



# CONSTITUTION OF THE COUNCIL

## Part 4 Section 4

### RECONSIDERATION AND SCRUTINY PROCEDURE RULES

#### A. REMOVAL OF DELEGATION FOR RECONSIDERATION (Policy and Resources Committee to re-consider a decision)

##### 1. Overview

As set out in Article 7.3 (Removal of delegation) at Part 2 of this Constitution, a majority of the members of the Policy and Resources Committee may request that a decision taken by one of the other Policy and Service Committees, or of a Key Decision taken by an officer acting under delegated authority from a Committee, is re-considered by the Policy and Resources Committee.

The effect of this process is to remove delegated authority from the Committee or officer in respect of that item of business, so that the decision is nullified, allowing the Policy and Resources Committee to confirm, refer back or make the decision afresh under this procedure.

Due to the costs and delay caused by reconsidering a decision, it is intended that it should only be used in exceptional circumstances. It is therefore subject to safeguards concerning:

- (i) the number of members required to make a valid request;
- (ii) the timescale in which a request must be made; and
- (iii) criteria for acceptable reasons to make a valid request

before the delegated authority is removed and the item of business referred to the next meeting of the Policy and Resources Committee

##### 2. Process

Members of the Policy and Resources Committee may initiate a reconsideration of a decision taken by another Policy and Services Committee, or of a Key Decision taken by an officer acting under delegated authority from one of those committees, by a meeting of the Policy and Resources Committee. This process will not apply to decisions made in the circumstances set out at paragraph 6 below.

A request for a reconsideration of an item of business must be made in writing (which may be by email) to the Monitoring Officer or Chief Executive and be made:

- (i) before the expiry of three full working days from the date on which the decision notice was published;
- (ii) supported or signed by half or more of the appointed (not substitute) members of the Policy and Resources Committee; and
- (iii) setting out why the request meets the criteria for reconsideration.

### 3. **Criteria**

Such a request must be received by the Monitoring Officer or Chief Executive and must set out at least one of the following grounds in support, explaining why the decision is or might reasonably be felt to be:

- (a) a key decision but not treated as such;
- (b) inadequate consultation with stakeholders prior to the decision;
- (c) inadequate evidence on which to base a decision;
- (d) contrary to the budget or policy framework;
- (e) the action is not proportionate to the desired outcome;
- (f) a potential human rights or equalities challenge; or
- (g) insufficient consideration of legal and financial advice.

### 4. **Effect**

Where the Monitoring Officer or Chief Executive consider these criteria have been met, delegated authority for that matter shall be withdrawn from the Committee or officer concerned and the decision shall be accordingly nullified and made subject to referral to the next meeting of the Policy and Resources Committee, or if necessary to an extraordinary meeting, for the matter to be considered afresh.

### 5. **Decision**

Upon re-considering the referred item of business, the Policy and Resources Committee may:

- (a) Uphold the previous decision, following which the original decision shall take effect by 9.30am the next working day following the day of the Policy and Resources Committee meeting which considered the request.
- (b) Refer the matter back to the relevant Committee or officer with a recommendation from the Policy and Resources Committee. The relevant Committee or officer shall reconsider the matter, taking into account any concerns and recommendations of the Policy and Resources Committee, before reaching a final decision. The decision may not be the subject of a further request for reconsideration and will take from the date on which the new decision notice is published.

- (c) Determine the matter itself, whereby the Policy and Resources Committee may determine the matter as it sees fit. The Policy and Resources Committee will set out its reasons for coming to a different conclusion from the originating Committee or officer whose decision has been superseded. The decision may not be further reconsidered and will take effect from the date on which the new decision notice is published.

## 6. Exclusion from removal of delegation

- (a) A decision making Committee, Sub-Committee or officer may determine that a decision being taken by them is not to be subject to removal of delegation and reconsideration in the circumstances where:
  - (i) in the opinion of the decision-maker, any delay likely to be caused by the process for removal of delegation and reconsideration would seriously prejudice the Council's or the public's interest;
  - (ii) the Chief Executive (or in his or her absence their nominee) agrees both that the decision proposed is reasonable in all the circumstances and that it should be treated in this manner; and
  - (iii) the decision maker causes a record to be made and notice published that the decision is not to be subject to removal of delegation and reconsideration and of the reasons for that determination
- (b) The Chief Executive (or in his or her absence their nominee) may otherwise decline to act on a request made under paragraph 2 above in those circumstances where he or she considers that it would be likely that the implementation of the process for removal of delegation in respect of a decision taken and its then reconsideration by the Policy and Resources Committee would cause serious prejudice to the Council's or the public's interest.
- (c) Application of this exclusion to the removal of delegation and reconsideration procedure must be reported to the next available meeting of the Council, together with the reasons for doing so.



