

DECISION REVIEW PROCEDURE RULES

To: Constitution and Ethics Committee

Date: 15th September 2015

From: LGSS Director of Law, Property and Governance (CCC Monitoring Officer)

Electoral division(s): All

Purpose: To consider proposed changes to the Decision Review Procedure Rules.

Recommendation:

1. That the Committee consider whether it wishes to recommend revision of:-
 - (a) Article 6 and Rule 2 of the Decision Review Rules (Decisions which may be subject to review) to vary the list of committees which are currently subject to the decision review process (paragraph 4 refers).
 - (b) Rule 3 of the Decision Review Rules (Decisions which may not be reviewed) to cover the position where a decision is rescinded prior to the consideration of a decision review request (paragraph 5.2 refers).
 - (c) Rule 17 of the Committee and Sub Committee Procedure Rules (Previous Decisions and Motions) to give more flexibility for rescission of Committee decisions (paragraphs 5.5 – 5.6 refer).
2. That, subject to any amendments recommended at 1 above, the Committee recommend to full Council that:-
 - (a) Part 4.5 of the Constitution (Decision Review Rules) be amended as set out in Appendix A; and
 - (b) Article 6 of the Constitution (The Decision Review Process and Statutory Scrutiny Function) be amended as set out in Appendix B.

3. That the Monitoring Officer, in consultation with the Chairwoman of the Constitution and Ethics Committee, be authorised to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.

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1. BACKGROUND

- 1.1 At its meeting held on 23rd June 2015, the Committee considered a report regarding changes to the Decision Review Procedure Rules. Members noted that this procedure had been employed for the first time only recently. Officers had, as a result, identified some ambiguities within the current rules, particularly a question as to whether it was possible within the existing provisions to have a circular process of repeated reviewing of a decision.
- 1.2 In discussing the draft changes, Members:-
- Drew attention to an apparent discrepancy between Rule 3i) which exempted from review “a decision which was made more than 3 working days ago” and Rule 4a) which provided that a written request must be received “before the end of 3 full working days from the date on which the decision notice was published”;
 - Commented on the lack of timescale for publication of the decision notice; noting that Article 6 provided that a decision should be published usually within two working days of being made and that meeting this timescale formed a performance indicator for Democratic Services, and that this usually was met; and
 - Suggested that the provision “A decision may only be subject of a request for a decision review by the General Purposes Committee once” be rearranged to move the word “only” to the end of the sentence, for greater clarity (this same amendment will also be required to the equivalent Rule for Full Council).
- 1.3 Members accordingly agreed that the report should be reviewed and submitted for comment before being brought back to the Committee.

2. DECISION REVIEW RULES – NEED FOR REVIEW

- 2.1. The paragraphs below set out the reasoning for the need to amend the Decision Review Rules, as reported to the Committee at its previous meeting.
- 2.2. Part 4.5 of the Constitution sets out the rules which apply in respect of the review of a decision. Under a Leader and Cabinet system, this procedure is generally known as “call in” with decisions of the Executive, Executive members and key decisions taken by officers being subject to call in by the relevant Overview and Scrutiny Committee.
- 2.3. When the Council changed its constitutional arrangements and introduced the committee system, although there was no longer a statutory requirement for the Constitution to include such a procedure, Members opted to retain a form of decision review in the new arrangements.
- 2.4. Under the current rules, to trigger the review process, at least 8 members of the Council are required to submit a request for review of a decision that falls within the remit of the procedure, by the General Purposes Committee. At least 24 members of the Council are required to submit a request, to trigger a review of a decision by Full Council.

