

CABINET

10 JULY 2012

LOCALISM ACT 2011 – CONSTITUTIONAL ISSUES

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Summary

This report sets out various provisions in the Localism Act which affect the Council's constitutional arrangements, the action required and where applicable the options available to members.

1. Budget and Policy Framework

- 1.1 There are a number of provisions in the Localism Act affecting the governance and constitutional arrangements of local authorities. Any consequential changes to the constitution of the Council have to be considered and agreed by Full Council. The Cabinet and relevant Overview and Scrutiny Committees may consider the issues and options and make recommendations to the Council.

2. Background

- 2.1 The Localism Act contains a number of provisions relating to the governance arrangements of local authorities. All members of the Council have already received a briefing note on the changes to the rules on pre-determination in Section 25 of the Act, which came into effect on 15 January. Work is underway separately on changes to the standards regime for elected members as set out in Sections 26 to 37 of the Act and it is planned to present a report to full Council on a new standards framework for Medway in July 2012. This will include any changes required to the planning and licensing codes of good practice in the Councils constitution to reflect a lighter touch Code of Conduct and the new rules on pre-determination.

2.2 The Council also needs to consider the action it must, or may, take in relation to other provisions in the Localism Act relating to governance, which are now in effect. These relate to the election and terms of office of executive leaders in Councils operating leader and cabinet executives, repeal of provisions about petitions to local authorities and changes required to the rules for Overview and Scrutiny Committees following repeal of the requirement to have a Councillor Call for Action scheme (for non crime and disorder issues). In addition to repealing the CcfA, the Act introduces a right for any Councillor who is not on the relevant Overview and Scrutiny Committee to refer a matter to the Committee for consideration (subject to some exclusions).

2.3 Each of these changes is explained in more detail in paragraph 3 below.

3. Provisions in the Localism Act relating to governance - issues and options.

3.1 **Form of governance:** The Localism Act requires local authorities to operate one of three forms of governance; either (i) executive arrangements (Mayor and Cabinet or Leader and Cabinet) or (ii) a committee system or (iii) prescribed arrangements as may be set out in regulations made by the Secretary of State. Medway is currently operating under executive arrangements with a Leader and Cabinet. A resolution of the Council is required in order for the authority to make a change in its governance arrangements. There is the option to have an Overview and Scrutiny Committee(s) as part of the committee system. The Localism Act also allows the Council to resolve that a proposed change in governance arrangements is subject to approval in a referendum. If the Council passes a resolution to change its governance arrangements then it can't do so again for a further five years unless via a referendum.

3.2 **Election and term of office of executive leaders:** transitional provisions preserve current rules relating to elections and terms of office of executive leaders until such time as the Council makes provision in its executive arrangements under section 91 of the Local Government Act 2000 (inserted by the Localism Act). This section requires the Council's executive arrangements to have provisions for the election of the executive leader, including provision for an election where there is a vacancy. The Act also stipulates that where the Council resolves to remove the executive leader, a new executive leader has to be elected at the meeting where the resolution is passed or at a subsequent meeting. The Act removes the requirement for a four- year term of office for an executive leader and says the Council may chose to make local provision with respect to the term of office for the executive leader. However there is provision for the Secretary of State to make regulations in relation to all these matters. Therefore at this stage, pending regulations, the Council may wish to preserve a four year term of office for the Leader and agree the minor changes required to the relevant section of the Constitution as set out in Appendix B to this report to provide for the election of a new leader where there is a Council resolution for removal from office or where a vacancy arises.

3.3 **Repeal of provisions about petitions to local authorities:** with effect from 1 April 2012, Section 46 of the Localism Act repealed the provisions relating to petitions in the Local Democracy, Economic Development and Construction Act 2009. This means the Council may review and change the arrangements

it has in place for handling petitions. The current scheme in the Council's constitution largely reflects the system Medway had in place before the duty to have a petitions scheme came into force for all local authorities in June 2010. In summary, petitioners receive a response from the relevant Director and can then escalate the matter for discussion at the relevant Overview and Scrutiny Committee if they wish the action taken at officer level to be reviewed. The Council could now decide to withdraw its petitions scheme in its entirety or make changes to the existing scheme. The provisions in the current Medway scheme introduced as a requirement under the 2009 legislation are as follows:

- The public as well as Councillors can now present petitions at full Council meetings
- All petitions received by the Council are handled under the scheme (except for those where other procedures apply; ie licensing, planning, council tax banding, request for a referendum)
- The Council's website contains information about the action taken in respect of all petitions handled under the scheme
- The Council is hosting a facility on its website for e-petitions to be set up
- There are signature thresholds which trigger a full Council debate or an Officer being called to account at an Overview and Scrutiny Committee (currently 12 675 signatures are required for a full Council debate and 5070 signatures in order to call an officer to be held to account – neither of these provisions have been invoked since the new scheme came into effect.)

An overview of the petitions handled under the Council's petitions schemes for the periods 1 April 2009 to 14 June 2010 and from 15 June 2010 until 30 April 2012 is set out below:

Period	Number of petitions	Number submitted via e-petition facility	Highest number of signatures	Number of petitions referred to Overview and Scrutiny Committees
1 April 2009 to 14 June 2010	53	0	9094 - Save Tudor wall and garden	12
15 June 2010 to 30 April 2012	70	6	3413 - Closure of Balfour Centre	15

At this stage there are no recommendations for change from officers. The current scheme is working effectively.

- 3.4 **Councillor call for action (CCfA):** with effect from 4 May 2012 the Council's executive arrangements must include provision for those members of the Council who are not members of the appropriate Overview and Scrutiny Committee to be able to refer an item to one of the Council's Overview and Scrutiny Committees as long as the matter is relevant to the functions of the Committee and is not an excluded matter. The Secretary of State may issue guidance on the exercise of this power. The Order bringing this provision into

effect revokes the previous requirement to enable members of the Council (who are not on the appropriate Overview and Scrutiny Committee) to refer any local government matter affecting their ward to an overview and scrutiny committee (with the exception of excluded matters). This was known as Councillor Call for Action and currently appears in the Council's Constitution in Chapter 4 as part of the Overview and Scrutiny rules. The Council is required to continue with provision in its executive arrangements for crime and disorder CCfAs as the provisions of the Police and Justice Act 2006 still apply.

The changes required to the Overview and Scrutiny rules to give effect to these new legislative provisions are as highlighted in Appendix C. The principal change is to enable any member of the Council who is not a member of the relevant Overview and Scrutiny Committee to add an item to the agenda as long as it is not an excluded matter. In addition any systematic failure may be referred to Overview and Scrutiny under this provision even if the systematic failure relates to an excluded matter. Under the current rules a member who is not a member of the relevant Overview and Scrutiny Committee would be required to have the support of five other members of the Council in order to add an item to an Overview and Scrutiny Committee agenda and there are no excluded matters under the current provision.

- 3.5 One or two other minor changes to the Overview and Scrutiny rules are highlighted to bring the rules in to line with established practice and procedures.

