

# Public Document Pack



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21 June 2019

Dear Councillor

I am now able to enclose, for consideration at the meeting of the **GOVERNANCE COMMITTEE** on Thursday 27 June 2019 at 6.00 pm, the following reports that were unavailable when the agenda was printed.

8 **REVIEW OF COMMITTEE ARRANGEMENTS** (Pages 2 - 52)

To consider the report of the Head of Governance.

Yours sincerely

A handwritten signature in black ink, appearing to be "Nicky", written over a white background. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chief Executive

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<b>Subject:</b>	<b>REVIEW OF COMMITTEE ARRANGEMENTS</b>
<b>Meeting and Date:</b>	<b>Governance Committee – 27 June 2019</b> <b>Council – 24 July 2019</b>
<b>Report of:</b>	<b>Joint Report of the Head of Governance and the Monitoring Officer</b>
<b>Classification:</b>	<b>UNRESTRICTED</b>

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**Purpose of the report:** To review the current committee structure and size and provide options for consideration by the full Council.

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**Recommendation:**

- Governance Committee:
- (a) That it makes recommendations to the full Council on whether any changes need to be made to the existing committee structure (excluding scrutiny) agreed at the Council meeting on 17 May 2019 and/or to the number of seats on each committee.
  - (b) That it makes recommendations to the full Council on the number of scrutiny committees (minimum of one) to be operated by the Council and the number of seats on the scrutiny committee(s).
  - (c) That, having due regard to the statutory guidance, it makes recommendations to the full Council on whether any changes need to be made to the Constitution in respect of the participation of lead members on scrutiny committees.
  - (d) That, having due regard to the statutory guidance, it makes recommendations to the full Council on whether any changes need to be made to the method by which the Chairman and Vice-Chairman of scrutiny committee(s) are elected.
  - (e) That it be noted that officers will consider any other matters arising from the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities as part of the annual Review of the Constitution in 2019.
- Council:
- (a) That Council determines whether any changes need to be made to the existing committee structure (excluding scrutiny) agreed by Council at its meeting on 17 May 2019 and whether any changes need to be made to the number of seats on each committee.
  - (b) That Council determines whether any changes need to be made to the number of scrutiny committees (minimum of one) to be operated by the Council and the number of seats on the scrutiny committee(s).
  - (c) That, having due regard to the statutory guidance, Council determined whether any changes need to be made to the Constitution in respect of the participation of lead members on
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scrutiny committees.

(d) That, having due regard to the statutory guidance, Council determines whether any changes need to be made to the method by which the Chairman and Vice-Chairman of scrutiny committee(s) are elected.

(e) That it be noted that officers will consider any other matters arising from the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities as part of the annual Review of the Constitution in 2019.

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## 1. Summary

1.1 The Council at its meeting held on 17 May 2019 instructed officers to review (a) the committee structure and (b) the number of seats on each committee. This report sets out potential options to be considered by the Governance Committee and full Council.

## 2. Introduction and Background

2.1 The elections held on 2 May 2019 were the first held since The Dover (Electoral Changes) Order 2019 was brought into effect. The Order reduced the number of district councillors from 45 to 32 and the number of wards from 21 to 17. Following this change it was decided by full Council that it was an appropriate time to review the committee structure to ensure it was still fit for purpose for a smaller council size. This report sets an analysis of the impact of the change in council size on the committee arrangements and sets out the options that Members may wish to consider arising from this.

2.2 In addition to the review requested by full Council, the Department for Housing, Communities and Local Government issued statutory guidance in May 2019 in respect of Overview and Scrutiny that the Council must have regard to in making its scrutiny arrangements.<sup>1</sup> The phrase ‘must have regard’ comes directly from the statutory guidance (page 5) and is defined as follows:

“The phrase ‘must have regard’, when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.”

2.3 The statutory guidance also suggests that authorities may have regard to other material they might “choose to consider, including that issued by the Centre for Public Scrutiny, when exercising their overview and scrutiny functions.”

2.4 Finally, in setting out the parameters of this report it should be noted that alternative models of governance arrangements permitted under the Local Government Act 2000 (as amended by the Localism Act 2011) have not been considered as this is outside the remit set by Council.

## 3. Committee Structure

3.1 The Council currently appoints the following committees:

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<sup>1</sup> *Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities (May 2019)*  
<https://www.gov.uk/government/publications/overview-and-scrutiny-statutory-guidance-for-councils-and-combined-authorities>

COMMITTEE	ESTABLISHED BY
Dover Joint Transportation Board	Agreement with Kent County Council
Electoral Matters Committee	Decision of the Council
General Purposes Committee	Decision of the Council
Governance Committee	Decision of the Council
Joint Staff Consultative Forum	Collective bargaining agreement
Joint Health, Safety and Welfare Consultative Forum	Health and Safety at Work Act 1974
Licensing Committee	Licensing Act 2003
Planning Committee	Decision of the Council
Regulatory Committee	Decision of the Council
Scrutiny (Community & Regeneration) Committee	The Local Government Act 2000 (s.21(1)) requires at least one scrutiny committee (see section 5 of this report for more information)
Scrutiny (Policy & Performance) Committee	

- 3.2 The functions exercised by each of these committees are set out in Appendix 1 of this report for information.
- 3.3 The above list of committees provides limited scope for the abolition or merger of committees. For example, one option considered by officers was the amalgamation of the statutory Licensing Committee (which routinely considers all matters under the Licensing Act 2003 and Gambling Act 2005) and the non-statutory Regulatory Committee (which deals with licensing matters outside of the Licensing & Gambling Acts) into a single committee. However, it is the view of the Solicitor to the Council that for all practical purposes the Licensing Act 2003 requires it to only exercise the functions set out in the legislation, which would therefore prevent such an amalgamation.
- 3.4 The Dover Joint Transportation Board is a non-statutory joint forum with Kent County Council which advises on the exercise various functions relating to highways and road traffic. The membership and functions are specified in an agreement with Kent County Council and provide parity between the numbers of members of each authority. Any changes would require the agreement to be renegotiated with Kent County Council.
- 3.5 There is a statutory minimum requirement that the Council have one scrutiny committee as it operates executive arrangements. This means that the Council could potentially reduce the number of scrutiny committees to one. This is set out in more detail in section 5 of the report.
- 3.6 This leaves the following committees that could potentially be merged or abolished (with their functions reabsorbed by the full Council):
- Electoral Matters Committee
  - General Purposes Committee
  - Governance Committee
  - Planning Committee