- 2.5. The review of the decision of the Highways and Community Infrastructure Committee in respect of the Cambridge Central Library Enterprise Centre put the decision review provisions in Part 4.5 of the Constitution under the microscope and has highlighted where some improvements might be made to clarify certain aspects of the process.
- 2.6. The decision of the Highways and Community Infrastructure Committee was subject to a decision review by the General Purposes Committee who referred the decision back to the Highways and Community Infrastructure Committee for re-consideration. The Highways and Community Infrastructure Committee, at its meeting held on 2 June, made a decision to proceed with the proposals to develop an Enterprise Centre within Cambridge Central Library.
- 2.7. The Monitoring Officer ruled that the process for review of the decision of the Highways and Community Infrastructure Committee by the General Purposes Committee had been exhausted, although the second stage of review by Full Council was still available, subject to 24 members submitting a written request within the time limits. It is recommended that this process is made clearer within the wording of the relevant Rules.
- 2.8. In the case of the Central Library decision, a request was made by the requisite number of Members to refer the decision for review by Full Council. However, in view of new information that had come to light, the Chairman of the Committee exercised his authority to call a special meeting of the Committee to reconsider their original decision. The Committee rescinded its decision which effectively meant that the decision that had been subject of the decision review request no longer existed.
- 2.9. In the interests of efficiency of decision taking, there is a need to have a clear process identifying the point at which decisions will be implemented to avoid repeated calling in of the same decision. However, the Decision Review Rules should be clarified to provide that under the current two step decision review process, even if a decision has been called in to the General Purposes Committee, it can still be referred, subject to securing the support of 24 Members, to Full Council for review and decision. This would then provide an opportunity for the most controversial of decisions to be subject to review by the Full Council.

3. UPDATED DECISION REVIEW RULES/ARTICLE 6

- 3.1. Since the last meeting, the opportunity has been taken to review the Decision Review Rules and Article 6, taking account the points raised by Members. Further points upon which the Committee's views are invited are set out in paragraphs 4 and 5 of this report.
- 3.2. The revised Rules are set out in Appendix A to this report. Article 6 to the Constitution (The Decision Review Process and Statutory Scrutiny Function) is attached at Appendix B. Any deletions are denoted by strike through text and additions/amendments are denoted by underlined text.

3.3. Particular attention is drawn to the following amendments:-

- Rule 2 – the Rule has been expanded to include a cross reference to Article 6 of the Constitution which lists those committees to which the Decision Review Procedure applies. It is suggested that the committees to which the procedure applies should also be contained in the Decision Review Rules as set out in the revised Rule 2. The Article has been reviewed to remove the procedure and instead provides just a cross reference to the Decision Review Procedure Rules. Paragraph 4 below invites the Committee to review which committees should be subject to the decision review process.
- Rule 3 i) – the previous provision relating to a decision which “was more than 3 days old” has been amended and revised to reflect the original intention that a decision that has already been implemented because no decision review request was made within the requisite timescale, is not available for a decision review.
- Rule 4 – to reflect Members’ concerns about the lack of clarity around the deadline for publication of decision statements, a new Rule 4.1 has been inserted which sets out the requirements and timescales in respect of publication of decision statements.
- The word “only” has been moved as requested by the Committee so that Rule 4.2.1 now provides “A decision may be subject of a decision review by the General Purposes Committee once only”. Rule 4.2.2 similarly provides that “A decision may be the subject of a decision review by the Full Council once only”

3.4. At the previous meeting of the Committee, Members questioned the timescale for publication of decision statements following the meeting. Decision statements are published normally within two working days of the decision being made. Members discussed whether the decision statements should be published within one working day. The Committee is asked to note that following preparation of the decision statement, it is circulated to lead officers for review prior to publication. This is so that the Democratic Services Officer can check any technical or other elements of the decision prior to publication. Publication of decision statements forms part of the performance indicators for the Democratic Services team. Performance against this target during 2015/16 to date is 100%. To add clarity, it is proposed that the word “normally” should be removed from the Rules so that they provide that decision statements will be published within two working days of the decision being made.

4. **COMMITTEES SUBJECT TO THE DECISION REVIEW PROCESS**

- 4.1. The revised Rules at Appendix A (Rule 2) have replicated the committees and decision takers which are already listed in Article 6 of the Constitution as being subject to the decision review procedure as follows:-
- Policy and Service Committees (Adults, Children and Young People, Economy and Environment, Health and Highways and Community Infrastructure);
 - General Purposes Committee;
 - Joint Area Committees;
 - LGSS Joint Committee; and
 - Any Key Decisions made by officers (note: officers may not make Key Decisions unless specifically authorised).