4. Business Support Overview and Scrutiny Committee

- 4.1 The Business Support Overview and Scrutiny Committee considered this report on 21 June 2012. Members discussed the provision in the Localism Act requiring local authorities to maintain a list of community assets of value. A future report was requested on the List of Community Assets of Value and the provision for community interest groups to be treated as a potential bidder in relation to listed land.
- 4.2 The committee discussed the provision to review and change the arrangement it had in place for petitions. Councillors agreed that the current provision for petitions should remain in place. However, Members were concerned about the accessibility of the e-petitions facility on the council's website. The committee also discussed access to and consideration of petitions raised through other e-petition facilities other than the one hosted by the council. Members requested that a report was added to the work programme on this matter.
- 4.3 A Member raised a matter in relation to paragraph 16.8 (ii) of the Constitution (set out on page 64 of the agenda) and asked why a request for call-in to Full Council was signed by six or more Members representing at least two political groups and whether this could be amended to one political group. The Monitoring Officer responded that if Members wished to amend a section of the Constitution, which was not a legal requirement, they could do so at Full Council.
- 4.4 Members also asked what form of governance other Local Authorities had implemented or were proposing to implement. For example, Brighton and Hove Council had adopted a hybrid system of committees and the scrutiny

function, as they wished to be fully informed before making a decision for Medway. Officers undertook to investigate this and inform Members prior to the Full Council meeting of 26 July when this matter would be considered.

- 4.5 Contact has been made with DCLG and the Local Government Association but is unclear whether either are planning to map the overall position at this point. The Centre for Public Scrutiny has a discussion forum running on its website which provides an indication of some of the Councils where new governance arrangements have been adopted, or are being considered, but this is not a comprehensive or official overview of local authorities across England. South East Employers have been supporting the London Borough of Sutton in its preparation to move to the committee system and have advised that four councils made the change to a Committee system in May 2012; the London Borough of Sutton, Nottinghamshire County Council, Brighton and Hove Council plus one District Council.
- 4.6 Attached at Appendix A is a brief summary of the Committee system models recently adopted by three of these Councils under the provisions in the Localism Act. Where Councils have chosen to have one or more Overview and Scrutiny Committees as part of their new system (as permitted under the Act) they must give them the powers set out in regulations made under the Localism Act. Any meaningful evaluation of the impact, effectiveness and cost of establishing a committee system cannot be made at this early stage.
- 4.7 The Committee agreed to recommend to Cabinet:
- (i) retention of a four year term of office for the executive Leader and agree to the minor changes to the Council's executive arrangements as set out in Appendix B given the potential for further regulations being made by the Secretary of State;
 - (ii) no change at this stage to the Councils petition scheme even though the Localism Act revokes the duty to have a scheme for handling petitions;
 - (iii) changes to the overview and scrutiny rules as highlighted in Appendix C to give effect to revocation of the Councillor Call for Action scheme (for non crime and disorder issues) and the implementation of a requirement to enable any member of the Council who is not a Member of the relevant Overview and Scrutiny Committee to be able to refer matters to the Committee (with the exception of excluded matters).

5. Risk Management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Failure to meet statutory timescales	Medway fails to meet statutory timescales for implementation of the provisions in the Localism Act	The report sets out a proposed timeline for reporting to full Council on the changes required which will enable a considered response to the changes and enable the Council to take any Secretary of State guidance into account

6. Financial and Legal Implications

- 6.1 The issues set out in this report for consideration by the Council arise from various provisions in the Localism Act as set out in paragraph 3 of the report. It is clearly indicated where the Council is required to give effect to these provisions and where there is some local choice.
- 6.2 There are no financial implications as the provisions in the Localism Act addressed in this report do not generate a requirement for additional resources although a Council decision to run a referendum on governance arrangements would generate significant unbudgeted expenditure if the council resolves at any point to change the different governance arrangements, the associated financial implications would be assessed and reported at that time.

7. Recommendations

- 7.1 The Cabinet is asked to recommend the following to Council, on 26 July 2012, for approval:
- 7.1.1 That the choice to change the Council's form of governance to an elected mayor and cabinet or the committee system (with or without overview and scrutiny Committee(s)) be noted at this stage
- 7.1.2 that a four year term of office for the executive Leader should be retained and agreement to the minor changes to the Council's executive arrangements as set out in Appendix B given the potential for further regulations being made by the Secretary of State
- 7.1.3 That no change should be made at this stage to the Council's petitions scheme even though the Localism Act revokes the duty to have a scheme for handling petitions, noting that the Business Support Overview and Scrutiny Committee has called for a report reviewing the arrangements for e-petitioning
- 7.1.4 That the changes to the overview and scrutiny rules as highlighted in Appendix C to give effect to revocation of the Councillor Call for Action scheme (for non crime and disorder issues) and the implementation of a requirement to enable any member of the Council who is not a member of the relevant Overview and Scrutiny Committee to be able to refer matters to the Committee (with the exception of excluded matters).

8. Suggested reasons for decision

- 8.1 The Council is required to respond to the provisions of the Localism Act 2011 – this report will enable the Cabinet's views on the proposals to be reported to Council on 26 July 2012

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Background papers

Localism Act 2011

Information requested by the Business Support Overview and Scrutiny Committee: Committee system models

1. Set out below is a brief summary of the Committee system models recently adopted by three Councils under the provisions in the Localism Act. Where Councils have chosen to have one or more Overview and Scrutiny Committees as part of their new system (as permitted under the Act) they must give them the powers set out in regulations made under the Localism Act. Any meaningful evaluation of the impact, effectiveness and cost of establishing a committee system cannot be made at this early stage.
2. **Nottinghamshire County Council:** The Council has returned to the Committee system and has established 16 main Committees to be responsible for the Council's principal functions configured as follows; Administration, Adult Social Care and Health, Audit, Children and Young People, Community Safety, Culture, Economic Development, Environment and Sustainability, Finance and Property, Health Scrutiny, Personnel, Planning and Licensing, Policy, Rights of Way, Standards and Transport and Highways. There are another 11 Sub Committees and Joint Committees in the new system.
3. **London Borough of Sutton:** Full Council agrees the Council's overall policies, sets the budget and acts as final arbiter when matters are requisitioned. The Council has appointed a four year Leader and five politically balanced Committees responsible for the Council's principal functions; Strategy and Resources, Adult Social Services and Health, Children Families and Education, Environment and Neighbourhood, Housing Economy and Business. Other Committees with decision-making powers include Development Control, Licensing, Audit, Pensions and six local committees. There is one Scrutiny Committee with a remit to scrutinise health matters and carry out the scrutiny of crime and disorder matters and flood risk management. The Scrutiny Committee will also, in exceptional circumstances, carry out scrutiny reviews requested by Committees.
4. **Brighton and Hove Council:** The Council has opted for a hybrid model with ten politically balanced decision-making Policy Committees (Policy and Resources, Adult Care and Health, Children and Young People, Economic Development and Culture, Housing, Environment and Sustainability, Transport, Planning, Licensing, Audit and Standards and five Sub Committees (Housing Management, Licensing Panel, Standards Panel, Personnel Appeals Panel and Corporate Parenting Sub Committee. Two Overview and Scrutiny Committees are included in the new system to support the work of the Council as a whole, monitor the work programme of the Policy Committees and which can call-in decisions which have been made but not yet implemented. These Committees may also set up Panels to look at specific policy review or scrutiny issues. The Panels carry out reviews into matters of local concern.

