking on behalf of the authority on a regular basis to journalists or broadcasters”.

4.1.5 Provisions in the Local Government and Public Involvement in Health Act 2007 have now transferred the function of granting and supervising exemptions from political restriction from an Independent Adjudicator to Local Authority Standards Committees.

4.1.6 Where a post is politically restricted because the salary exceeds the defined threshold (currently scp 44), then an application for exemption must also include a certificate as to whether in the Council’s opinion the post falls within Section 2(3) of the Act. The relevant Corporate Director will be responsible for providing the certificate of opinion if requested. Although the certificate of opinion is evidence that the Committee should consider, it is not on its own determinative of the matter and the Committee must reach its own conclusion.

- 4.1.7 In addition to granting exemptions from political restriction the Act also provides for any person to make an application to the Committee to have a post added to the list of politically restricted posts.
- 4.1.8 It is proposed that the terms of reference of the Standards Committee are amended to include the function of granting and supervising exemptions from political restriction. Members are advised that this change is unlikely to have any significant effect as applications for exemption from political restriction are very rare.

4.2 Overview and Scrutiny Call-In Processes

- 4.2.1 In May 2008 Professor Steve Leach published the outcomes of his review of Overview and Scrutiny in Nottingham. Part of the review examined the operation of call-in provisions. To date there has not been a single call-in in Nottingham, a situation that is highly unusual amongst all local authorities.
- 4.2.2 Professor Leach recommended that changes be made to the call-in provisions in order to simplify the process. His recommendations have been considered and accepted by the Overview and Scrutiny Committee which agreed to take them forward. This report seeks the necessary changes to the Constitution to change the call-in provisions.

Current call-in provisions

- 4.2.3 The current Overview and Scrutiny Procedure Rules contained within the Constitution state that the following conditions must be met for a call-in to be invoked:

“Within five working days of publication of an executive decision, five councillors (who must include members of more than one political group) may request reconsideration of that decision (call-in). The request must:-

- relate to a decision likely to result in expenditure which is, or savings that are, above a figure to be determined by the Council (currently £25,000).

- be in writing
- be signed by the members concerned
- identify factors not addressed by the decision-maker
- name a member to present the request at the meeting of the committee
- be submitted to the Deputy chief Executive/Corporate Director of Resources for consideration by the Overview and Scrutiny Committee.”

4.2.4 Having considered the provisions, Professor Leach made the following comment on the arrangements for call-in in Nottingham:

“The perception of marginalisation amongst opposition groups is not helped by the regulations governing call-in, which mean that it is exceedingly difficult for opposition members (or indeed anyone) to deploy this mechanism. Call-in, if used responsibly is a healthy democratic safeguard which does not represent a ‘failure of the system’ but should be viewed as a positive example of accountability in action. Its total absence in Nottingham in recent years is a cause for concern, not celebration.”

Proposed Amendments

4.2.5 It is proposed that the call-in provisions in the Constitution are amended in response to a recommendation made by Professor Steve Leach in his review.

4.2.6 Based upon the recommendations for addressing these issues the Overview and Scrutiny Committee agreed, at its meeting of 12 March, to propose amendments to the call-in provisions to Council for consideration. These are:

- “Any three non-Executive councillors may invoke a call-in of an Executive decision.
- Requests for call-in must be made within 5 working days of publication of the decision.
- Any decision made by the Executive Board, a Member of the Executive or a committee of the Executive shall be subject to call-in.

- The request for a call-in should be in writing, signed the three councillors requesting the call-in and be based on one or more of the following reasons, details of which should be given:-
 - decision outside the policy/budgetary framework;
 - inadequate consultation relating to the decision;
 - relevant information not considered;
 - viable alternatives not considered;
 - justification for the decision open to challenge on the basis of evidence considered.
 - The Head of Overview and Scrutiny shall be responsible for assessing the validity of call-ins, in consultation with the Director for Performance and Scrutiny in cases of doubt and, where doubt still remains, with the Director for Legal and Democratic Services.
 - The Overview and Scrutiny Committee or the Call-In Sub-Committee shall be responsible for determining whether a call-in be referred back to the decision maker or, in certain cases, to Council.”

4.2.7 It is recommended that Council agree to delete the existing provisions for call-in as outlined in paragraph 4.2.3 and replace them with the revised wording suggested in paragraph 4.2.6.

4.3 Councillor Call for Action

4.3.1 It is proposed that the Overview and Scrutiny Procedure Rules are amended to include reference to the arrangements made for managing the process of Councillor Call for Action (CCfA).

4.3.2 CCfA was introduced as part of the Local Government and Public Involvement in Health Act 2007 and came into force on 1 April 2009. CCfA provides councillors with an additional method of resolving issues of concern within their local areas. It enables any Member of the Council to refer an issue to an overview and scrutiny committee, provided he or she has exhausted other means of resolving the issue locally.

4.3.3 CCfAs will relate to services for which the local authority is responsible, termed a “local government matter”, except in the case of crime and disorder issues.

