

Report to: Executive Board - Monday 19th August 2002

Substitutes at Meetings of the Council's Overview & Scrutiny Committees

<p>Report of: Legal Services Business Manager</p> <p>Report Author: Emma Griffiths Legal Services Business Unit</p> <p>Lead Member Responsible: Cllr. Bill Baker</p> <p>Overview and Scrutiny Committee Responsibility: Finance and Performance Management</p> <p>Key Decision: No</p>	<p>WARDS AFFECTED All</p>
<p>SUMMARY AND RECOMMENDATIONS</p> <p>This report sets out the basis on which the Council can ensure that alternative members can attend meetings of its Overview and Scrutiny Committees as substitutes if the permanent members of those committees are unable to attend.</p> <p>The report contains no financial or staffing implications.</p> <p>The Executive Board is recommended to:-</p> <ul style="list-style-type: none"> • recommend Council to agree a change to the Constitution by replacing the words "Substitutes will not be permitted" (in paragraph 2 on Page 139 of the Constitution - Overview and Scrutiny Procedure Rules) with the scheme of substitution for its Overview and Scrutiny Committees set out in paragraphs 5 - 8 of the report; • to recommend Council to agree a list of named substitutes for each Overview and Scrutiny Committee; and • to recommend Council to rescind the named substitutes that were appointed to the Finance and Performance Management Overview and Scrutiny Committee at the Annual Council Meeting. 	

Background

1. The Constitution in its current form does not allow for substitute members to attend Overview and Scrutiny Committees. This could cause difficulties in achieving the minimum levels required for the

meetings to be quorate. In order to allow alternative (substitute) members to attend Overview and Scrutiny Committee meetings whenever the permanent members of those committees are unable to attend a change must be made to the Constitution.

Rules on Substitution

2. Sections 101 and 102 of the Local Government Act 1972 place responsibility for appointing members to committees with Council as a whole. The legal basis for the attendance of substitute members at committee meetings has been the subject of debate for many years and a definitive view has not been taken by central government. Nevertheless it is widespread practice in local government in one form or another and it is reasonable to conclude that a power to appoint includes a power to make conditional appointment i.e. a substitute for a member who cannot attend.
3. Local Authorities can consider the appointment of substitute members to their Committees other than Area Committees. The Local Government Act 2000 does not allow for substitute or co-opted members to the Executive Board.
4. For each committee or sub-committee the Council can appoint substitute members to those committees and should do so in compliance with the principles of political balance. This is best achieved by appointing the same number of substitutes for each Overview and Scrutiny Committee as there are permanent members.

Powers and duties of substitutes

5. Substitute members will have all the powers and duties of any ordinary member of the committee but will not be able to exercise any special powers or duties exercisable by the person that they are substituting.
6. Substitutes may attend meetings in that capacity:
 - (i) to take the place of the ordinary member for whom they are the substituting;
 - (ii) where the ordinary member will be absent for the whole of the meeting;
 - (iii) at any subsequent meeting (including any adjournment) at which the investigation will be considered;
 - (iv) for discrete investigations;
 - (v) after notifying the Proper Officer (the Head of the Paid Service) before the meeting of the intended substitution.
7. No member may participate in an investigation unless they have been involved in that investigation from the beginning.

8. Substitutes members of Overview and Scrutiny Committees may not be substituted.

THIS REPORT HAS BEEN SEEN AND APPROVED BY THE PORTFOLIO
HOLDER AND THE MONITORING OFFICER

Background papers:

New Council Constitutions - Modular Constitutions for English Authorities

DETR December 2000

New Council Constitutions Guidance - DETR