- Regulatory Committee

3.7 The Electoral Matters Committee and General Purposes Committee are the two committees that in terms of remit offer the most potential for abolition or merger as they are exercising functions they could be absorbed relatively easily by the full Council. However, it should be noted that the small size of each committee (5 members on each) and the infrequency of meetings (neither has scheduled meetings) mean that in practical terms there is little benefit from abolishing the two bodies. Furthermore, the recent electoral arrangement review has demonstrated the benefits in having a more flexible body (such as a committee) for discussions prior to final decisions at the full council as opposed to having to call meetings of the full council at every stage in the review process. In respect of the option of merging the two committees, the dissimilar remits while not insurmountable would have to be given consideration.

3.8 The Governance Committee fulfils the role of an 'independent audit committee' required by the Code of Practice for Internal Audit in Local Government (CIPFA 2006), although this has subsequently been superseded by the UK Public Sector Internal Audit Standards (PSIAS) it has not changed the requirement for an 'independent audit committee'. The CIPFA guidance also recommends that "to be effective, the audit committee needs to be independent from executive and scrutiny" and on this basis abolishing the committee would not respect the guidance and merging its functions with another committee would weaken this focus. The other role exercised by the Governance Committee in respect of the ethical framework for elected members has significant synergy with its role in respect of the risk framework for audit and also needs to remain independent from the executive and scrutiny functions. It is therefore not recommended that any changes be made to the Governance Committee.

3.9 The Planning and Regulatory Committees exercise functions which in common parlance (though not in law) are often referred to as being quasi-judicial in nature. The decision making functions of these committees required a high degree of procedural fairness which, in practice, would present problems if exercised directly by the full Council. For this reason it is not recommended that either committee be abolished. Officers examined the potential for merging the two committees but, other than some potential synergy in respect of the licensing of street furniture, it was felt that the remits were too dissimilar (e.g. considering planning applications compared to considering taxi driver applications and 'fit and proper' person reviews) to justify such a change as it would result in effectively two separate agendas as part of the same meeting or separate meetings to cover each area. It is therefore not recommended that any changes be made to the Planning Committee or Regulatory Committee.

#### 4. **Committee Sizes**

4.1 The next matter to consider following the number of committees is the size of the committees which, with the exception of the full Council (as all councillors are automatically members of the full Council) and the Dover Joint Transportation Board (which is governed by an agreement with Kent County Council) can be altered by a majority vote of the Council.

4.2 The Annual Meeting of Council held on 17 May 2019 appointed members to a total of 84 Committee Seats (excluding the full Council, the Cabinet, Project/Policy Advisory Groups, Licensing Sub-Committees, Executive Groups and appointments of fewer than 3 members), on the basis of proportional entitlement (either required or agreed to by Council to be treated as proportional) as follows:

<b>COMMITTEE</b>	<b>Current seats on each committee</b>
Dover Joint Transportation Board	7
Electoral Matters Committee	5
General Purposes Committee	5
Governance Committee	7
Joint Staff Consultative Forum	5
Joint Health, Safety and Welfare Consultative Forum	5
Licensing Committee	15
Planning Committee	10
Regulatory Committee	5
Scrutiny (Community & Regeneration) Committee	10
Scrutiny (Policy & Performance) Committee	10
<b>Total</b>	<b>84</b>

4.3 The table above results in a **current mean average of 2.62 committee places per member**, excluding full Council, Cabinet, Project/Policy Advisory Groups, Licensing Sub-Committees and Executive Committees. It should be noted that within this average, some members will be appointed to more and some to less than the average number of seats. This compares with a mean average of 1.86 committee places per member prior to the elections on 2 May 2019.

4.4 A breakdown of the number of committee seats (excluding full Council, Cabinet, Project Advisory Groups and committee) currently held by individual members is set out below:

<b>Number of Committee Seats</b>	<b>Number of Councillors</b>
0	1
1	9
2	6
3	10
4	5
5	1

4.5 However, it should be noted that the meeting frequency for each committee is not the same for each committee with committees meeting either on an ad-hoc basis, quarterly, bi-monthly or monthly. In addition, some committees may also require meetings in addition to the number set out in the next table. A list of scheduled meetings is set out below.

<b>COMMITTEE</b>	<b>Total Seats</b>	<b>Number of Scheduled Meetings 2019/20</b>
Dover Joint Transportation Board	7	4
Electoral Matters Committee	5	As Required
General Purposes Committee	5	As Required
Governance Committee	7	4
Joint Staff Consultative Forum	5	4
Joint Health, Safety and Welfare Consultative Forum	5	4
Licensing Committee	15	4
Planning Committee	10	12
Regulatory Committee	5	6
Scrutiny (Community & Regeneration) Committee	10	11
Scrutiny (Policy & Performance) Committee	10	11
<b>Total</b>	<b>84</b>	<b>60</b>

- 4.6 In looking at ways in which the average committee places per member could be reduced, there are a number of caveats that need to be kept in mind. Firstly, as mentioned earlier in this report the following committees have specified sizes set out in either the operating agreement with a partner authority or legislation:

Committee	Reason
Dover Joint Transportation Board	To ensure parity with the number of Kent County Councillors (7) for the Dover District
Licensing Committee	The Licensing Act 2003 requires that the Licensing Committee has between 10 – 15 members.