Localism Act – Proposed changes to provide for filling a vacancy in the office of Leader of the Council

<p>Article 7 – The Leader and Cabinet</p> <p>Introduction</p> <p>Page 2.15</p> <p>Paragraph 7.4</p>	<p>Insert new section at bottom of paragraph 7.4:</p> <p>In the event of there being a vacancy in the office of Leader, the Council shall elect a new Leader at its next ordinary meeting.</p> <p>If the Council passes a resolution to remove the Leader, a new Leader shall be elected at the meeting at which the Leader is removed from office or at a subsequent meeting of the Council</p>
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APPENDIX C

6. ARTICLE 6 – OVERVIEW AND SCRUTINY COMMITTEES

6.1 Introduction

The overview and scrutiny function is central to the Council's constitutions. Overview and Scrutiny Committees:

- meet in public to discuss and make recommendations on the development of policy;
- hold the Leader and Cabinet to account for their actions;
- have a key role in considering matters of local concern;
- ~~undertake best value reviews.~~

6.2 There will be four Overview and Scrutiny Committees

Within their terms of reference, Overview and Scrutiny Committees will:

- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- make reports and/or recommendations to the Full Council and/or the Cabinet and/or any joint Committee in connection with the discharge of any functions;
- consider any matter affecting the area or its inhabitants;
- exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Cabinet and/or any joint Committees;
- establish ad hoc short life panels to undertake specific tasks;
- consider ~~local government~~ and crime and disorder matters raised under Councillor Call for Action procedures.

6.3 Joint NHS Scrutiny Committee

There will be one Joint NHS Scrutiny Committee with Kent County Council. Its terms of reference are set out in chapter 4, part 5 - Overview and Scrutiny Rules.

6.4 Specific functions

(a) Policy development and review

Within allocated budgets Overview and Scrutiny Committees may:

- assist the Council and the Cabinet in the development of the budget and policy framework by in-depth analysis of policy issues;
- conduct research, community consultation and other consultation;
- consider and implement mechanisms to encourage and enhance community participation in the development of policy;
- question members of the Cabinet and/or Committees and employees about their views on issues and proposals affecting the area;
- 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;
- require representatives of NHS bodies~~the Chief Executive of the health authority and local health trusts~~ to attend the relevant Overview and Scrutiny Committee to discuss policy issues relating to health in Medway.

(b) **Scrutiny**

Within allocated budgets Overview and Scrutiny Committees may:

- review and scrutinise the decisions, initiatives and projects and performance of the Cabinet and/or Committees and Council employees in relation to individual decisions, initiatives and projects;
- review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
- question members of the Cabinet and/or Committees and employees about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
- make recommendations to the Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process;
- review and scrutinise the performance of other public bodies and relevant partners in the area and invite reports from them by requesting (and in the case of the health service requiring them) to address the Overview and Scrutiny Committee and local people about their activities and performance;
- question and gather evidence from any person with their consent.

(c) **Finance**

Overview and Scrutiny Committees may exercise overall responsibility for the finances made available to them.

(d) **~~Annual report~~Reporting**

Overview and Scrutiny Committees must report to each ordinary annually to Council meeting on their workings and make recommendations for future work programmes and amended working methods if appropriate.

(e) **Employees**

Overview and Scrutiny Committees may exercise overall responsibility for the work programme of the employees employed to support their work.

6.4 Proceedings of Overview and Scrutiny Committees

Overview and Scrutiny Committees will conduct their proceedings in accordance with the overview and scrutiny rules set out in part 5 of chapter 4 of this constitution.

PART 5 - OVERVIEW AND SCRUTINY RULES

1. What will be the number and arrangements for Overview and Scrutiny Committees?

1.1 The Council will have four Overview and Scrutiny Committees and one joint NHS Scrutiny Committee with Kent County Council as set out in Article 6 and will appoint to them as it considers appropriate from time to time. Such Committees may appoint Sub-Committees. Overview and Scrutiny Committees may also be appointed for a fixed period, on the expiry of which they shall cease to exist.

2. Who may sit on Overview and Scrutiny Committees?

All Councillors except members of the Cabinet may be members of an Overview and Scrutiny Committee. However, no member may be involved in scrutinising a decision with which he/she has been directly involved.

3. Co-optees

Each Overview and Scrutiny Committee or Sub-Committee shall be entitled to recommend to Council the appointment of a number of people as non-voting co-optees as set out in the terms of reference for Overview and Scrutiny Committees at the end of this procedure rule.

4. Education representatives

- 4.1 Each relevant Overview and Scrutiny Committee/Sub-Committee dealing with education matters shall include in its membership the following voting representatives:
- (a) 1 Church of England diocesan representative;
 - (b) 1 Roman Catholic diocesan representative;
 - (c) 2 parent governor representatives.
- 4.2 A relevant Overview and Scrutiny Committee/Sub-Committee in this paragraph is an Overview and Scrutiny Committee or Sub-Committee of a local education authority, where the Committee or Sub-Committee's functions relate wholly or in part to any education functions which are the responsibility of the authority's executive. If the Overview and Scrutiny Committee/Sub-Committee deals with other matters, these representatives shall not vote on those other matters, though they may stay in the meeting and speak.

5. Meetings of the Overview and Scrutiny Committees

There shall be at least six meetings scheduled for each Overview and Scrutiny Committee in each year which can be cancelled by the chair in consultation with the Chief Executive. In addition, extraordinary meetings may be called from time to time as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the chair of the relevant Overview and Scrutiny Committee, by a third of the members of the Committee or by the proper officer if he/she considers it necessary or appropriate.

6. Quorum

The quorum for an Overview and Scrutiny Committee shall be as set out for Committees in the Council procedure rules in part 1 of this chapter of the constitution.

7. Who chairs Overview and Scrutiny Committee meetings?

Overview and Scrutiny Committees/Sub-Committees will be chaired by a Councillor who is a member of that Committee/Sub-Committee.

8. Work programme

The Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own work programme and submitting it on an annual basis to the Council. In doing so they shall take into account the wishes of all members on that Committee.

9. Agenda items

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

9.2 ~~9.2~~ Any ~~six~~ members of the Council who ~~is~~ ~~are~~ not ~~a~~ members of ~~an~~ the Overview and Scrutiny Committee may give written notice to the proper officer that he/she/they wish(es) to refer to that Committee any matter relevant to the Committees functions which is not an excluded matter-an item to be included on the agenda of a relevant Overview and Scrutiny Committee. If the proper officer receives such a notification, then he/she will include the item on the first available agenda of the relevant Overview and Scrutiny Committee for consideration by the Committee. The member concerned ~~A representative of those members~~ shall be entitled to address the Committee.

