

SECTION 5 - OVERVIEW AND SCRUTINY PROCEDURE RULES

1. The number and arrangement for Scrutiny Committees

The number and terms of reference of Scrutiny Committees will be agreed by Council. The Council has agreed to establish a Scrutiny Committee and a Policy Overview Committee at its meeting on 24th June 2009. (Minute No. 112/6/09)

The Terms of Reference of the Scrutiny and Policy Overview Committees are attached as Appendix 1. The Policy Overview Committee may from time to time appoint task and finish groups to assist with their reviews. Such groups may comprise of any non-Executive Members on the Council

The Council also agreed the Guiding Principles of Overview and Scrutiny and these are attached as Appendix 2.

A procedure for agreement of final Scrutiny/Policy Overview Reports is attached as Appendix 3.

2. Who may sit on a Scrutiny/Policy Overview Committee

All Councillors, except Members of the Executive, may be appointed as Members of a Scrutiny Committee. However, no Member may be involved in scrutinising a decision in which he/she has been directly involved.

3. Co-optees

The Scrutiny/Policy Overview Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees on an ad-hoc basis.

A Scrutiny/Policy Overview Committee may invite people other than those people referred to in the above paragraph to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and shall invite such people to attend.

Attendance is, of course, entirely optional.

4. Meetings of the Overview and Scrutiny Committees

The number of ordinary meetings of the Scrutiny Committees will be determined by Annual Council at the beginning of the Civic year. In addition, extraordinary meetings may be called from time to time as and when appropriate. A Scrutiny Committee meeting may be called by the Chairman of the Scrutiny Committee, by any five Members of the Committee or by the proper officer if he/she considers it necessary or appropriate.

5. Quorum

The quorum of the Scrutiny and Policy Overview Committees shall be set out as for committees in the Council Procedure Rules in Part 4 of this Constitution.

6. Election of Chairman

If one political group has a majority of Members on the Executive then the Chairmen of the Scrutiny Committees will be Councillors who are not Members of the political group which has a majority on the Executive.

7. Work Programme

(1) The Scrutiny/Policy Overview Committees will be responsible for setting their own work programme and in doing so they shall take into account wishes of Members on that Committee who are not Members of the largest political group on the Council.

8. Agenda Items

Any Member of a Scrutiny/Policy Overview Committee shall be entitled to give notice to the proper officer that he/she wishes an item relevant to the functions of the Committee to be included on the Agenda for the next available meeting of the Committee. On receipt of such a request the proper officer will ensure that it is included on the next available agenda.

Any Member of the Council who is not a member of the Scrutiny Committee may give written notice to the proper officer that they wish an item to be included on the Agenda of the relevant Committee. If the proper officer receives such a notification, then he will include the item on the first available Agenda of the relevant Committee.

The Scrutiny/Policy Overview Committee shall also respond, as soon as their work programme permits, to requests from the Council and, if it considers it appropriate, the Executive, to review particular areas of Council activity. Where they do so, the Scrutiny/Policy Overview Committees shall report their findings and any recommendations back to the Executive and/or Council. The Executive and/or Council shall consider the report of the Scrutiny Committee within one month of receiving it.

9. Policy review and development

The role of the scrutiny 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.

In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, the Scrutiny and Policy Overview Committee may make proposals to the Executive.

Scrutiny Committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisors and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisors, assessors and witnesses a reasonable fee and expenses for doing so (subject to budgetary provision).

10. Reports from Scrutiny and Policy Overview Committees

Once it has formed recommendations on proposals for development, the Scrutiny /Policy Overview Committee will prepare a formal report and submit it to the proper officer for consideration by the Executive. The report from the Scrutiny Committee will have been subject to the agreed protocol which gives the witnesses and portfolio holders' opportunities to include their comments within the report.

If a Scrutiny Committee cannot agree on one single final report to the Executive, then up to one minority report may be prepared and submitted for consideration by the Council or Executive with the majority report.

The Executive shall consider the report of the Scrutiny Committee as soon as is convenient, and in any event no more than two months of it being submitted to the proper officer.

11. Making sure that Scrutiny Committee reports are considered by the Executive

The reports will be included on the agenda for Executive meetings under the heading 'Scrutiny Committee Reports'. The reports of the Scrutiny Committees referred to the Executive shall be included at this point in the agenda (unless they have been considered in the context of the Executive's deliberations on a substantive item on the agenda) within two months of the Scrutiny Committee completing its reports/recommendations.

Recommendations from the Executive, together with the recommendations from the Scrutiny Committee, may be considered at the next full Council.

