



CABINET – 6 NOVEMBER 2002

COUNCIL CONSTITUTION – OPERATIONAL RIGHTS OF REVIEW PANELS

1. INTRODUCTION

1.1 At present, the Council's Constitution permits a Review Panel to require a Portfolio Holder to attend a Panel meeting only where the Panel is reviewing a decision taken by the Executive. There is no general right to require the attendance of a Portfolio Holder in any other circumstance.

1.2 At its meeting on 14 October 2002, Council adopted the following recommendation of the Housing, Health and Social Exclusion Review Panel:

“That the Council consider amending the Constitution to enable any Review Panel to be empowered to request the appearance of the appropriate Cabinet member on any subject which it has raised with the Cabinet, and that the Cabinet be requested to make a recommendation on this issue to the Council”.

The reason for the Panel's recommendation was “in order to assist each Panel to pursue the scrutiny function and to ensure that it is fully briefed on recent developments”.

1.3 This report suggests an amendment to the Constitution to reflect the above recommendation.

1.4 Under the terms of the Constitution, as the Panel considers that an amendment is warranted, this matter will be referred on to full Council whatever the Cabinet's recommendation (even if the Cabinet is of the view that no amendment to the Constitution is necessary).

2. PROPOSED AMENDMENT TO CONSTITUTION

2.1 Chapter 10 of the Constitution sets out Review Panels' operational rights and rights of access to information. The current provision enabling Panels to require the attendance of Portfolio Holders for the purpose of reviewing actual decisions taken is at Section 5 of that Chapter. A proposed amendment, showing suggested new text in bold italics, is attached at Appendix 1 to this report.

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- 2.2 Rather than amending the existing paragraphs (which are complicated by references to decisions taken by the Cabinet, or an officer), the proposed amendment makes it clear, by inserting a sub-heading, that the existing paragraphs refer only to situations where a decision has been called in. New paragraphs 5.4 to 5.7, containing the Panels' right to require a Portfolio Holder to attend a Panel meeting for other purposes, have been added under another sub-heading.

3. EFFECT OF PROPOSED AMENDMENT

- 3.1 The first paragraph of the proposed amendment reflects the wording of the Housing, Health and Social Exclusion Review Panel's recommendation.
- 3.2 It will be noted that attendance of the Portfolio Holder has to be required by the Panel itself, in relation to any subject "which it has raised with the Cabinet". This means that the Portfolio Holder's attendance cannot be required by, say, the Panel Chairman or any member(s) acting unilaterally. Nor can it be required in order to discuss a matter that the Panel has not already raised with the Cabinet.
- 3.3 A requirement for at least two weeks' notice (members may wish to consider whether this is a reasonable minimum period) has also been included, as has provision for the circumstance where the Portfolio Holder cannot attend the meeting. Where an Executive decision is called in (see the unamended paragraphs 5.1 to 5.3) the Panel needs to meet to review the decision as a matter of urgency – usually within 10 days. The same degree of urgency may not apply where, say, the Panel wishes to discuss a matter of general policy with the Portfolio Holder. For this reason, a provision allowing the Panel Chairman to delay consideration of the matter to a meeting that the Portfolio Holder can attend is suggested.
- 3.4 These provisions also need to be read in conjunction with Standing Order for Meetings 28.4, which provides:
- "If a Cabinet member fails without good cause to attend a Panel meeting after having been required to do so, or fails to arrange for a representative to attend on his behalf if he is himself unable to attend, the Monitoring Officer shall refer to matter to the Standards Committee".
- 3.5 The effect of the provisions is therefore as follows:
- (a) If the Portfolio Holder is unable to attend the meeting at which the Panel plans to discuss the matter for which they have required his or her attendance, the Panel Chairman should be notified at least two days before the meeting.
 - (b) The Panel Chairman will then consider whether he or she would be willing to postpone consideration of the item to the next (or a special) meeting.

- (c) If he/she will not, or if he/she will but the Portfolio Holder cannot attend the subsequent meeting either, the Portfolio Holder should brief another Cabinet member who will attend on his or her behalf.
- (d) If the Portfolio Holder neither attends the meeting (or either meeting, if the Panel Chairman decides to postpone the matter), nor arranges for a representative to attend on his or her behalf, the matter will be referred to the Standards Committee. (It should be noted the Standards Committee has no powers to impose any penalty on the Portfolio Holder, but may report on the matter to full Council).

4. ENVIRONMENTAL/CRIME AND DISORDER/FINANCIAL IMPLICATIONS

4.1 None

5. RECOMMENDATION

5.1 That the Council is asked to approve the amendments to Chapter 10 of the Council's Constitution, as shown in bold italic script in Appendix 1 to this report.

Further Information

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Background papers

None

EXTRACT FROM CHAPTER 10 OF THE CONSTITUTION

5. ATTENDANCE OF EXECUTIVE COUNCILLORS AT PANEL MEETINGS

Call-in of Executive Decisions

5.1 In consideration of any decision taken by the Executive, Panels shall have the absolute right to require the decision-maker, or a Member of the Cabinet where the decision was taken in a Cabinet meeting, to attend any meeting called to review the decision of the Executive. Where it is not reasonable to expect an individual decision-maker himself or herself to attend the meeting:

- a. where the decision was made by a Portfolio Holder, another member of the Cabinet; or
- b. where the decision was made by an officer, a member of the Cabinet or another officer to whom the decision-maker reports,

shall attend on the decision-maker's behalf.

5.2 A decision of the Executive shall not be implemented until such time as the Member of the Cabinet or its representative has attended a meeting of the Panel or the Panel has reported on the decision to the full Council at its next ordinary meeting.

5.3 A Panel may request copies of information or documents to enable it to review a decision of the Executive. If such papers have not been supplied at least two days prior to the meeting of the Panel, the Executive's decision shall stand deferred to a further meeting of the Panel which shall be arranged as soon as practicable.

Other matters that are the responsibility of the Executive

5.4 *To enable them to undertake their duties effectively, Panels shall also have the absolute right to require the appropriate Portfolio Holder to attend any Panel meeting in order to discuss any subject the Panel has raised with the Executive, subject to a minimum of two calendar weeks' notice being given to the Portfolio Holder.*

5.5 *Where the Portfolio Holder is unable to attend the meeting, the Panel Chairman may, at his or her discretion, decide to postpone consideration of the matter to a later programmed Panel meeting, or to a special Panel meeting.*

- 5.6** *Where 5.5 applies, and the Portfolio Holder is also unable to attend the subsequent meeting, or the Panel Chairman decides that consideration of the issue should not be postponed, another Cabinet member shall attend the Panel meeting on the Portfolio Holder's behalf.*
- 5.7** *A Portfolio Holder who is unable to attend a Panel meeting that he or she has been requested to attend must inform the Panel Chairman of this fact, and of his or her arrangements for alternative representation (if appropriate) no later than two days before the meeting.*