9.3 ~~9.3~~ The definition of an excluded matter in paragraph 9.2 of these rules is as follows:

- a) a local crime and disorder matter which may be referred to the relevant Overview and Scrutiny Committee under the provision of paragraph 9.5 of these rules

- b) any matter relating to a planning or licensing decision
- c) any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment
- d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussion at a meeting of an Overview and Scrutiny Committee or Sub Committee

A matter will not be defined as an excluded matter under paragraphs a) to c) above if it consists of an allegation that a function for which the Council is responsible has not been discharged at all or that its discharge has failed or is failing on a systematic basis

- 9.43 The Overview and Scrutiny Committees shall also respond, as soon as their work programme permits but within the set timescales; to requests from the Council and if appropriate the Cabinet, to review particular areas of Council activity. Where they do so, the Overview and Scrutiny Committees shall report their findings and any recommendations back to the Leader/Cabinet (as appropriate) and/or Council. The Council and/or the Leader/Cabinet (as appropriate) shall consider the report of the Overview and Scrutiny Committee within one month of receiving it.
- 9.54 Any member of the Council who is not a member of the relevant Overview and Scrutiny Committee has the right to refer a ~~local government or~~ crime and disorder matter affecting his or her ward to the relevant Overview and Scrutiny Committee. The power to do this is known as raising a Councillor Call for Action (CCfA) but must be exercised in accordance with the guidance and procedures set out in section 23 of the Overview and Scrutiny rules. Any Councillor who is already a member of the relevant Overview and Scrutiny Committee and who wishes to refer a ~~local government or~~ crime and disorder matter to the Committee may do so under 9.1 but must have regard to the guidance in section 23 if the matter being raised is a CCfA.
- 9.5 If the relevant Overview and Scrutiny Committee decide not to review or scrutinise a matter or not to make a report or recommendations to the Council or Cabinet (as appropriate) following the referral of a ~~local government or~~ crime and disorder matter to the Committee in accordance with paragraph 9.54 of these Rules the Committee must notify the Councillor who made the referral of its decision and the reasons for its decision.

10. Policy review and development

- 10.1 The role of the Overview and Scrutiny Committees 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 part 3 of this chapter.
- 10.2. In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, Overview and Scrutiny Committees or Sub-Committees may make proposals to the Cabinet for developments in so far as they relate to matters within their terms of reference.

10.3 Overview and Scrutiny Committees may hold enquiries 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 so far as budget provision has been made by the Council for these purposes.

11. Reports from Overview and Scrutiny Committee

11.1 Once it has formed recommendations on proposals for development, the Overview and Scrutiny Committee will prepare a formal report and submit it to the proper officer for consideration by the Leader/Cabinet (as appropriate) (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).

11.2 If an Overview and Scrutiny Committee cannot agree on one single final report to the Council or Leader/Cabinet (as appropriate), then a minority report which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the Council or Leader/Cabinet (as appropriate) with the majority report. The names of those who dissent may, at a member's request, be recorded on the main report.

11.3 Where the Overview and Scrutiny Committee makes a report or recommendations to the Council or Leader/Cabinet (as appropriate) the Committee may publish its report or recommendations and must by notice in writing require the Council or Leader/Cabinet (as appropriate) to consider the report or recommendations, and to notify the Overview and Scrutiny Committee what (if any) action it proposes to take. This must be done within two months of the Council or Leader/Cabinet (as appropriate) receiving the report or recommendations or (if later) the notice. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter. The Overview and Scrutiny Committee must provide the Councillor who made the referral of the local government or crime and disorder matter in accordance with paragraph 9.4 of these Rules a copy of any report or recommendations made to the Council or Leader/Cabinet (as appropriate) after consideration of that referral by the Overview and Scrutiny Committee. If the Overview and Scrutiny Committee has published its report then Leader/Cabinet will publish its response.

12. Making sure that overview and scrutiny reports are considered by the Leader/Cabinet (as appropriate)

- 12.1 Once an Overview and Scrutiny Committee has completed its deliberations on any matter, the Committee, advised by the proper officer, will forward a copy of its final report to either or both the Cabinet and the Council for consideration, according to whether the contents of the report would have implications for the Council's budget and policy framework. When the matter is referred to Council, the proper officer will also serve a copy on the Leader and the chair of the relevant Overview and Scrutiny Committee with notice that the matter is to be referred to Council. The Leader/Cabinet (as appropriate) will have one month in which to respond to the overview and scrutiny report, and the Council shall not consider it within that period. When the Council does meet to consider any referral from an Overview and Scrutiny Committee on a matter which would impact on the budget and policy framework, it shall also consider the response of the cabinet to the overview and scrutiny proposals and shall respond to the Overview and Scrutiny Committee within two months of receiving the report or recommendations. For crime and disorder matters (including crime and disorder CCfAs) the Council or Leader/Cabinet (as appropriate) and any of the other responsible authorities or co-operating bodies to whom the report or recommendations have been sent must respond in writing and within 28 days from the date of the report or recommendations, or if this is not reasonably possible, as soon as reasonably possible thereafter.
- 12.2 Where an Overview and Scrutiny Committee or Sub-Committee prepares a report for consideration by the Cabinet in relation to a matter where the Leader or Council has delegated decision making power to another individual member of the Cabinet, then the Overview and Scrutiny Committee will submit a copy of their report to that individual for consideration. At the time of doing so, the Overview and Scrutiny Committee shall serve a copy on the proper officer and the Leader. If the member with delegated decision making power does not accept the recommendations of the Overview and Scrutiny Committee then he/she must then refer the matter to the next available meeting of the Cabinet for debate before exercising his/her decision making power and responding to the report in writing to the Overview and Scrutiny Committee. The Cabinet member to whom the decision making power has been delegated will respond to the Overview and Scrutiny Committee within four weeks of receiving it. A copy of his/her written response to it shall be sent to the proper officer and he/she will attend a future meeting to respond.
- 12.3 Overview and Scrutiny Committees will in any event have access to the Cabinet's forward plan and timetable for decisions and intentions for consultation. Even where an item is not the subject of detailed proposals from an Overview and Scrutiny Committee following a consideration of possible policy/service developments, the Committee will at least be able to respond in the course of the Cabinet's consultation process in relation to any key decision.
- 13. Rights of Overview and Scrutiny Committee members to documents**
- 13.1 In addition to their rights as Councillors, members of Overview and Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the access to information rules in part 2 of this chapter of the constitution.

13.2 Nothing in this paragraph prevents more detailed liaison between the Cabinet and Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

14. Members and employees giving account

14.1 Any Overview and Scrutiny Committee or Sub-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 member of the Cabinet, the Chief Executive and/or any director, assistant director and service manager 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;
- (iii) their performance.

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

14.2 Where any member or employee is required to attend an Overview and Scrutiny Committee under this provision, the chair of that Committee will inform the proper officer. The proper officer shall inform the member or employee in writing giving at least five 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 employee concerned will be given sufficient notice to allow for preparation of that documentation.

14.3 Where, in exceptional circumstances, the member or employee is unable to attend on the required date, then the Overview and Scrutiny Committee shall in consultation with the member or employee arrange an alternative date for attendance to take place normally within a maximum of 15 working days from the date of the original request.

15. Attendance by others

An Overview and Scrutiny 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 employees in other parts of the public sector and shall invite such people to attend.