- 4.7 In addition, the Council could recommend changes to the size of the Joint Staff Consultative Forum and the Joint Health, Safety and Welfare Forum but these would require consultation with trade unions before any changes could be implemented. The issue of merging the fora was considered by officers but rejected as it was not consistent with good practice and there were concerns about whether this was consistent with the principles establishing the Joint Health, Safety and Welfare Forum. In operational terms, the two meetings are run consecutively and the memberships are the same so the impact of there being two fora is minimal. However, it does remain an option open to Members should they wish officers to enter into consultation with the trade unions on an alternative size of fora.
- 4.8 One approach to reducing the average number of committee places per member would be to adjust the number of seats on each committee proportionally to reflect the decrease in overall council size from 45 to 32 councillors (a 28% reduction). Subject to the committee size restrictions set out above, this results in the following committee sizes:

<b>COMMITTEE</b>	<b>Current Seats</b>	<b>Proportionally adjusted Seats*</b>
Dover Joint Transportation Board	7	7
Electoral Matters Committee	5	4 (3.60)
General Purposes Committee	5	4 (3.60)
Governance Committee	7	5 (5.04)
Joint Staff Consultative Forum	5	4 (3.60)
Joint Health, Safety and Welfare Consultative Forum	5	4 (3.60)
Licensing Committee	15	11(10.80)
Planning Committee	10	7 (7.20)
Regulatory Committee	5	4(3.60)
Scrutiny (Community & Regeneration) Committee	10	7 (7.20)
Scrutiny (Policy & Performance) Committee	10	7 (7.20)
<b>Total</b>	<b>84</b>	<b>64</b>

(\*) As it is not possible to have less than a whole seat, numbers have been rounded to the nearest whole number.

- 4.9 This would result in a proposed mean average of 2.00 committee places per member, a reduction on the current average of 2.62 committee places per member and significantly closer to the pre-May 2019 average of 1.86 committee places per member.
- 4.10 However, it is not recommended that committee sizes be reduced below 5 seats due to the significantly increased risk of inquoracy in such circumstances. It should be noted that the current quorum for most committees is 3 members.
- 4.11 In addition, the main work of the Licensing Committee is undertaken by the Licensing Sub-Committees which have a statutory size of 3 members under s.9 of the Licensing Act 2003. In order to ensure that all members of the Licensing Committee have equal access to membership of a Sub-Committee, it is suggested that the size of the Licensing Committee should be a multiple of three.
- 4.12 If the sizes of committees are adjusted proportionally to reflect the decrease in overall council size from 45 to 32 councillors (a 28% reduction) but with a minimum size of 5 seats on committee was applied, together with the recommendation in respect of the Licensing Committee, it would result in the following committee sizes.

<b>COMMITTEE</b>	<b>Current Seats</b>	<b>Proportionally adjusted Seats*</b>
Dover Joint Transportation Board	7	7
Electoral Matters Committee	5	5(4)
General Purposes Committee	5	5(4)
Governance Committee	7	5

<b>COMMITTEE</b>	<b>Current Seats</b>	<b>Proportionally adjusted Seats*</b>
Joint Staff Consultative Forum	5	5(4)
Joint Health, Safety and Welfare Consultative Forum	5	5(4)
Licensing Committee	15	12(11)
Planning Committee	10	7
Regulatory Committee	5	5(4)
Scrutiny (Community & Regeneration) Committee	10	7
Scrutiny (Policy & Performance) Committee	10	7
<b>Total</b>	<b>84</b>	<b>80</b>

4.13 This would result in a proposed mean average of 2.50 committee places per member, a small reduction on the current average of 2.62 committee places per member but still significantly higher than the pre-May 2019 average of 1.86 committee places per member.

4.14 The option of a more radical reduction in numbers that still respects a minimum committee size of 5 members is set out below:

<b>COMMITTEE</b>	<b>Current Seats</b>	<b>Proportionally adjusted Seats*</b>
Dover Joint Transportation Board	7	7
Electoral Matters Committee	5	5
General Purposes Committee	5	5
Governance Committee	7	5
Joint Staff Consultative Forum	5	5
Joint Health, Safety and Welfare Consultative Forum	5	5
Licensing Committee	15	10
Planning Committee	10	5
Regulatory Committee	5	5
Scrutiny (Community & Regeneration) Committee	10	5
Scrutiny (Policy & Performance) Committee	10	5
<b>Total</b>	<b>84</b>	<b>69</b>

4.15 This would result in a proposed mean average of 2.09 committee places per member, a reduction on the previous table's mean average of 2.50 committee places per member and much closer to the pre-May 2019 average of 1.86 committee places per member.

4.16 If the table set out at paragraph 4.15 was adjusted to increase the Planning Committee to seven seats in recognition of its workload, it would result in a mean average of 2.25 committee places per member.

## 5. **Scrutiny Committees**

5.1 The Local Government Act 2000 (s.21(1)) requires that authorities such as Dover District Council that operate executive arrangements (i.e. the Cabinet system) must make arrangements that “include provision for the appointment by the authority of one or more [scrutiny] committees of the authority”.

5.2 The Council in 2003 following the adoption of the Leader and Cabinet model of executive arrangements had four scrutiny committees with eight members on each committee. This was reduced to two scrutiny committees in 2006 with ten members on each committee.

5.3 The Local Government Act 2000 (s.21(2)) requires that the Council must ensure that the one or more scrutiny committees have the power to exercise the following functions:

- to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive;
- to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the executive;
- to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive;
- to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive; and
- to make reports or recommendations to the authority or the executive on matters which affect the authority’s area or the inhabitants of that area.

5.4 The statutory guidance also indicates that any model of scrutiny adopted by the Council should also facilitate the ‘Four Principles of Good Scrutiny’ championed by the Centre for Public Scrutiny, which are as follows:

- Provide constructive ‘critical friend’ challenge;
- Amplify the voices and concerns of the public;
- Be led by independent people who take responsibility for their role; and
- Drive improvement in public services

5.5 It should be noted that these principles have been espoused by the council since 2006 as aspirations of good scrutiny and are publicised on the Council’s website.

5.6 As long as the above criteria can be met in terms of functions, the number of scrutiny committees that the Council appoints is a matter for its determination. There are two options open to the Council – the single scrutiny committee model or the multiple scrutiny committee model. A comparison with Kent and CIPFA Nearest Neighbour authorities can be found at Appendix 2.

### Single Scrutiny Committee Model

5.7 As previously mentioned, the Council is required to make “provision for the appointment by the authority of one or more [scrutiny] committees”. This means that the Council does not have to retain the current two committee model, as it could combine the terms of reference to create a single scrutiny committee.