Scrutiny Committees will in any event have access to the Executive's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from a Scrutiny Committee following a consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Executive's consultation process in relation to any key decision.

12. Rights of Scrutiny Committee Members to documents

Rights to copies

(1) Subject to paragraph (2) below, a Scrutiny Committee (including its Review Groups) will be entitled to copies of any document which is in the possession or control of the Executive or its Committees and which contains material relating to:-

(a) any business transacted at a public or private meeting of the Executive or its Committees; or

(b) any decision taken by an individual Member of the Executive.

(c) the Members of the relevant Scrutiny Committees are entitled to sight of papers in relation to private decisions of the Executive before the decision is made.

Limit on rights

(2) A Scrutiny Committee will not be entitled to:

(a) any document that is in draft form; or

(b) the advice of a political adviser.

13. Members and Officers giving account

(a) The Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any (other) member of the Executive, the head of paid service and/or any senior officer to attend before it to explain in relation to matters within their remit::

i) any particular decision or series of decisions;

ii) the extent to which the actions taken implement Council policy; and/or

iii) their performance.

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

(Where any Member or officer is required to attend a Scrutiny Committee under this provision, the Chair of the Committee will inform the proper officer. The proper officer 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 preparation of that documentation.

Where, in exceptional circumstances, the Member or officer is unable to attend on the required date, then the Scrutiny Committee shall in consultation with the Member or officer arrange an alternative date for attendance [to take place within a maximum of 5 days from the date of the original request).

14. Attendance by others

A Scrutiny/Policy Overview Committee may invite people other than those people referred to in paragraph 14 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend. Attendance is of course entirely optional.

15. Call-in

(Except decisions outside the budget or policy framework which are set out in the Budget and Policy Framework Procedure Rules)

When a decision is made by the Executive, an individual Member of the Executive or a Committee of the Executive, or a key decision is made by an officer with delegated authority from the Executive, or an Area Forum or under joint arrangements, the decision shall be published, including, where possible, by electronic means, and shall be available at the main offices of the Council normally within four working days of being made. Members of all Scrutiny Committees will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.

That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless it is called in.

During that period, the proper officer shall call-in a decision for scrutiny by the Committee if so requested by the Chairman of the Scrutiny Committee, or in his absence, the Vice-Chairman, or any five non Executive Members and shall then notify the decision-taker of the call-in. Requests to call-in a decision should be made in writing accompanied by specific reasons. He shall call a meeting of the Committee on such date as he may determine, where possible after consultation with the Chairman of the Committee, and in any case within five working days of the decision to call-in. (Minute Nos. 65(ii)/6/01 and 675(2)(i)/12/01).

If, having considered the decision, the Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns. If referred to the decision maker, they shall then reconsider within a further five working days, amending the decision or not, before adopting a final decision.

If, following an objection to the decision, the Scrutiny Committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the Scrutiny Committee meeting, or the expiry of that further five working day period, whichever is the earlier.

16. Call - in procedure and urgency

The call-in procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would, for example – seriously prejudice the Council's or the public's interests. The record of the decision and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Mayor must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Mayor, the Deputy Mayor's consent shall be required. In the absence of both, the head of paid service or his nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

17. The Party Whip

Definition

“Any instruction given by or on behalf of a political group to any Councillor who is a Member of that group as to how that Councillor shall speak or vote on any matter before the Council or any Committee or Sub-Committee, or the application or threat to apply any sanction by the group in respect of that Councillor should he speak or vote in any particular manner.”

When considering any matter in respect of which a Member of a Scrutiny Committee is subject to a party whip, the Member must declare the existence of the whip, and the nature of it before the commencement of the Committee's deliberations on the matter.

The declaration, and the detail of the whipping arrangements, shall be recorded in the Minutes of the meeting.

17. Procedure at Scrutiny/Policy Overview Committee meetings

(a) Scrutiny/Policy Overview Committees shall consider the following business:

- i) Minutes of the last meeting;
- ii) declarations of interest (including whipping declarations);
- iii) consideration of any matter referred to the Committee for a decision in relation to call in of a decision;
- iv) responses of the Executive to reports of the Scrutiny/Policy Overview Committee; and
- v) the business otherwise set out on the Agenda for the meeting.

(b) Where the Scrutiny/Policy Overview Committee conducts investigations (e.g. with a view to policy development), the Committee may also ask people to attend to give evidence at Committee meetings which are to be conducted in accordance with the following principles:

- i) that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- ii) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
- iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

(c) Following any investigation or review, the Committee shall prepare a report, for submission to the Executive and/or Council as appropriate and shall make its report and findings public.