16. Call-in

16.1 When a decision is made by the Leader, Cabinet, an individual member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an employee with delegated authority from the Leader/Cabinet, 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 two working days of being made. All Councillors will be sent copies of the records of all such decisions within the timescale, by the person responsible for publishing the decision.

- 16.2 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 the call-in procedure is triggered.
- 16.3 During that period, the proper officer shall call-in a decision for scrutiny by the relevant Overview and Scrutiny Committee if so requested in writing and signed by one third of the whole number of members of an Overview and Scrutiny Committee or any six members of the Council. The proper officer shall then notify the decision-taker of the call-in. (Note: Any one parent governor or diocesan representative on the Overview and Scrutiny Committee(s) dealing with education matters may also provide written notice of a request for call-in on education matters).
- 16.4 Once a decision has been called in it will be considered by the next available meeting of the relevant Overview and Scrutiny Committee.
- 16.5 If, in the view of the Chief Executive, the matter falls within the remit of more than one Overview and Scrutiny Committee the proper officer shall refer the request to the most relevant Overview and Scrutiny Committee following consultation with the relevant Committee chairs.
- 16.6 If, having considered the decision, the relevant Overview and 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 or refer the matter to full Council. If referred to the decision-maker they shall then reconsider the decision within a further six working days, amending the decision or not, before adopting a final decision. The relevant Overview and Scrutiny Committee may make representations to the decision-maker during reconsideration of the matter.
- 16.7 If following receipt of a request for a matter to be called-in the Overview and Scrutiny Committee does not meet as scheduled, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the scheduled date of the overview and scrutiny meeting.
- 16.8 To avoid the possibility of very many emergency Council meetings Overview and Scrutiny Committees should normally only use the power to refer a matter to the full Council for consideration with a request for referral back to the decision-maker if it considers either:
 - (i) that the decision is contrary to the policy framework or contrary or not wholly in accordance with the budget;
 - (ii) where a request for call-in is signed by six or more members representing at least two political groups.

- 16.9 If a matter is referred to Full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Cabinet as a whole or a Committee of it, a meeting will be convened to reconsider the matter within six working days of the Council request. Where the decision was made by an individual, the individual will reconsider within six working days of the Council request.

16.10 If the Council meets but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting.

16.11 Call-in and urgency

The call-in procedure set out above shall not apply where the decision being taken by the Leader/Cabinet is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would 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 chair of the relevant Overview and Scrutiny Committee 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 relevant overview and scrutiny chair, the vice-chair's consent shall be required. The chair or vice-chair of more than one Overview and Scrutiny Committee shall be consulted if the proper officer considers that an urgent decision falls within the remit of more than one Overview and Scrutiny Committee. In the absence of these consultees the head of paid service or his/her nominee's consent shall be required. All members of a relevant scrutiny Committee will be notified in writing (including electronic communication) as soon as it is practicably possible to do so when agreement to waive call-ins is given under this rule.

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

When considering any matter in respect of which a member of an Overview and 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.

18. Procedure at Overview and Scrutiny Committee meetings

18.1 Overview and Scrutiny Committees and Sub-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 Leader/Cabinet (as appropriate) to reports of the Overview and Scrutiny Committee;
- (v) the business otherwise set out on the agenda for the meeting.

18.2 Where the Overview and Scrutiny 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;
- (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

18.3 Following any investigation or review, the Committee/Sub-Committee shall prepare a report, for submission to the Leader/Cabinet (as appropriate) and/or Council as appropriate and shall make its report and findings public.

19. Procedure for handling petitions at Overview and Scrutiny Committees

19.1 Overview and Scrutiny Committees have an important role in relation to petitions submitted to the Council. Petitions must be handled in accordance with the Council's petition scheme which is attached as appendix A to the Council Rules in part 1 of chapter 4 of the constitution.

20. Matters within the remit of more than one Overview and Scrutiny Committee

20.1 Where a matter for consideration by an Overview and Scrutiny Committee or Sub-Committee also falls within the remit of one or more other Overview and Scrutiny Committee or Sub-Committee the decision as to which Overview and Scrutiny Committee will consider it will be resolved by the proper officer in consultation with the relevant Committee chairs.

20.2 Alternatively the relevant Overview and Scrutiny Committee may establish a time-limited, politically balanced task group comprising members from each of the relevant Overview and Scrutiny Committee to deal with the matter.

20.3 Before submitting its findings to the Leader/Cabinet (as appropriate) and/or Council for consideration, the report of the reviewing Overview and Scrutiny Committee shall be considered by the other relevant Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration within the set timescales.

21. Joint arrangements

- 21.1 There will be one Joint NHS Scrutiny Committee with Kent County Council comprising members appointed by Medway Council and members appointed by Kent County Council. The rules set out below apply to the joint Committee and any Sub-Committee established by it.
- 21.2 The Committee will appoint a chairman at its first meeting in each municipal year, and that chairman will normally be drawn in rotation from Kent members and Medway members. Where a review is unfinished at the end of a municipal year, members may agree that the previous year's chairman (if still a member of the Committee) may continue to preside over consideration of matters relating to that review.
- 21.3 If the joint Committee cannot agree a single response to an NHS consultation then a minority response which is supported by the largest minority, but at least three members, may be prepared and submitted for consideration by the NHS body with the majority response. The names of those who dissent may, at a member's request, be recorded on the main response.
- 21.4 The response of the joint Committee to a consultation will normally be submitted to the chair and spokespersons of the relevant Overview and Scrutiny Committees of Kent and Medway prior to its submission to the NHS body and at least ten working days before the closing date of the consultation.
- 21.5 Following receipt of the joint Committee response by the chair and spokespersons of the relevant Overview and Scrutiny Committee, either of those Committees (or an appropriately empowered Sub-Committee thereof) may meet and resolve to inform their proper officer of views or comments they wish to have incorporated in the joint Committee's response. If such a request is received by a proper officer before the closing date of the consultation, those views or comments will be appended to the joint Committee's response and that appendix will form part of the joint Committee's response.
- 21.6 These rules will take precedence over the rules in the constituent authorities constitutions, which will otherwise apply to the joint Committee. Where the rules of the constituent authorities' constitutions are in conflict the chairman's ruling will determine which applies.
- 21.7 Kent and Medway NHS Joint Overview and Scrutiny Committee terms of reference
- To receive evidence in relation to consultations initiated by local NHS bodies regarding proposals for substantial development or variation of the health service which effect both Medway and a substantial part of Kent.
 - To make comments on behalf of the relevant Overview and Scrutiny Committees of Medway and Kent on any such proposals to the NHS body undertaking the consultation.

- To undertake other scrutiny reviews of health services if requested to do so by the relevant Overview and Scrutiny Committees of both Medway and Kent.
- To report on such other scrutiny reviews to the relevant Overview and Scrutiny Committees of Medway and Kent.