- 5.8 The creation of a single scrutiny committee while representing a change in the current arrangements could have a number of potential benefits over the current multiple scrutiny committee model, as follows:
- As the sum of all scrutiny functions, it would be able consider cross-cutting and wider strategic issues and provide a consistent, single point of focus for member and public engagement in the decision-making system.
  - It would provide for a more flexible model avoiding gaps or overlaps between multiple scrutiny committees while giving the breadth of remit to respond to a wide range of issues.
  - A single scrutiny committee would be easier to support administratively (1 work programme) and, given the reduction in the size of the officer corps, reduce the pressure on the wider corporate diary that serving multiple scrutiny committees on different dates creates.
  - It would enable members with a broad range of expertise to avoid being forced into choosing a specialism based on the separate remits of multiple scrutiny committees.
  - It prevents an inconsistency of approach to scrutiny that work undertaken by separate committees can create.
  - It could still create specific 'task and finish' groups from within its membership to focus on a particular area of work (such as service reviews or specific regeneration projects) and potentially adopt innovative practices for scrutinising specific issues that might not apply to the wider scrutiny function.
  - A wider remit avoids the temptation to search for business purely to fill agendas of multiple committees' scheduled meetings.
- 5.9 The potential disadvantages of this model would in effect constitute the advantages of having multiple scrutiny committees and so has been addressed under that section (para 5.15 below).
- 5.10 In respect of the countywide approach to scrutiny, Dover District Council is the only district/borough authority in Kent to operate two full scrutiny committees. Dartford and Gravesham operate a two scrutiny committee model but the second scrutiny committee is limited to crime and disorder matters and only meets twice per year.
- 5.11 A reduction in the number of scrutiny committees to a single scrutiny committee (based on the table at paragraph 4.13) would reduce the number of seats on committees from 80 to 73 and reduce the mean average of committee places per member from 2.50 to 2.28.
- 5.12 A single scrutiny committee of seven members would equate to 21.87% of the total membership of the council serving on scrutiny. Currently, the two scrutiny committee model with ten members (across two committees) serving on scrutiny equates to 31.25% of the total membership of the council. This compares to a Kent mean average of 27.25% and a CIPFA Nearest Neighbour mean average of 22.12% of the total memberships of the council.
- 5.13 A suggested term of reference for a single scrutiny committee is set out in Appendix 3.
- The Multiple Scrutiny Committee Model
- 5.14 The preferred multiple scrutiny committee model would be the retention of the current two scrutiny committee model rather than increasing the number of scrutiny committees due to the increased ratio of committee seats per member that would result from creating additional scrutiny committees. This could either be with the retention of the same number of members on each committee or with a reduction

from the current numbers to reflect the reduction in the total number of members on the Council.

- 5.15 The retention of the current multiple scrutiny committee model, albeit with a reduced number of members on the committees, offers the following potential benefits:
- That by having specialised remits, it would enable members to specialise in certain areas of scrutiny to the degree that a wider remit, cross-cutting single committee might not encourage.
  - It enables different approaches to scrutiny to be followed by each committee with the potential for innovative scrutiny arising.
  - It spreads the workload between two scrutiny committees ensuring that one committee is not overloaded with work.
  - That Members and officers are familiar with the current model.
- 5.16 Within this approach the current remits for each scrutiny committee could be retained or new remits more closely aligned with directorate/portfolio arrangements could be implemented.
- 5.17 The table set out at paragraph 4.13 demonstrates the average mean number of committee seats per member if two scrutiny committees of seven members each were to be appointed.
- 5.18 There are currently ten members appointed to each of the scrutiny committees. However, as the same members are appointed to each scrutiny committee this means in practical terms ten members are occupying a total of twenty committee seats. If the number of seats on each scrutiny committee was to be reduced to five members each (instead of seven members as set out in paragraph 4.13) to reflect the actual number of councillors serving on scrutiny, this would reduce the number of seats on committees from 80 to 76 and reduce the mean average of committee places per member from 2.50 to 2.37.
- 5.19 A multiple scrutiny committee model of two committees of seven members each would equate to 43.75% (21.87% if the same members were on both scrutiny committees) of the total membership of the council serving on scrutiny. Currently, the two scrutiny committee model with ten members (across two committees) serving on scrutiny equates to 31.25% of the total membership of the council. This compares to a Kent mean average of 27.25% and a CIPFA Nearest Neighbour mean average of 22.12% of the total memberships of the council.
- 5.20 The current terms of reference for the Scrutiny (Policy and Performance) Committee and the Scrutiny (Community and Regeneration) Committee are set out in Appendix 4. If Members wished a revised terms of reference for a two scrutiny committee model that better aligns with the current directorates/portfolios can be developed by officers.

### **Scrutiny Committee Membership**

- 5.21 Section 21(11) of the Local Government Act 2000 makes scrutiny committees bodies to which the political balance rules apply unless the Council resolves, with no one voting against it, to vary this principle. The Local Government Act 2000 also prevents executive members from serving on scrutiny committees (Section 21(9FA(3))) and the Chairman and Vice-Chairman of the Council (who have the ability to suspend call-in).
- 5.22 The Council also must have regard to the statutory guidance which makes reference to the existence of less formal executive positions (such as Lead Members in the case of Dover District Council) as follows (page 15):

“Authorities should take care to ensure that, as a minimum, members holding less formal executive positions, e.g. as Cabinet assistants, do not sit on scrutinising committees looking at portfolios to which those roles relate. Authorities should articulate in their constitutions how conflicts of interest, including familial links (...), between executive and scrutiny responsibilities should be managed, including where members stand down from the executive and move to a scrutiny role, and vice-versa.”

- 5.23 The Leader of the Council has currently appointed two lead members – Councillor J Rose who is the lead member for Dover Waterfront (part of the Environment and Commercial Services portfolio) and Councillor M Rose who is the lead member for Digital Services (which is part of the Community and Tourism portfolio). There are also a number of shadow lead members but these could not be considered as informal executive positions as their role is to support the shadow portfolio holders.
- 5.24 It should be noted that Article 1 of the Council’s Constitution states that one of the purposes of the Constitution is to “ensure that no one will review or scrutinise a decision in which they were directly involved” and the Overview and Scrutiny Procedure Rules also state that “no member may be involved in scrutinising a decision in which he/she has been directly involved.”<sup>2</sup>
- 5.25 In executive terms, while lead members at Dover District Council do not exercise executive decision-making powers directly themselves they do advise the portfolio holders who will be making executive decisions (either individually or collectively as part of the Cabinet). They will therefore be covered by Article 1 of the Council’s Constitution and would have to declare a conflict of interest and withdraw from the meeting during the scrutiny of any decisions in which they have been involved.
- 5.26 However, this does not go quite as far as the statutory guidance set out in paragraph 4.6 above, which suggests that “as a minimum, members holding less formal executive positions... do not sit on scrutinising committees looking at portfolios to which those roles relate” and it is for Council therefore to consider whether it needs to adopt this specific exclusion. If it is the view of the Council that it wishes to make this amendment a suggestion as to how this could be done is set out in Appendix 5.

