

Committee Model Working Group

24 February 2023



Report of: Director – Legal and Democratic Services

Title: Scrutiny arrangements under the Committee Model of governance

Ward: All

Officer Presenting Report: Director – Legal and Democratic Services

Recommendations:

That the Committee Model Working Group considers and makes recommendations in respect of the matters raised in this report.

The significant issues in the report are:

This report sets out a number of options for the Working Group to consider relating to the discharge of scrutiny functions under the Committee Model of governance.



1. Summary

As part of the preparations for the Committee Model of governance, there are a number of detailed matters that the Working Group needs to consider, which are part of the Work Programme for the Working Group during 2023.

This report considers the options for a scrutiny function under the Committee Model of governance.

The Working Group will need to make recommendations about the matters raised in this report. Those recommendations, together with recommendations from other meetings of the Working Group, will be reported to Full Council in due course, where a final decision will be taken regarding the arrangements for the Committee Model of governance.

2. Scrutiny arrangements under the Committee Model of governance

Under the Committee Model of governance, the Council could, but is not required to, have an Overview and Scrutiny Committee and it is for the Council to determine what style of scrutiny arrangements it would like to put in place.

There are different options for establishing scrutiny arrangements, including formal scrutiny through committees established to discharge scrutiny functions and ‘task and finish’ style sub-committees that could undertake policy development work that stops short of formal overview and scrutiny. Alternatively, the Council may decide that it does not want to put in place committees with scrutiny functions and instead will rely on the scrutiny of decisions as part of the decision-making process within policy committees.

Whichever model of scrutiny the Council decides to adopt, it should be recognised that the Council must have arrangements in place to undertake scrutiny of health, community safety partnerships and flood risk management/coastal erosion risk management functions. More details can be found in paragraph 3.

3. Legal and Constitutional matters

The Legal and Constitutional matters raised by this report are as follows.

Overview and scrutiny committees were first introduced by the Local Government Act 2000 as part of executive governance arrangements to ensure that members of an authority who were not part of the executive could hold the executive to account for the decisions and actions that affect their communities. Subsequently, the Localism Act 2011 amended the Local Government Act 2000 to allow councils to incorporate overview and scrutiny arrangements as part of a change to the committee model of governance. Councils who operate the committee model of governance are not required to have overview and scrutiny arrangements, but may do so if they wish.

If the Council decided to formally set up overview and scrutiny arrangements as part of the committee model of governance, then provision is made under section 9JA of the Local Government Act 2000 to enable the Council to establish one or more overview and scrutiny committees.

Where the Council resolves to establish one or more overview and scrutiny committees, the arrangements for how the committees should function and their responsibilities are set out in Regulations 4-10 of the Local Authorities (Committee System) (England) Regulations 2012. Those functions and responsibilities, which are not dissimilar to current arrangements, include the following:

- a. to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions of the authority;
- b. to make reports or recommendations with respect to the discharge of any functions of the local authority or on matters which affect the authority's area or the inhabitants of that area;
- c. in reviewing or scrutinising a decision that has not yet been implemented to recommend that the decision be reconsidered by the person who made it;
- d. to establish sub-committees;
- e. to require members and officers to attend the committee to answer questions and also to invite other persons to attend;
- f. to enable members of the Council to refer matters to an overview and scrutiny committee;
- g. the Council must designate one of its officers as its Statutory Scrutiny Officer.

The 2012 Regulations also contain specific provisions relating to co-opted members of overview and scrutiny committees and membership of education overview and scrutiny committees.

Notwithstanding the preceding paragraphs, it should be noted that there are certain scrutiny functions that will need to be discharged by the Council irrespective of whether the Council decides to establish overview and scrutiny committees or not. The Council must ensure that arrangements are in place to enable the effective scrutiny of health functions, community safety partnerships and flood/coastal erosion risk management functions.

Sections 244 and 245 of the National Health Service Act 2006 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 set out the arrangements that the Council needs to have in place to undertake health scrutiny. These functions are currently discharged by the Health Scrutiny Sub-committee of the People Scrutiny Commission.

Section 19 of the Police and Justice Act 2006 requires local authorities to have a crime and disorder committee with power to scrutinise the decisions and actions of the Community Safety Partnership in their area and to make reports and recommendations to the local authority and the Partnership. The Crime and Disorder (Overview and Scrutiny) Regulations 2009 require Local Authorities to scrutinise CSPs at least once a year. This function is currently discharged by the Communities Scrutiny Commission.

Section 9JB of the Local Government Act 2000 requires the Council, as a lead local flood authority, to review and scrutinise the exercise by risk management authorities (e.g., Environment Agency, Water Companies etc. as defined in s.6(13) of the Flood and Water Management Act 2000) of (a) flood risk management functions, or (b) coastal erosion risk management functions, which may affect the local authority's area. This function is currently discharged by the Growth and Regeneration Scrutiny Commission.

Part 4 of the Council’s Constitution includes the Scrutiny Procedure Rules, and these rules would need to be updated to reflect any new arrangements for scrutiny.

4. Matters for the Working Group to consider

The Working Group should consider the following matters as part of the preparation for the Committee Model of governance.

There are 3 potential options for scrutiny under the Committee Model of governance. It should be noted that these options are not mutually exclusive, and it would be possible to reflect all of these options in the governance arrangements for the Committee Model.

Formal scrutiny arrangements

The first option is to put in place scrutiny arrangements that follow the requirements of Regulations 4-10 of the Local Authorities (Committee System) (England) Regulations 2012, details of which are set out above. Under this option the Council would need to determine whether the scrutiny of decisions is reserved to only one committee or whether there are a number of scrutiny committees with responsibility for scrutinising different areas of Council business.

Task and Finish – Budget/Policy development

The second option is to make provision for policy committees to establish ‘Task and finish’ style sub-committees which would be responsible for budget/policy development. Alternatively, if the Council decided to establish formal scrutiny arrangements, then scrutiny committees could be given the responsibility for budget/policy development.

Scrutiny of health functions, CSPs and flood risk management/coastal erosion risk management functions

The third option is to consider the most appropriate way to discharge the Council’s legal duty to scrutinise health, community safety partnerships and flood risk management/coastal erosion risk management functions. The scrutiny of these functions could be carried out by one or more of the policy committees. Alternatively, if the Council decided to establish formal scrutiny arrangements, then scrutiny committees could be given the responsibility for the scrutiny of these matters.

To summarise, the Working Group may wish to frame the discussion of the above matters around the following questions:

- a. Should the Council establish formal overview and scrutiny arrangements? If the Council establishes formal overview and scrutiny arrangements how many overview and scrutiny committees will the Council have and what functions will each committee be responsible for scrutinising?
- b. If the Council establishes formal overview and scrutiny arrangements, is the preference to have one overview and scrutiny committee or multiple overview and scrutiny committees aligned to the policy committees?

- c. Should the Council make provision for policy committees and/or scrutiny committees to establish 'Task and Finish' style sub-committees and/or informal Working Groups and/or Inquiry Days with responsibility for budget/policy development?
- d. How will budget development be carried out, for example through 'Task and Finish' sub-committees or a Working Group?
- e. Will the scrutiny of health functions, community safety partnerships and flood risk/coastal erosion risk management functions be carried out by policy committees or scrutiny committees?
- f. What will be the approach to post decision scrutiny or 'calling in' decisions i.e., will requests be taken to a Scrutiny Committee or somewhere else, such as Full Council.
- g. Will the review of risk and performance reports be undertaken by a scrutiny committee or policy committee?

Appendices:

None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None