22. Terms of reference of Overview and Scrutiny Committees

22.1 General Terms of reference

Each Overview and Scrutiny Committee shall have the following general terms of reference in relation to their specific areas of responsibility:

- i) To consider any matter affecting the area or its inhabitants;
- ii) To exercise the right to call-in, for consideration, decisions made but not yet implemented by the executive and other statutory functions including, but not limited to, pre-decision scrutiny and holding the executive to account;
- iii) To exercise overall responsibility for the finances made available to them;
- iv) To report annually to the Full Council on their workings;
- v) To exercise overall responsibility for the work programme of the employees employed to support their work;
- vi) To submit a work programme on an annual basis, including recommendations on amended working methods and taking account of the concerns of the church and parent governor representatives where applicable;
- vii) To consider any petitions within their remit received by Full Council which do not relate to a matter falling within the remit of an executive Committee, and report as appropriate;
- viii) To put in place and maintain a system to ensure that referrals from overview and scrutiny to the Cabinet either by way of report or for reconsideration are managed efficiently;
- ix) In agreement with other relevant overview and scrutiny to appoint time limited overview and scrutiny panels to consider specific matters which cut across the terms of reference of two or more Overview and Scrutiny Committees and to determine their terms of reference;
- x) At the request of the Cabinet, to make decisions about the priority of referrals made by that Overview and Scrutiny Committee to the Cabinet if the volume of such reports creates difficulty for the management of Cabinet business or jeopardises the efficient running of Council business;
- xi) To conduct service reviews;

- xii) To scrutinise and review partnership working including the performance of partners;
- xiii) To scrutinise and review the operation of risk management in the Council.
- xiv) ~~To deal with any local government matter referred to the Committee under the provisions for raising a Councillor Call for Action subject to the guidance and procedures set out in section 23 of the Overview and Scrutiny rules.~~
- xv) To deal with petitions referred to the Committee under and in accordance with the Council's petition scheme.

22.2 Specific terms of reference

(a) Business Support Overview and Scrutiny Committee

To fulfil all the functions of an Overview and Scrutiny Committee in relation to support services, and in particular (but not limited to):

- (i) matters concerning the employment of staff, terms and conditions of employment and staff development;
- (ii) equalities in the community and the workplace;
- (iii) monitoring and assessing access to Council services including being the scrutiny Committee with responsibility for the Customer First initiative;
- (iv) the management of all matters in connection with the media, public relations and communications and the consultation process;
- (v) the management and provision of legal contract/strategic procurement and property services (including licensing, strategic enforcement and local land charges);
- (vi) the management and provision of building maintenance and the design and surveying services;
- (vii) corporate sponsorship and bidding;
- (viii) the provision of ICT;
- (ix) the planning and co-ordination of service delivery;
- (x) the function and duties of the Council in relation to the conduct of elections;
- (xi) the provision of members' support;
- (xii) to fulfil the overview and scrutiny role in relation to the Council's Council Plan and Sustainable Community Plan;

- (xiii) all matters pertaining to the governance of the Council including the review of the constitution, executive arrangements, Council rules and members' allowances;
- (xiv) to consider the effectiveness of partnership working, including the Local Strategic Partnership;
- (xv) to assist the Cabinet in the development of the Council's annual budget and to review and scrutinise the Council's performance in relation to budgetary management;
- (xvi) to assist the Council in the development of a three-year budget strategy;
- (xvii) to review the management of resources made available to the Council and to scrutinise its financial management, property and asset acquisition and disposal and capital programme;
- (xviii) to assist the Cabinet in the development of a Council wide property and asset strategy;
- (xix) to scrutinise the Council's treasury management, investment strategy, minimum revenue provision policy statement along with treasury management practices and associated schedules;
- (xx) to promote procedures which ensure proper custodianship of Council finances, making recommendations to the Cabinet for best financial practice across the Council;
- (xxi) to review the operation of the Council's financial regulations making proposals to the Cabinet and/or Council for their development;
- (xxii) to receive reports from the Council's internal and external auditors and the Council's internal auditor making suggestions for improvement in practice to the Council and/or Cabinet as required, as a result of those reports;
- (xxiii) in particular to fulfil the overview and scrutiny role in relation to the development of the Council's budget, capital strategy, corporate (strategic) plan, corporate asset management plan, e-government strategy and equal opportunities statement;

- (xxiv) to provide guidance and leadership on the development and co-ordination of the scrutiny function for all Overview and Scrutiny Committees, including guidance on priorities for scrutiny activity;
- (xxv) Registrars and Bereavement Services;
- (xxvi) scrutiny of work areas within the remit of the Chief Executive;
- (xxvii) adult learning.

(b) **Children and Young People Overview and Scrutiny Committee**

To fulfil all the functions of an Overview and Scrutiny Committee in relation to children and in particular (but not limited to):

1. School services and all of the functions of the Council as an education authority under the Education Acts, School Standards and Framework Act 1998 and all other relevant legislation in force from time to time;
2. the provision of opportunities for education, training and learning outside the school environment including pre-school, community learning and youth justice issues;
3. to fulfil the overview and scrutiny role in relation to the development of the Council's asset management plan for schools, behaviour support plan, early years development and childcare plan, education development plan, lifelong learning and development plan, policy framework for admission to schools, school organisation plan, special educational needs action plan and youth justice plan;
4. fostering and adoption and family placements;
5. children and family services including all functions and duties of the Council under all relevant legislation in force from time to time relating to children's social work and social services;
6. in particular to fulfil the overview and scrutiny role in relation to the children and young people's strategic plan;
7. youth health promotion;
8. youth strategy;
9. mental and physical disabilities in young people;
10. quality protects;
11. inclusion;

12. collaborative working with health and voluntary agencies;
13. scrutiny of work areas within the remit of the Director of Children and Adults, excluding adult social care.

The review and scrutiny of matters relating to the health service including National Health Service (NHS) scrutiny in accordance with the provision of the Health and Social Care Act 2001, insofar as it relates to children's health; in particular

- (i) the review and scrutiny of local NHS Bodies, in particular (but not limited to) any matter relating to the planning, provision and operation of health services for children in Medway;
- (ii) supporting the improvement of health services and the reduction of health inequalities for the children of Medway;
- (iii) considering and responding directly to consultations from the NHS on any proposal for a substantial development or substantial variation in the provision of health services for children in Medway.

NOTE:

The Children and Young People Overview and Scrutiny Committee will have responsibility for health scrutiny in relation to children (defined for this purpose as young people aged 0-18 years).

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by the NHS bridges services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

(c) Health and Adult Social Care Overview and Scrutiny Committee

To be responsible for:

- the review and scrutiny of matters relating to the health service in the area, including NHS scrutiny, in accordance with the provisions of the Health and Social Care Act 2001 (with the exception of matters relating to children's health which shall be within the remit of the Children and Young People Overview and Scrutiny Committee) as follows:
 - the review and scrutiny of local National Health Service Bodies (NHS), in particular (but not limited to) any matter relating to the planning, provision and operation of health services in Medway,

- supporting the improvements of health services and the reduction of health inequalities for the people of Medway,
 - considering and responding directly to consultations from the National Health Service on any proposal for a substantial development or substantial variation in the provision of health services in Medway,
 - any other matters within the remit of the Community Services Overview and Scrutiny Committee that the committee may wish to delegate to the sub-committee;
- health promotion;
 - all the functions and duties of the Council under relevant legislation in force from time to time and relating to residential and day care, domiciliary care and respite care and social work for elderly people, adults with physical disabilities, people with mental health problems and learning difficulties, home care service, staffing and emergency response for elderly persons in sheltered housing and hospital social workers;
 - social care procurement;
 - collaborative working with health and voluntary sector agencies in the area;
 - the promotion of good health and the Council's specific initiatives to support this.

