



PART B: RECOMMENDATIONS TO COUNCIL

REPORT TO: POLICY AND RESOURCES COMMITTEE

DATE: 29 SEPTEMBER 2011

**REPORT OF THE: COUNCIL SOLICITOR AND MONITORING OFFICER
ANTHONY WINSHIP**

**TITLE OF REPORT: SUBSTITUTE MEMBERS OF COMMITTEES AND
NUMBERS OF SUBSTITUTES**

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To consider the procedural arrangements for substitute Members of Committees and to increase the maximum number of substitutes in respect of each Political Group at any meetings.

2.0 RECOMMENDATIONS

- 2.1 The Policy & Resources Committee is invited to decide which of the following two options it wishes to recommend to Council, either:-

Option A

Allow substitute Member arrangements for the Overview & Scrutiny Committee and amend clauses 2.1 and 2.2 of the Overview and Scrutiny Procedure Rules at Page 112 of the Constitution accordingly ; or

Option B

Recommend Council to maintain as a rule of the Constitution that there are no substitute Members for Overview & Scrutiny Committee by reinstating clause 28.5 in Part 4 of the Constitution –Rules of Procedure in the following terms :

“28.5 Overview and Scrutiny Committees

Substitute Members cannot be drawn from those Members who sit on the Policy and Resources and Community Services Committees.”

- 2.2 That Council is recommended to approve a change to Council Procedure Rule 28.1 such that for each Committee where substitution is applicable the maximum number of substitutes in respect of each Political Group becomes 50% of that group's

membership on the relevant committee, rounded up if necessary, subject to a minimum of 2.

3.0 REASONS FOR RECOMMENDATIONS

3.1 To 'prepare and keep up to date' the Constitution in accordance with section 37 of the Local Government Act 2000.

4.0 SIGNIFICANT RISKS

4.1 No significant risks have been identified in preparing this report.

5.0 BACKGROUND AND INTRODUCTION

5.1 It is a legal requirement for a Committee to have a known membership. For this reason named substitutes are agreed at the Annual Meeting of Council for Committees.

5.2 One of the central principles of the reform of the political management system of Council's implemented by the Local Government Act 2000 was the separation of roles between the Executive/Policy Committees and the Overview & Scrutiny Committee. Accordingly the Council's constitution has historically maintained this separation of roles.

6.0 POLICY CONTEXT

6.1 The Council has a legal duty to maintain a constitution.

7.0 CONSULTATION

7.1 None

8.0 REPORT DETAILS

8.1 There has periodically been a request from Members for Officers to explore the extent to which there may be dual membership of Members on Policy Committees and an Overview & Scrutiny Committee.

8.2 The legal position in relation to the issue of dual membership of a Policy Committee and an Overview & Scrutiny Committee is as follows:

- (a) There is no legal prohibition on Members of a Policy Committee being Members of the Overview & Scrutiny Committee;
- (b) Statutory guidance states that a core group of between 5-10 scrutiny Members should not be on a Policy Committee. But subject to that other Members could be on both. There is, therefore, some flexibility to allow some Members to be on both. This would be convenient for a small group like the Liberal Group. If Members wished to disregard that statutory guidance they would need to give clear, and convincing reasons to depart from that guidance;
- (c) The Members Code of Conduct provides that a Member may not scrutinise a decision in which they participated in making at a Policy Committee; and

- (d) The Council's Constitution had until recently provided that Members of the Policy Committees cannot be a Member of the Overview & Scrutiny Committee. This can be amended if Members so wish.
- 8.3 Council relaxed the historic rule in the Constitution which provided that Members of the Overview & Scrutiny Committee may not also sit on a Policy Committee.
- 8.4 However Council maintained as a rule of the Constitution that there are no substitute Members for Overview & Scrutiny Committee.
- 8.5 In March 2011 an unfortunate mistake was made in updating the constitution and a change in error has been made to the constitution. Paragraph 28.5 of Part 4 of the Constitution clearly states that named substitutes for the Overview & Scrutiny Committee may be drawn from those Members who sit on the Policy and Resources and Commissioning Board. The incorrect text is as follows :
- “28.5 Overview and Scrutiny Committees**
Named substitute Members may be drawn from those Members who sit on the Policy and Resources Committee and Commissioning Board.”
- 8.6 This is wrong and inconsistent with clauses 2.1 and 2.2 of the Overview and Scrutiny Procedure Rules at Page 112 of the Constitution.
- 8.7 Paragraph 28.5 should read as follows :
- “28.5 Overview and Scrutiny Committees**
Substitute Members cannot be drawn from those Members who sit on the Policy and Resources and Community Services Committees.”
- 8.8 The Chairman of the Overview & Scrutiny Committee is understood to favour maintaining the historic position of following the statutory guidance quoted above on having a core membership on the Overview & Scrutiny Committee. This can be achieved by reinstating clause 28.5 as shown in paragraph 8.7 above.
- 8.9 Present general arrangements restricting the number of substitutes to 2 are arguably unfair to a large group. The proposal in paragraph 2.2 give all groups the same proportion of substitutes on any committee without disadvantaging any group compared with the present rules.
- 8.10 Members are asked to note that Council Procedure Rule 23.2 provides that any motion to amend the Council Procedure Rules will, when proposed and seconded, stand adjourned without discussion to the next Ordinary Meeting of Council.

9.0 IMPLICATIONS

- 9.1 The following implications have been identified:
- a) Financial
There are no significant financial implications in considering this report.
 - b) Legal
The legal issues around this decision are in detail in the report.
 - c) Other

There are no significant other implications in considering this report.

**Anthony Winship
Council Solicitor**

Author: Anthony Winship, Council Solicitor
Telephone No: 01653 600666 Ext: 267
E-Mail Address: anthony.winship@ryedale.gov.uk

Background Papers:
None.