- 4.2. Decision statements are prepared for these committees and those decisions may be subject to review under the decision review process.
- 4.3. There are a number of other committees that are not presently subject to the decision review process:-
- Audit and Accounts Committee;
 - Constitution and Ethics Committee;
 - Staffing and Appeals Committee;
 - Cambridgeshire Health and Wellbeing Board;
 - Planning Committee; and
 - Pension Fund Committee.
- 4.4. It is a well-accepted principle that decisions of a quasi-judicial nature should not be subject to a call in process since there will usually be course to separate appeals processes for such decisions. It would therefore not be appropriate for decisions of the Planning Committee, some decisions of the Staffing and Appeals Committee or the Service Appeals Sub-Committee when acting in a quasi-judicial capacity, to be subject to the decision review process.
- 4.5. The Committee is invited to consider whether only the committees listed in paragraph 4.1 should continue to be subject to the decision review procedure. If any committees are added, it will be necessary to adjust Rule 2 of the Decision Review Rules accordingly.

5. RESCINDED DECISIONS

- 5.1. As indicated in paragraph 2.8 above, the decision of the Cambridge Enterprise Library was rescinded by the Highways and Community Infrastructure Committee, the Chairman having called a special meeting in the light of new information which had come to light.
- 5.2. The Committee may wish to reflect on the implications of the rescission of a decision which is already subject to a review request. The revised Rules in Appendix A have not been amended to provide that, in the event of a decision being rescinded prior to any decision review request being determined, the decision review process will not proceed on the basis that there is no extant decision for review. However, should the Committee be minded to seek a variation to reflect this position, the following wording could be included in Rule 3 (Decisions which may not be reviewed):-
- (vi) A decision which has been rescinded by the relevant committee or decision maker prior to the determination of any request for a decision review in accordance with Rule 4.2.
- 5.3. As an associated issue, the Committee may also wish to reflect upon whether Rule 17 of the Committee Procedure Rules (Previous Decisions and Motions) should be amended.
- 5.4. The Rule currently provides as follows:

17. PREVIOUS DECISIONS AND MOTIONS

17.1 Motion to Rescind a Previous Decision

A motion or amendment to rescind a decision made at a meeting of the Committee or Sub-Committee within the past six months cannot be moved unless information which was not available when the resolution was passed is placed before the Committee or Sub-Committee.

17.2 Motion Similar to One Previously Rejected

A motion or amendment in similar terms to one that has been rejected at a meeting of the Committee or Sub-Committee in the past six months cannot be moved unless information which was not available when the motion or amendment was rejected is placed before the Committee or Sub-Committee.

Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

- 5.5. It will be seen that this Rule only allows a Committee to amend a decision where new information which was not available at the time of making the decision is placed before the Committee.
- 5.6. This Rule is not consistent with the Council Procedure Rules that provide that a rescission may be moved where the motion or amendment is signed by at least a third of members. Should Members wish to provide for greater flexibility in rescinding decisions the Rules could be amended to provide that a motion to rescind a previous decision passed within the preceding six months or to propose a motion similar to one previously rejected, may be proposed where new information has become available OR by a resolution approved by at least a specified number of the membership of the Committee. It is clearly not good practice to rescind decisions other than in exceptional circumstances and therefore, if the Committee wishes to amend Rule 17 along these lines, it may wish to consider adopting the same threshold as applies for a decision review (ie: at least 8 members of the Committee)

6. CONCLUSION

- 6.1. The Decision Procedure Rules at Appendix A and Article 6 at Appendix B have been revised to reflect the comments expressed at the last meeting of the Committee.
- 6.2. The Committee is also invited to indicate whether it wishes to make further amendments:
 - (a) To the list of committees which are subject to the decision review process (paragraph 4);
 - (b) In respect of the rescission of a decision prior to the consideration of a decision review request (paragraph 5.2); and
 - (c) To provide greater flexibility for rescission of previous resolutions (paragraph 5.4 – 5.6.)

SOURCE DOCUMENTS	LOCATION
Constitution	http://www.cambridgeshire.gov.uk/info/20050/council_structure/288/councils_constitution