NOTE:

The Children and Young People Overview and Scrutiny Committee will have responsibility for health scrutiny in relation to children (defined for this purpose as young people aged 0-18 years).

The Health and Adult Social Care Overview and Scrutiny Committee will be the lead on scrutiny of health insofar as it relates to the transition between childhood and adulthood or where consultation by the NHS bridges services for children and adults, with participation by representatives of the Children and Young People Overview and Scrutiny Committee when such matters are discussed.

(d) **Regeneration, Community and Culture Overview and Scrutiny Committee**

To fulfil all the functions of an Overview and Scrutiny Committee in relation to regeneration, community and culture, and in particular (but not limited to):

- (i) all of the functions and duties of the Council insofar as they relate to environmental health, including street cleansing,

- recycling and refuse collection and air quality management and pollution control;
- (ii) strategic planning;
 - (iii) community safety;
 - (iv) the wardens' service;
 - (v) travellers;
 - (vi) CCTV and enforcement;
 - (vii) emergency planning;
 - (viii) landscape, urban design and conservation;
 - (ix) all of the functions and duties of the Council in relation to development and building control;
 - (x) the preparation, implementation and maintenance of traffic management and highway schemes and initiatives;
 - (xi) matters in relation to LA 21;
 - (xii) in particular to fulfil the overview and scrutiny role in relation to the development of the Council's air quality action plan, development plan, food law enforcement service plan, local transport plan and waste strategy;
 - (xiii) the development of the Council's rural strategy;
 - (xiv) the regeneration of communities in the area and the physical regeneration of the area including being the scrutiny Committee for matters within the remit of the Medway Renaissance Partnership;
 - (xv) the provision and management of community services and participation;
 - (xvi) economic development and social regeneration including to fulfil the overview and scrutiny role in relation to the development of the Council's economic development strategy;
 - (xvii) the management of events and heritage attractions;
 - (xviii) the development and promotion of tourism;
 - (xix) the development of the Council's cultural strategy;

- (xx) the provision and management of castles, museums, art galleries, theatre, archives and local history activities, leisure centres, swimming pools and other like facilities;
- (xxi) leisure, arts, sport and recreational activities to enhance the quality of life for local people;
- (xxii) the provision and management of trees, parks, grounds and other like facilities;
- (xxiii) all of the functions of the Council in relation to European matters;
- (xxiv) social inclusion, community development and neighbourhood renewal and the Council's specific initiatives to promote them;
- (xxv) scrutiny of work areas within the remit of the Director of Regeneration, Community and Culture;
- (xxvi) scrutiny of the work of the Community Safety Partnership and the partners who comprise it, insofar as their activities relate to the partnership itself and to consider crime and disorder CCfAs (in accordance with the guidance and procedures on the CCfA as set out in section 23 of the Overview and Scrutiny rules);
- (xxvii) the review and scrutiny of flood and coastal erosion risk management functions under the Flood and Water Management Act 2010;
- (xxviii) the provision and management of libraries;
- (xxix) the operational management of the Council's housing stock;
- (xxx) the development of partnerships with external organisations to meet housing need and regenerate unsatisfactory housing;
- (xxxi) the improvement of private sector housing;
- (xxxii) grants and loans to owner occupiers, tenants, landlords and/or developers;
- (xxxiii) homelessness and rehousing;
- (xxxiv) special needs housing;
- (xxxv) housing strategy.

23. Guidance and procedures for Councillor Call for Action on Crime and Disorder Matters

23.1 What is a Councillor Call for Action?

Councillor Call for Action (CCfA) is a process for a Councillor to act on behalf of residents to resolve a local crime and disorder issue ~~of concern~~, acting as a **last resort** for people who cannot get issues resolved through any other means. Ward Councillors should be looking to identify crime and disorder CCfAs in their community, but CCfAs can also be raised by local people directly with their ward Councillors. It will still be up to Councillors to recognise whether an issue is a CCfA and whether it is appropriate to champion that issue.

~~The decision to raise and champion a CCfA lies with individual Councillors. The CCfA, alongside proposals which will require a much wider range of agencies to formally cooperate with scrutiny in the future, is intended to provide greater emphasis to the work undertaken by Councillors in their communities as community advocates and champions, and to further increase the accountability of public service providers to local communities.~~

Crime and Disorder CCfA is a legal requirement under the Police and Justice Act from April 2009 and Councillors are under a **duty** to consider requests from members of the public on crime and disorder ~~certain~~ issues. If a Councillor declines to refer a local crime and disorder matter to the relevant Overview and Scrutiny Committee the person who asked him/her to consider it may refer the matter to the Cabinet

The definition of a local crime and disorder issue for the purposes of CcfA is as follows:

A matter concerning

- (a) crime and disorder (including in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) or
- (b) the misuse of drugs, alcohol and other substances

which affects all or part of the ward for which the member is elected or any person who lives or works in that area.

23.2 What's new about the CCfA?

What distinguishes the CCfA from items and topics already raised by Councillors for consideration by scrutiny is:

- **Any** member can raise a crime and disorder CCfA issue for scrutiny to consider
- The focus of the CCfA is on **neighbourhood** or **locality** crime and disorder issues and specifically the **quality** of public service provision at a locality level.
- The CCfA represents a genuine local **community** concern (based on local Councillors' judgements) and

- It is a **persistent** problem which the local Councillor has been **unable to resolve** through local action and discussion with relevant services and agencies.

Scrutiny reviews resulting from CCfA will be undertaken by Overview and Scrutiny Committees with an invitation to Councillors from the affected locality to contribute to the discussion. There is an expectation that any scrutiny reviews resulting from crime and disorder CCfA ~~on the ward-based scrutiny issues~~ will be 'short and sharp', focused reviews - it is important that the public see this as a responsive and un-bureaucratic process which delivers tangible outcomes.

23.3 What is expected of a local Councillor?

Essentially the crime and disorder Councillor Call for Action (CCfA) is a recognition of the work undertaken by ward Councillors in taking up local issues on behalf of their communities. Councillors are expected to identify crime and disorder issues of local concern and act with and on behalf of their community to resolve those issues. It is up to Councillors using this guidance to decide:

- Which issues to take forward as CCfAs and champion;
- When an issue should be referred to the relevant Overview and Scrutiny Committee and
- When to reject an issue.

It is a matter of judgement for a Councillor to decide which local crime and disorder matters to champion and each local Councillor will be accountable to the local community for these judgements. Championing a request will mean taking the issue up on behalf of the resident(s) concerned and trying to resolve the problem by liaising with council officers, and/or outside agencies.