18. Matters within the remit of more than one Scrutiny Committee

Where a Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Scrutiny Committee, then the Chairman shall agree which Committee will consider it. The Committee conducting the review shall invite the Chair of the other Committee (or his/her nominee) to attend its meetings when the matter is being reviewed. Other Members of that Committee may also attend if they wish.

TERMS OF REFERENCE

Scrutiny Committee

1. To hold the Executive to account by scrutinising decisions:
 - (a) which the Executive is planning to take (the Forward Plan);
 - (b) before they are implemented (Call-in);
 - (c) after they are implemented; and
 - (d) reviewing the performance of the Executive, senior officers, and as appropriate, partners.
2. Scrutiny of the preparation of the Council's annual budget and to review and scrutinise the Council's performance in relation to budgetary management.
3. To scrutinise and monitor the Council's performance and recommend improvement.
4. To review overall progress towards programmed objectives.
5. To review the standards and effectiveness of the services provided by the Council.
6. To review and where necessary to recommend the improvement of management and operational methods to ensure that they are effective in meeting the Council's objectives.
7. To consider the administration aspects of Swale Borough Council and monitor communication methods with the public, including customer services.
8. Scrutiny of the development, review and application of the Council's policies, complaints systems and procedures.

Policy Overview Committee

1. Assist the Council and the Executive in the development of its budget and policy framework by in depth analysis of policy issues.
2. Conduct research with the community and other consultation in the analysis of policy issues and possible options.
3. Consider and implement mechanisms to encourage and enhance community participation in the development of policy options.
4. Liaise with other external organisations operating in the area, whether national, regional or local to ensure that the interests of local people are enhanced by collaborative working.

The Guiding Principles of Overview and Scrutiny

The key local principles forming the foundation of the overview and scrutiny function at Swale Borough Council are as follows:

1. The focus for scrutiny must be based upon the achievement of outcomes rather than upon process and procedures in order to develop a function that can make a real difference to the Council and the borough.
2. That Overview and Scrutiny be positive, objective and constructive, seeking to add value to any service that it considers. Scrutiny should acknowledge good practice where found and recommend improvements where necessary.
3. It is essential that the Council has an active and challenging scrutiny function that reflects corporate priorities regarding the provision of services.

The Four Principles of Good Scrutiny

As a matter of good practice, the Overview and Scrutiny function at Swale Borough Council incorporates the Four Principles outlined by the Centre for Public Scrutiny in all its work.

“To provide a ‘critical friend’ challenge to executive policy-makers and decision-makers”

- Clarity of purpose
- Constructive, robust and purposeful challenge
- A constructive working relationship with Executive, colleagues including external bodies
- Be open, transparent and inclusive in its actions

“Enable the voice and concerns of the public and its community”

- Ensuring an ongoing dialogue with the public to create an ‘accountability relationship’
- Representing and engaging diverse communities and addressing inequalities where they exist in the borough
- Promoting public understanding of the scrutiny role

“Independent minded governors’ should lead and own the scrutiny process”

- Champions of the value and potential for good public scrutiny as the vehicle for public accountability
- Active engagement of non-executive members in a scrutiny role
- Ensure adequate public accountability and community leadership

“Drive improvement in public services”

- Promote community wellbeing and improve the quality of life
- Harness public concern as a lever for addressing wider issues
- Co-ordinate reviews of policy and service performance in line with strategic objectives.

Procedure for finalising Scrutiny reports

(as agreed by Minute No. 34/5/07 and 137/6/07) amended to reflect change from Review Groups to Task and Finish Groups).

- (1) That, following each Task and Finish Group Meeting, Co-ordinators update the next Panel meeting in writing.
- (2) That, where witnesses do not attend, they be given the opportunity to comment on the factual and other content of the draft report, on matters relating to their organisation. Written confirmation must be received, even if it is no comment.
- (3) That it be made clear to witnesses the nature of comments required and that their comments will be included within the report.
- (4) That the relevant Executive Member(s) be asked for their comments on the draft report.
- (5) That, where approval of the final report needs to be made outside of a meeting (for example via e-mail), Panel Members respond via Democratic Services.
- (6) That the use of a backstop date is adopted for all comments; for example, if no reply is received within five working days then this would be taken to mean no comment. This is to apply for Panel Members, Executive Members and witnesses.
- (7) That the order of approval be completed as follows:
 - Draft report to Scrutiny Panel
 - Draft report to Witnesses/Executive Member for comments
 - Draft report to Panel for final approval
 - Final report to Executive