4.3.4 For these purposes a “local government matter” is one which:-

- Relates to the discharge of any function of the authority;
- Affects all or part of the electoral area for which the referring councillor is elected or any person who lives or works in that area; **and**
- Is not an excluded matter.

4.3.5 Excluded matters are those which relate to planning or licensing applications, or matters deemed to be vexatious, persistent, unreasonable or discriminatory.

4.3.6 Under the Police and Justice Act 2006, CCfAs regarding crime and disorder issues were given separate provision. However, both CCfAs have been amalgamated into one process and therefore both will be treated in the same way. Crime and disorder CCfAs are likely to be referred to the Community Wellbeing Select Committee as the select committee responsible for overview and scrutiny of those matters.

4.3.7 In response to the legislation outlined above a protocol outlining how the CCfA process will be managed in Nottingham has been agreed by Area Committee Chairs and the Overview and Scrutiny Committee. The protocol is attached as an Appendix to this report.

4.3.8 It is recommended that Council agree to incorporate the Protocol attached in the Appendix to this report into the Overview and Scrutiny Procedure Rules.

5 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

5.1 There are no direct financial implications arising from this report.

6 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

6.1 None.

7 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

The Local Government and Public Involvement in Health Act 2007
The Local Government and Housing Act 1989
Nottingham City Council's Constitution
Red Book Section C.7F – Politically restricted posts
Review of Overview and Scrutiny in Nottingham,
Professor S Leach (May 2008)

**COUNCILLOR EMMA DEWINTON
CHAIR, OVERVIEW AND SCRUTINY**

**COUNCILLOR JON COLLINS
LEADER OF THE COUNCIL**

COUNCILLOR CALLS FOR ACTION

The Local Government and Public Involvement in Health Act 2007 provides for any councillor to refer to an overview and scrutiny committee any local government matter of concern relating to the area she or he has been elected to, which is relevant to the functions of the committee. The matter is then to be included on an overview and scrutiny agenda for discussion at a meeting.

This will be the ultimate destination for items referred to as Councillor Calls for Action: these will relate to services for which the local authority is responsible, termed a “local government matter”, except in the case of crime and disorder issues.

For these purposes a “local government matter” is one which:-

- Relates to the discharge of any function of the authority;
- Affects all or part of the electoral area for which the referring councillor is elected or any person who lives or works in that area; **and**
- Is not an excluded matter.

Under the Police and Justice Act 2006, referrals regarding crime and disorder issues were given separate provision. However, both calls for action were subsequently amalgamated into one process. So, in effect, calls for action relating to crime and disorder issues will be treated in the same way as local authority matters. Crime and disorder issues are likely to be referred to the overview and scrutiny committee responsible for the overview and scrutiny of those matters (the Community Wellbeing Select Committee).

Managing calls for action in Nottingham

Before making a call for action referral to Overview and Scrutiny the councillor must have tried to resolve the issue or problem her/himself. This would include using resources at an area/ward level. In pursuit of resolving the matter, the ward councillor should:-

- § Request the assistance of area or neighbourhood officers who have responsibility to support local councillors;
- § This may lead to action being requested by the department responsible for the service or issue;

- § If still unsuccessful the councillor may refer the matter to his/her area committee which may have powers to deal with the matter; **or**, in view of the two monthly cycle of area committee meetings and the possibility of causing undue delay, explore other possible means to resolve the issue with the Area Committee Chair;
- § In the case of crime and disorder issues, with support from the appropriate City Council officer, request the responsible authority (as defined in the Police and Justice Act 2006) to take appropriate action on the matter, having been assured of the evidence available regarding the problem.

If the problem is still not resolvable, the councillor can refer it to the Overview and Scrutiny Committee (or in the case of Crime and Disorder issues, to the Community Wellbeing Select Committee), which will determine what, if any, action within its powers may be taken.

On receiving the referral, the Overview and Scrutiny Committee (or the Community Wellbeing Select Committee) will decide whether or not to carry out further scrutiny work on the matter after considering:-

- Whether the referral is valid. In cases of doubt, the Head of Overview and Scrutiny, in consultation with the Director of Performance and Scrutiny and, where doubt still remains, the Director of Legal and Democratic Services will assess the validity of the referral;
- Whether the referring member has any further powers in relation to the matter; **and**
- Representations made by the referring member on why it would be appropriate for the committee or one of the select committees to exercise their powers.

Action by the Overview and Scrutiny Committee may be to refer it to the appropriate Select Committee for scrutiny activity or the Committee may consider establishing a Task and Finish Panel to undertake a review. The Community Wellbeing Select Committee may decide to undertake a review itself.

The Overview and Scrutiny Committee or a Select Committee may, on hearing the information relating to the referral or making further enquiries, determine that there is a policy or service provision gap. In this case, the action may be to recommend to the Executive Board or responsible authority (as defined by the Police and Justice Act 2006) that policy or service provision be made to cover the issues raised by the call for action.

The Overview and Scrutiny Committee will inform the councillor what work, if any, it has chosen to undertake and, if it has chosen not to undertake any work, the reasons why. It must also provide the councillor with any reports or recommendations which are subsequently made on the matter and the response made to these by the Executive Board or responsible authority.