Councillors deal with issues of concern on behalf of their constituents as an everyday part of their constituency case work. The CCfA is not intended to add additional bureaucracy to these ward Councillor requests, which will continue to be dealt with in the same way as they are now. If a Councillor or a member of the public is uncertain about whether a request might be appropriate, the Head of Democratic Services and Head of Elections and Members Services can provide advice and assistance.

23.4 Checklist for Councillors using a CCfA

Initial consideration and actions:

- Discussion with other ward Councillors (to check their actions and intentions and whether they can help).
- Take steps to resolve the issue through existing mechanisms such as contacting Council Officers (including the Overview and Scrutiny Team), liaising with other organisations, use of the Council's complaints procedure or petitions procedure, or checking whether it can be fed into an existing Task Group.

- If the issue is resolved, inform the resident of the outcome and the steps taken, including any difficulties or learning points.
- If the issues remain unresolved, consult the [Democratic Services Overview and Scrutiny](#) Team and if appropriate formally request that the item be considered by the relevant Overview and Scrutiny Committee.
- A Councillor must take in to account government guidance on CCfA in determining whether to refer a matter to the relevant Overview and Scrutiny Committee

[A flow chart of the CCfA process is attached to this guidance and takes you through each step of the process].

Reject if it is any of the following:

- An individual complaint (unless it is a series of individual complaints demonstrating “systematic failure” in a particular area)
~~□ An issue relating to an “excluded” matter such as planning or licensing matter or another issue where individuals or entities have a right of appeal (other than a complaint to the Ombudsman)~~
- Vexatious, discriminatory or not reasonable (see notes at end).
- It is being used as a “second bite of the cherry” e.g. where a previous call-in has failed, or a petition has already been considered.

Accept if it is:

- An [crime and disorder](#) issue of genuine local concern; and
- All other avenues for resolution have been followed, and
- this now seems to be the most appropriate way to deal with it.

23.5 How does CCfA fit with the Overview and Scrutiny Committee Work Programmes?

~~Currently~~ Any member of an Overview and Scrutiny Committee ~~(or 6 other members)~~ can put an item on the relevant Committee agenda using the arrangements set out in the Councils Overview and Scrutiny rules. ~~These arrangements remain unchanged.~~ There is also provision for a Councillor to refer a matter to an Overview and Scrutiny Committee of which he/she is not a member subject to some excluded matters.

The aim of Scrutiny is to be as strategic as possible, championing issues on behalf of the community so it is possible that a [crime and disorder](#) CCfA topic may already be included in an Overview and Scrutiny Committee work programme.

It is valuable for [crime and disorder](#) CCfA issues to feed into overview and scrutiny work programmes, and vice versa. The purpose of CCfA is to give members more of a voice, and scrutiny itself is a member-led process. CCfA can sit comfortably alongside existing methods for placing items on the scrutiny work programme. CCfA should make the work programme more relevant and timely.

~~Currently the Regeneration Community and Culture~~ Each Overview and Scrutiny Committee has the ~~remit~~power to deal with crime and disorder CCfAs ~~within its terms of reference~~. The Committee will be asked to identify if a CCfA is appropriate for scrutiny ensuring that the issues scrutinised and reviewed are of genuine community concern.

The Committee ~~receiving a CCfA~~ will receive an initial report and relevant ward Councillors will be invited to take part in the meeting if they are not members of the Committee. The Committee will then take a view on next steps which may include a Task Group to review the issues in some detail. In deciding whether to take any further action the Committee will take in to account any representations made by the Councillor as to why further investigation or review is appropriate.

23.6 Consideration of a Crime and Disorder CCfA by an Overview and Scrutiny Committee

Ward Councillors and where possible representatives of the community concerned will be notified of the date of the meeting and invited to attend along with any other relevant bodies. The Chairman will provide a short introduction and the Councillor bringing the CCfA will be invited to outline their objectives and to answer questions from other members. The discussion will be structured to focus on the issue raised.

Overview and Scrutiny Checklist for determining a CCfA

The Committee will review the actions taken to date to resolve the issue and all of the criteria set out in paragraph 4 above. It may determine that no action should be taken, for example because:

- The applicant is a vexatious complainant and the issue is being or has been dealt with under the Council's Complaints procedure.
- The issue is currently going through the complaints procedure, and it is appropriate for this to be concluded.
- Ward Councillors have not explored the issue fully and exhausted all avenues.

Alternatively, it may conclude that the public interest is best served by setting up a Task Group to consider the matter in more detail. The Committee should endeavour where possible to identify an appropriate "resolution" of the issue.

Where a Committee decides not to take any further action in respect of a Crime and Disorder CCfA (such as to carry out a review of the matter) it will inform the member who referred the matter, in writing, of its decision and its reasons for that decision.

Notes

Definition of a Complaint

For the purpose of the Council's procedure the Council accepts the Local Government Ombudsman's definition.

"An expression of dissatisfaction by one or more members of the public about the Council's action or lack of action or about the standard of a service, whether the action was taken or the service provided by the Council itself or a person or body acting on behalf of the Council."

Statutory Regulations state that *any matter which "is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee is to be excluded"*.

The relevant Guidance states as follows in regard to these terms:

"Vexatious" and "persistent" – it is probably best to refer to the guidance to the Freedom of Information Act which states that:

Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easier to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.

Issues around persistency are implied by this definition. However, a persistent request may well be entirely valid – it may relate to a systematic problem that has not been effectively resolved. A request which some members may regard as vexatious, for political reasons, may actually be entirely reasonable.

Councils should not see politically motivated CCfAs, and CCfAs on subjects of high-profile political controversy, as a threat. They should be used as an opportunity for Members to defuse political rows and, jointly, to develop solutions that are satisfactory to all.

"Discriminatory" – a modern interpretation of the word "discrimination" is provided at section 45 of the Equality Act 2006, in relation to religion and belief, as follows:

A person ("A") discriminates against another ("B") for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A's religion or belief) A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).

"Not reasonable" – it is suggested that, in the interests of transparency, authorities do not interpret "not reasonable" as being the same as the legal word "unreasonable". It is best to consider it as a qualifier to the word "vexatious", as a vexatious request is likely not to be reasonable, and a request that is not reasonable is likely to be vexatious.

~~Other exclusions – Regulations also state that issues should be excluded from CCfA when they relate to a planning decisions, licensing decisions and all other areas where a person has an alternative avenue to resolve an issue (that is, through a statutory review or appeal process). The Guidance also advises that individual complaints (i.e. a complaint made by an individual which relates to the individual service that the Council provides to him or her) should be excluded, as a complaints~~

~~process already exists. This does not apply, however, where a series of individual complaints demonstrate a “systematic failure” in a particular service area.~~

~~Specific criteria for “automatic rejection” of CCfAs under certain circumstances will not be the best way forward, because each CCfA will need to be looked at on its own merits.~~

~~Definition of a local crime and disorder matter for the purposes of CCfA~~

~~A matter concerning~~

~~(a) crime and disorder (including in particular, forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment) or~~

~~(b) the misuse of drugs, alcohol and other substances~~

~~which affects all or part of the ward for which the member is elected or any person who lives or works in that area.~~

(c) **Crime and Disorder** Councillor Call for Action Flow Chart