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#### B. OVERVIEW AND SCRUTINY WAYS OF WORKING

##### 1 Policy and Services Committee Terms of Reference

As set out at Section 3(B) of this Constitution, the overview and scrutiny methods of working and conducting reviews is an important part of the Policy and Services Committees' terms of reference as part of a 'doing and reviewing' approach. In conducting a review, the Committees may hold enquiries and investigate the available options for future direction in policy development and will act in accordance with the procedure rules.

##### 2 Overview and Scrutiny Approach

The Policy and Services Committees are to adopt overview and scrutiny working practices when undertaking their functions to review the Council's actions or to review or otherwise scrutinise outside bodies and processes, In doing so, the Committee shall have regard to the relevant Regulations, statutory and non-statutory guidance issued by the Secretary of State and best practice as issued by the Centre for Governance and Scrutiny (CfGS). This may include adopting innovative ways of working for these functions. In this context, the Policy and Services Committees will operate more like select committees and may take oral evidence through select committee style witness hearings in order to produce a report and recommendations as a result of the review.

##### 3 Internally Focussed Reviews

The Policy and Services Committees may scrutinise and review decisions made or actions taken by the Authority in so far as they have a direct impact on the role or functions of the Committee and the Committee can make recommendations to the relevant Committee on policies, budget and service delivery.

##### 4 Externally Focussed Reviews

The Policy and Services Committees are also responsible for the overview and scrutiny of external organisations. The Committee may therefore undertake reviews and make recommendations on services or activities carried out by external organisations which affect the Borough of Wirral or any of its inhabitants where this does not fall within the role or remit of another service committee or where it relates

to cross cutting issues, including the review and monitoring of contractual and operational performance of shared service partnerships, joint ventures and outside organisations to which the Council makes a resource contribution, focusing on examination of the benefits of the Council's contribution and the extent to which the body concerned makes a contribution to the achievement of the Council's priorities.

## 5 **Review Process**

To undertake an overview and scrutiny style review, the Committees may hold inquiries and investigate the available options for future direction in policy development and may appoint advisers 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 advisers, assessors and witnesses a reasonable fee and expenses for doing so.

In conducting a review the Committee will act in the manner set out at paragraphs (B)7 below and further consider and implement mechanisms to encourage and enhance community participation in the development of policy options and to investigate, take evidence and consult upon issues within their remit.

## 6 **Review Outcome**

The intention of a review is that, upon its conclusion, the Committee or Working Group will produce a report containing recommendations for decision by the Policy and Resources Committee or other Committee (including their or their parent committee), an officer or external governmental or non-governmental body as may be relevant.

## 7 **Conduct of Reviews**

7.1 Before starting any overview and scrutiny style review or enquiry, the Committee will consider the resources available to conduct the review and:

- (a) Define the issue(s) it wishes to look at and the Committee's purpose in undertaking the review;
- (b) Indicate the type of background information and any performance or other data the Committee requires;
- (c) Indicate the individuals to be invited to be interviewed as part of their review (e.g., Members, staff, representatives from other organisations, local residents and outside experts. etc);
- (d) Set a realistic timescale including meeting dates if there are to be additional meetings to those in the calendar; and
- (e) Decide whether the review is to be undertaken by the Committee itself or by a Panel (working group) of members of the Committee reporting to the main Committee.

with the intention at all times to maximise the efficiency of the investigation or analysis of the review.

- 7.2 The terms of reference will be sent to all members of the Committee.
- 7.3 The Group Whip shall not apply to the overview and scrutiny method of working

## 8 **Review Panel Standing Order**

Where the review is to be undertaken by a Panel (working group) of members of the Committee it shall comply with the following rules

### (a) Chair of meeting

Either the Chair or Vice-Chair of the Committee will normally be appointed "Lead Councillor" for the Review and will Chair meetings of the Panel unless the Committee determine otherwise. If he/ she is not present the Members present shall appoint a Chair from amongst their number for that meeting only.

### (b) Appointment of substitute members

Due to a need for consistency and it is suggested that substitutes should not be permitted unless designated by the parent committee.

### (c) Business

At each meeting, the following business will be conducted

- (i) to consider the accuracy of the minutes of the last meeting
- (ii) to declare interests
- (iii) to consider the matters set out in the agenda for the meeting

### (d) Quorum

The membership of the Panel will be at least 3 members and the quorum shall be a minimum of 2.

### (e) Appointment of Co-opted/ Advisers

The Panel may appoint non-voting co-optees/ advisers to assist during the Review.

### (f) Time and place of meetings

The dates and times of meetings will be agreed at the first meeting of the Panel in accordance with the project plan. Meetings will be held at such place as the Panel considers most appropriate or remotely. The Chair may call additional meetings.

(g) Form of minutes

An officer from Democratic Services will be responsible for taking minutes at meetings of the Panel.

(h) Voting

Voting will be by show of hands or by means of a roll-call if held remotely and it will not normally be the practice to record how individual members have voted unless specifically requested to do so.