#### **Scrutiny Committee Chairmanship**

- 5.27 The statutory guidance (page 16) recognises the importance of the chairman of scrutiny committees in providing a leadership role and the need for the chair to “possess the ability to lead and build a sense of teamwork and consensus among committee members.” It goes on to state that scrutiny committee chairmen should “pay special attention to the need to guard the committee’s independence. Importantly, however, they should take care to avoid the committee being, and being viewed as, a de facto opposition to the executive”.
- 5.28 The Council’s Constitution (Part 4 Rules of Procedure – Overview and Scrutiny Procedure Rules (paragraph 6)) requires that the chairmanship of Overview and Scrutiny Committee(s) be held by a “councillor who is not a member of the largest political group on the Council, unless there is no such person serving on the committee/sub-committee.” This is in line with the view of the Centre for Public Scrutiny that “appointing minority party chairs helps to promote a non-partisan culture in scrutiny, and makes it more likely that scrutiny members (and chairs) will think and act independently.”<sup>3</sup>

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<sup>2</sup> Article 1, paragraph 1.03 (purpose of the constitution), page 16 & Overview and Scrutiny Procedure Rules, paragraph 2, page 216

<sup>3</sup> Scrutiny bodies: membership and political management, Centre for Public Scrutiny (2014)

- 5.29 In Kent, out of the 10 district/borough authorities operating executive arrangements 6 (including Dover) are opposition chaired and 3 are controlling group chaired. The remaining authority (Folkestone and Hythe) has no political party restriction on who can chair scrutiny and rather appoints the chairmanship at the first meeting of the scrutiny committee each year rather than at full Council.
- 5.30 In respect of selecting the chairman of a scrutiny committee, the statutory guidance states that this “is for each authority to decide itself, however every authority should consider taking a vote by secret ballot” to select the chair. The secret ballot process, while historically not common amongst local authorities as a means of selecting chairmen, is used by a number of House of Commons Select Committees to select their chairmen. If it is the view of the Council that it wishes to adopt the election of scrutiny chairs by secret ballot, a suggestion as to how this could be done is set out in Appendix 6.
- 5.31 The statutory guidance also “strongly recommends” (page 16) that the chair of a scrutiny committee “not preside over the scrutiny of their relatives.” This issue will be considered by officers as part of the annual Review of the Constitution in 2019.

## 6. Identification of Options

- 6.1 This review has identified the following areas that Members will need to consider:

### Committee Structure (non-scrutiny)

- 6.2 Option 1: To make no change to the number of committees set out in paragraph 3.1 (excluding scrutiny committees which are addressed elsewhere) of the report.
- 6.3 Option 2: To make a change to the number of committees set out in paragraph 3.1 (excluding scrutiny committees which are addressed elsewhere) of the report through merging or abolishing committees.

### Committee Sizes

- 6.4 Option 1: To make no change to the number of seats on committees set out in paragraph 4.2 (excluding scrutiny committees which are addressed elsewhere) of the report.
- 6.5 Option 2: To make a change to the number of seats on committees set out in paragraph 4.2 (excluding scrutiny committees which are addressed elsewhere) of the report.

### Scrutiny Committees - Number

- 6.6 Option 1: To reduce the number of scrutiny committees to the statutory minimum number of one committee.
- 6.7 Option 2: To maintain the current number of scrutiny committees (two) on the current remits.
- 6.8 Option 3: To maintain the current number of scrutiny committees (two) by change the remits to better reflect the directorate and cabinet portfolio structure of the authority.
- 6.9 Option 4: To increase the number of scrutiny committees to a number to be determined by the Council.

### Scrutiny Committees - Membership

- 6.10 Option 1: Having given due regard to the statutory guidance, no change be made to the Constitution in respect of lead Members serving on scrutiny committees on the grounds that the current measures in place to prevent Members from scrutinising a decision that they have been involved in are sufficient.

- 6.11 Option 2: Having given due regard to the statutory guidance, the Constitution be amended to prevent lead members from sitting on any scrutiny committee which relates to the portfolio for which they are the lead member. In the event that a single scrutiny committee model was adopted, this would prevent lead members from serving on scrutiny.

#### Scrutiny Committees - Chairmanship

- 6.12 Option 1: Having given due regard to the statutory guidance, opt to leave the current arrangements for the appointment of a chairman and vice-chairman of scrutiny committee(s) unchanged (e.g. by the full Council).
- 6.13 Option 2: Having given due regard to the statutory guidance adopt arrangements for the appointment of a chairman and vice-chairman of scrutiny committee(s) by secret ballot by the members of the scrutiny committee.

### **7. Evaluation of Options**

#### Committee Structure (non-scrutiny)

- 7.1 As mentioned earlier in the report, the Council is required to have a Licensing Committee and the Joint Health, Safety and Welfare Consultative Forum. The Governance Committee was created as part of CIPFA best practice recommendations (and a survey of all Kent authorities found they had an audit/governance committee in some form) and should be retained. In addition, to this there are agreements in place for the Dover Joint Transportation Board and the Joint Staff Consultative Forum that would need to be reviewed and subject to consultation/negotiation before any changes could be made.
- 7.2 There are a number of committees where the dissimilar remits mean an amalgamation would not be recommended due to operational issues in delivering. On this basis there are no straightforward changes that could be recommended.
- 7.3 It should be noted that any change to the number of committees appointed by the Council will require a recalculation of the political balance arrangements of the Council.

#### Committee Sizes (non-scrutiny)

- 7.4 There are a number of committees, as mentioned earlier, where the membership is defined as a specific number by agreement with other parties (Dover Joint Transportation Board and the two fora) or legislation (the Licensing Committee). In the case of those specified by agreement this would have to be subject to consultation/negotiation with the relevant parties.
- 7.5 The remaining committees can have their numbers adjusted by the full Council down to a minimum of 3 members, although operationally it is not recommended that any committee should be smaller than 5 members. A proportional reduction in line with that of the reduction in the total size of the Council (subject to the caveats mentioned above) is therefore the recommended option. This can be found at paragraph 4.13.

#### Scrutiny Committees - Number

##### Option 1: Single Scrutiny Committee

- 7.6 This fulfils the statutory requirement of s.21 of the Local Government Act 2000 for those authorities operating Executive arrangements which is that the Council must make arrangements that "include provision for the appointment by the authority of one or more [scrutiny] committees of the authority".
- 7.7 The single scrutiny committee model is the most prevalent in Kent and the CIPFA Nearest Neighbour Group and there is a trend in many district/borough authorities to move to this model. It is also the model that most easily delivers a reduced burden on

councillors following the reduction in council size while still maintaining a reasonably sized committee.

- 7.8 The key strengths of this model are set out in paragraph 5.8 of this report.
- 7.9 The most significant risks with this model of a single scrutiny committee are (i) that through the overuse of 'Task and Finish' working groups it effectively recreates a second scrutiny committee in all but name; and (ii) that it does not effectively prioritise its work programme resulting in long meetings and/or numerous additional meetings. However, practice at other authorities demonstrates that these risks can be mitigated.

#### Option 2: Multiple Scrutiny Committees

- 7.10 This model also fulfils the statutory requirement of s.21 of the Local Government Act 2000 and is the model currently operated by the Council. While not the most common model of scrutiny amongst the local authorities surveyed, it does operate effectively in a number of authorities.
- 7.11 The key strengths of this model are set out in paragraph 5.15 of this report.
- 7.12 The most significant risks with this model of multiple scrutiny committees are (i) that it does not as easily deliver on reducing the overall burden on Members without significant reductions in committee sizes; and (ii) it does not provide as well for cross-cutting scrutiny of issues and with separate defined remits can risk becoming overly bureaucratic.
- 7.13 The current scrutiny committee remits have been set out in Appendix 4 of this report. If the Council wished to maintain multiple scrutiny committees it does not have to do so on the current remits and officers can be asked to bring forward alternative remits for a two (or more) scrutiny committee model.

#### Scrutiny Committees - Membership

- 7.14 The statutory guidance makes a recommendation in respect of avoiding conflicts of interest arising from members occupying less formal executive posts being involved in scrutinising decisions that they have been involved in. As long as the Council gives regard to the statutory guidance in this matter it does not have to follow it. However, if the Council decides not to adopt the statutory guidance it must have a good reason for not doing so (as set out at paragraph 2.2 of this report) and be confident that its existing arrangements prevent such a conflict of interest arising.

#### Scrutiny Committees - Chairmanship

- 7.15 As previously stated, as long as the Council gives regard to the statutory guidance on the appointment arrangements for the chairman and vice-chairman of a scrutiny committee it does not have to follow them. However, if the Council decides not to adopt the statutory guidance it must have a good reason for not doing so (as set out at paragraph 2.2 of this report).
- 7.16 If the Council were to adopt the secret ballot model of electing the chairman and vice-chairman, a procedure for this is set out in Appendix 6.

## 8. **Resource Implications**

- 8.1 A reduction in the number of committees with a resulting reduction in the number of Chairmen and Vice-Chairmen would potentially result in savings in the Members' Allowance Scheme. However, an increase in the number of committees with a resulting increase in the number of Chairmen and Vice-Chairmen would potentially result in a cost to the Members' Allowance Scheme.

- 8.2 For example, the Chairman of a Scrutiny Committee receives an allowance of £3,708 per annum and the Vice-Chairman of a Scrutiny Committee receives an allowance of £927 per annum for a total of £4,635. An increase in the number of scrutiny committees would result in a cost to the Members' Allowance Scheme of £4,635 per committee and a decrease would result in a saving to the Members' Allowance Scheme of a similar amount.
- 8.3 Although not a direct financial cost, a significant increase in the number of committees would have an impact on officer resources.

9. **Appendices**

- Appendix 1 – Committee Functions (with potential constitutional changes on committee numbers)
- Appendix 2 - A comparison with Kent and CIPFA Nearest Neighbour authorities
- Appendix 3 – Constitutional Amendments Required for a Potential Single Scrutiny Committee
- Appendix 4 – Terms of Reference for the Scrutiny (Policy and Performance) Committee and the Scrutiny (Community and Regeneration) Committee
- Appendix 5 – Potential Constitutional amendments in respect of informal executive posts and scrutiny committees
- Appendix 6 – Potential Constitutional amendments in respect of the electing of the Chairman and Vice-Chairman of scrutiny committees by secret ballot

10. **Background Papers**

Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities (May 2019)

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## Committee Functions

The following is a list of committee functions extracted from the Constitution. If Council decides to change the number of members on each committee then amendments will need to be made as shown below.

### SECTION 1: RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

#### **Decision Making Body: Regulatory Committee**

**Membership:** 5 for other number to be agreed by Council members of the authority.

#### **Functions:**

1. All regulatory functions under any local Act.
2. The following functions or actions where the function or action involves:
  - determining an application from a person for a licence, approval, consent, permission or registration;
  - direct regulation of a person (with substantial discretion as to the regulatory action); or
  - enforcement of any such licence approval, consent, permission or direct regulation.
    - (i) Functions relating to contaminated land.
    - (ii) The discharge of functions relating to the control of pollution or the management of air quality.
    - (iii) The service of an abatement notice in respect of a statutory nuisance.
    - (iv) The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.
    - (v) The inspection of the authority's area to detect any statutory nuisance.
    - (vi) The investigation of any complaint as to the existence of a statutory nuisance.
    - (vii) The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

#### **Decision Making Body: General Purposes Committee**

**Membership:** 5 for other number to be agreed by Council Members of the authority.

#### **Functions:**

1. To hear appeals against both disciplinary decisions made by the Chief Executive and decisions taken to dismiss members of the Council's staff made by the members of staff affected except where the Committee itself has exercised the power to dismiss.
2. To consider representations by the member of staff affected, any representative(s) and/or witness(es).