(i) Attendance at meetings by members of the public

Meetings of the Panel will not normally be open to the press and public. Where the Committee or Panel determines that a meeting should be held in public, the meet shall comply with the Access to Information Rules set out at Part 4(2) of this Constitution

(j) Notice and agendas for meetings

Agenda and reports for meetings should ordinarily be available 5 clear days prior to the meeting. Reports should only be marked to follow in exceptional circumstances and this should be agreed with the Lead Councillor prior to the item being included on the agenda. Any member of the Panel may request Democratic Services to make sure that an item is placed on the agenda for the next available meeting for consideration.

(k) Consideration of Final Report

Following completion of the Review, the Panel's Final Report will be submitted to the parent Committee for consideration and approval prior to being submitted to the any other Committee, body or person . The Lead Councillor for the Review will normally present the final report of the Panel to the Committee.

## 9 Submission of Evidence to Reviews

Where the Committee or Panel conducts reviews or investigations and asks people to attend or to give evidence, it will proceed in accordance with the following:

- (a) **Summoned Speakers** -The Committee may require Members of the local authority, and officers of the authority, to attend before it to answer questions and it shall be the duty of any such Member or Officer to comply with the requirement, provided that they will not be obliged by that requirement to answer any question which he or she would be entitled to refuse to answer in, or for the purposes of proceedings in, a court of law in England and Wales.
- (b) **Invited Speakers** - The Committee may request any of the following to attend a meeting:

- i) any Member, elected or co-opted, to attend and advise;
  - ii) a representative of any outside body, whose powers or interests are relevant to the matter in hand, to give their views;
  - iii) any external expert to give evidence, provided arrangements can be made within the budget to pay any expenses or fees so incurred; or
  - iv) (or allow to speak) any resident of the Borough or any person with a legitimate interest in the topic under consideration to attend and give their views.
- c) Conditions - In applying the above, the proceedings of the Committee will be subject to the following provisions:
- i) Any requirements to attend shall be subject to not less than five clear working days' notice, except in a case of urgency;
  - ii) A Chair of the Committee concerned or relevant Member may ask the appropriate chief officer or other senior officer to attend with them to assist in providing technical advice;
  - iii) Where a Committee asks or requires an officer to attend who is not a chief or statutory officer, the appropriate chief and/or statutory officer shall also be entitled to be heard, and the officer required to attend may, if they wish, nominate a senior officer to attend on their behalf;
  - iv) Where someone requested or required to attend is genuinely unable to attend then, in the case of a Chair or Member, another Member of the relevant committee shall attend in their place. In the case of an officer, another officer who is able to speak on the topic under consideration shall attend;
  - v) Anyone asked to speak to a meeting of a Committee shall be entitled to see the terms of reference of the particular matter under consideration by the Committee before attending to speak;
  - vi) Anyone asked to speak to a to a meeting of a Committee shall be entitled to see the public papers which have been made available to the Committee and, wherever possible, on the same timescale as for a member of that Committee;
  - vii) Anyone asked to speak to a to a meeting of a Committee shall, wherever possible, be given access to statements submitted by individuals from whom the Committee has already heard, but not those who have not yet given evidence. The Chair shall have a discretion to disclose other papers, including statements submitted by following speakers and confidential or exempt material, if he or she considers that will help the speakers to address a particular point, or will otherwise assist the Committee's examination of the issue;
  - viii) All speakers shall respect the confidentiality of any confidential or exempt information they receive, and shall not disclose it without the authorisation of the Committee;



- ix) Speakers may submit papers in advance to the Committee where that is possible, but such papers shall be clear and succinct;
- x) Papers for consideration by Committee will not be admissible without meeting the Access to Information Procedure Rules (unless in the context of a working group setting);
- xi) Speakers shall be able to bring such notes and diaries as are helpful to them in assisting the Committee, but shall expect to make available any such notes to the Committee, on the request of the Chair;
- xii) Papers submitted by speakers shall become public documents (in accordance with the Access to Information Procedure Rules) once they have presented their evidence, and shall be cited as background papers in any published report by the Committee;
- xiii) Officers shall not be required to give personal opinion on any Committee's decision which is different from the recommendation they made;
- xiv) Committee Members may expect to ask searching questions, but will always behave in a polite and respectful way to anyone contributing to the Committee's proceedings;
- xv) The Chair may specify a time limit for a contribution, in advance of the commencement of such contribution, which shall not be less than five minutes. If someone making such a contribution exceeds the time limit given, the Chair may stop them. The Chair may also structure a discussion and limit the time allowed for questioning by members of the Committee;
- xvi) Speakers shall be entitled to a copy of any draft minute or other record taken of their contribution for comment wherever possible. Should they feel that such record is not accurate, then they shall be given the opportunity to make a written representation asking for the correction to be submitted to the next meeting of the Committee.