3. To consider representations by the Head of East Kent Human Resources Partnership concerning the appeal.
4. To determine the appeal.
5. To determine whether any grievance lodged against the Chief Executive, Monitoring Officer or Section 151 Officer has any merit and, if so determined, to appoint an independent assessor as contained in these officers' terms and conditions of employment.
6. To determine a grievance against a member of the Corporate Management Team where the employee lodging the grievance remains dissatisfied with the determination of the Chief Executive.

**Decision Making Body: Planning Committee**

**Membership:** 10 for other number to be agreed by Council members of the authority.

**Functions:**

1. The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land.
2. The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
3. Functions in connection with the determination of an appeal against any decision made by or on behalf of the authority in relation to planning matters.

**SECTION 2: RESPONSIBILITY FOR COUNCIL FUNCTIONS**

**Decision Making Body: General Purposes Committee**

**Membership:** 5 for other number to be agreed by Council Members of the Authority.

**Functions:**

1. To exercise the powers and functions of the Council within the Budget and Policy Framework other than:
  - (a) Those which are specifically reserved to the full Council by Article 4.02.
  - (b) Those which are within the remit of another committee of the Council.

**Decision Making Body: Planning Committee**

**Membership:** 10 for other number to be agreed by Council Members of the Authority.

**Functions:**1. Planning and Conservation

Functions relating to town and country planning and development control, trees, footpaths, bridleways and restricted byways and public rights of way as described in Article 2 and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000 no.2853) with the exception of any functions required by any enactment or this constitution to be discharged by the council including:

- (a) Power to determine applications for planning permission.
- (b) Power to determine applications to develop land without compliance with conditions previously attached.
- (c) Power to grant planning permission for development already carried out.
- (d) Power to decline to determine applications for planning permission.
- (e) Duties relating to the making of determinations of planning applications.
- (f) Power to determine applications for planning permission made by a local authority, alone or jointly with another person.
- (g) Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.
- (h) Power to enter into planning obligations, to modify and discharge planning obligations and related powers.
- (i) Power to issue a certificate of existing or proposed lawful use or development.
- (j) Power to serve a completion notice.
- (k) Powers in relation to the display of advertisements.
- (l) Powers in relation to entry onto land.
- (m) Power to require the discontinuance of a use of land.
- (n) Power to serve a planning contravention notice, breach of condition notice or stop notice.
- (o) Power to issue a temporary stop notice.
- (p) Power to issue an enforcement notice.
- (q) Power to apply for an injunction restraining a breach of planning control.
- (r) Power to determine applications for hazardous substances consent, and related powers
- (s) Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active phase 1 or 2 sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.
- (t) Power to require proper maintenance of land.
- (u) Power to determine application for listed building consent, and related powers.
- (v) Duties relating to applications for listed building consent.
- (w) Power to serve a building preservation notice, and related powers.

- (x) Power to issue enforcement notice in relation to demolition of listed building in conservation area.
  - (y) Powers to acquire a listed building in need of repair and to serve a repairs notice.
  - (z) Power to apply for an injunction in relation to a listed building.
  - (aa) Power to authorise stopping up or diversion of highway.
  - (bb) Power to execute urgent works.
  - (cc) Powers relating to the protection of important hedgerows.
  - (dd) Powers relating to the preservation of trees.
  - (ee) Powers in relation to complaints about high hedges.
  - (ff) Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway.
  - (gg) Power to extinguish public rights of way over land held for planning purposes.
2. To implement the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017
  3. Local choice functions allocated to the Planning Committee as set out in Section 1 of Part 3 of the Constitution.

**Decision Making Body: Regulatory Committee**

**Membership:** 5 for other number to be agreed by Council Members of the Authority.

**Functions:**

1. To exercise the functions of the Council relating to:
  - (a) Licensing the use of land as a caravan site ("site licences").
  - (b) Licensing the use of moveable dwellings and camping sites.
  - (c) Licensing hackney carriages and private hire vehicles.
  - (d) Licensing drivers of hackney carriages and private hire vehicles.
  - (e) Licensing operators of private hire vehicles.
  - (f) Granting of permits in respect of premises with amusement machines.
  - (g) Registering societies wishing to promote lotteries.
  - (h) Granting permits in respect of premises where amusements with prizes are provided.
  - (i) Licensing of sex shops and sex cinemas.
  - (j) Licensing the performance of hypnotism.
  - (k) Licensing or registration of premises for acupuncture, tattooing, ear-piercing and electrolysis.
  - (l) Licensing of pleasure boats and pleasure vessels.
  - (m) Licensing of market and street trading.
  - (n) Licensing dealers in game and the killing and selling of game.

- (o) Registration and Licensing of premises for the preparation of food.
- (p) Licensing of scrap yards and scrap metal dealers.
- (q) Licensing premises for the breeding of dogs.
- (r) Licensing of pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.
- (s) Registration of animal trainers and exhibitors.
- (t) Licensing of zoos.
- (u) Licensing of dangerous wild animals.
- (v) Knackers' yards.
- (w) Licensing of persons to collect for charitable and other causes.
- (x) Granting of consents for the operation of a loudspeaker.
- (y) Approving meat product premises.
- (z) Approving premises for the production of minced meat or meat preparations.
- (aa) Approving dairy establishments.
- (bb) Approving egg product establishments.
- (cc) Licensing of retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.
- (dd) Approving fish products premises.
- (ee) Registration of food business premises.
- (ff) The making of closing orders with respect to take-away food shops.
- (gg) Power to grant permission for provision, etc. of services, amenities, recreation, and refreshment facilities on the highway and related powers.
- (hh) Duty to publish notice in respect of proposal to grant permission under section 115E of the Highways Act 1980.
- (ii) Licensing of Riding Establishments.

Including the functions of:

- (1) imposing any condition, limitation or other restriction on any such approval, consent, licence permission or registration granted
- (2) determining any other terms to which any such approval, consent, licence, permission or registration is subject
- (3) determining whether, and in what manner to enforce
  - (a) any failure to comply with any such approval, consent, licence, permission or registration
  - (b) any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject
  - (c) any other contravention in relation to a matter with regard to the function of determining an application for any such approval, consent, licence, permission or registration

- (4) amending, modifying or varying any such approval, consent, licence permission or registration, or any condition, limitation or term to which it is subject.
  - (5) revoking or suspending any such approval, consent, licence permission or registration.
  - (6) determining appeals against refusal and revocation of registration of door staff/supervisors.
2. Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.
  3. Local choice functions allocated to the Regulation and Licensing Committee as set out in Section 1 of Part 3 of the Constitution.

### **Decision Making Body: Governance Committee**

**Membership:** 7 for other number to be agreed by Council Members of the Authority.

#### **Functions:**

1. To agree and then periodically review the Terms of Reference in relation to the Internal Audit function.
2. To ensure effective internal audit and internal control arrangements.
3. To receive the Internal Audit Annual Programme of work.
4. To receive audit activity reports and the assurances contained therein relating to the level of internal control and risk management across the Council.
5. Ensure that audit recommendations agreed by management are implemented effectively.
6. To consider external audit reports and make recommendations to the Council.
7. To ensure the effectiveness of the Council's risk management arrangements.
8. To seek assurances that effective action is being taken on risk and internal control related areas of weakness.
9. To receive the Statement of Internal Control and to monitor the implementation of the action plan.
10. To approve the Council's Statement of Accounts, as required by prevailing legislation.
11. Monitor and review the Constitution and make recommendations to the Council.

13. To consider the reports of the Joint Independent Remuneration Panel and make recommendations to the Council.
14. Independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment.
15. To discharge the functions of the Council relating to Standards contained in Part 1, Chapter 7 of the Localism Act 2011 (other than those which are reserved to Council by law) including:
  - (i) To promote and maintain high standards of conduct by Members and Co-opted Members of the District Council and to make recommendations to Council on improving standards.
  - (ii) To advise and assist Town and Parish Councils and Town and Parish Councillors to maintain high standards of conduct and to make recommendations to Town and Parish Councils on improving standards.
  - (iii) To advise the District Council on the adoption of or revisions to its Code of Conduct.
  - (iv) To advise, train or arrange to train District Members, Co-opted Members and Town and Parish Councillors on matters relating to the Code of Conduct.
  - (v) To assist the District Councillors, Co-opted Members and Town and Parish Councillors to observe their respective Codes of Conduct.
  - (vi) To monitor and assess the operation and effectiveness of the Code of Conduct and to review and manage the Arrangements for dealing with Code of Conduct Complaints.
  - (vii) To advise on local ethical governance protocols and procedures.
  - (viii) To maintain oversight of the District Council's arrangements for dealing with Code of Conduct complaints.
  - (ix) To act as an advisory body in respect of any ethical governance matter.
  - (x) To monitor and review the procedures for the Register of Members' Interests and declaring gifts and hospitality.
  - (xi) To receive reports from the Monitoring Officer on the number and nature of complaints received and action taken as a result in consultation with the Independent Person.
  - (xii) To receive an annual report on the District Council's ethical governance arrangements.
  - (xiii) To appoint a Hearing Panel to deal with Code of Conduct complaints following investigation.
16. To grant dispensations pursuant to S33(2) of the Localism Act 2011 and paragraph 8 of the adopted Code of Conduct where:

- (i) without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter.
  - (ii) that the authority considers that the dispensation is in the interests of persons living in its area; or
  - (iii) where the Committee considers that it is otherwise appropriate to grant a dispensation.
17. To monitor complaints handling and Ombudsman investigations and, in relation to non-executive functions, to make payments or provide other benefits in cases of maladministration.
18. To deal with any alleged breaches by councillors of local protocols adopted by the Council including the Protocol for Good Practice in Planning Procedure and the Protocol for Officers and Members for Dealing with Conflicts of Interest of Councillors in Professional Practice

#### **Decision Making Body: Licensing Committee**

**Membership:** 15 for other number between 10 and 15 to be agreed by Council Members of the Authority (and shall not be required to be politically balanced).

**Functions:**

1. Discharge those functions referred to by Section 7(1) of the Licensing Act 2003 (licensing functions).
2. Consider and report upon any recommendation or report of the Council or its Committees or the Executive and its Committees on any matters referred to it which relate to a licensing function.
3. Make recommendations to the Council or its Committees or to the Executive and its Committees on any matter relating to a licensing function.

#### **Decision Making Body: Licensing Sub-Committee**

**Membership:** Each to comprise 3 Members of the Authority appointed by the Licensing Committee (and shall not be required to be politically balanced)

**Functions:**

1. To discharge the functions under Section 18(3) relating to determining applications for premises licences where there are relevant representations.
2. To discharge the functions under Section 31(3) relating to determining applications for provisional statements where there are relevant representations.
3. To discharge the functions under Section 35(3) relating to determining applications for variations to premises licences where there are relevant representations.
4. To discharge the functions under Section 39(3) relating to determining applications to vary the designated premises supervisor where there is police objection.

5. To discharge the functions under Section 44(5) relating to determining applications for the transfer of a premises licence where there is police objection.
6. To discharge the functions under Section 48(3) relating to considering police objection to interim authority notice.
7. To discharge the functions under Section 72(3) relating to determining applications for club premises certificates where there are relevant representations.
8. To discharge the functions under Section 85(3) relating to determining applications to vary club premises certificates where there are relevant representation.
9. To discharge the functions under Section 105(2) relating to determining whether to give counter notice where there is police objection to temporary events notices.
10. To discharge the functions under Section 120(7) relating to determining applications for personal licences where there is police objection.
11. To discharge the functions under Section 120(6) relating to determining applications for personal licences where the applicant has unspent convictions.
12. To discharge the functions under Section 121(6) relating to determining applications for the renewal of personal licences where there is police objection.
13. To discharge the functions under Section 121(5) relating to determining applications for the renewal of personal licences where the applicant has unspent convictions.
14. To discharge the functions under Section 124(4) relating to revoking licences where convictions come to light after the grant or renewal of a personal licence.
15. To discharge the functions under Section 52(2) or (3) relating to the determination of applications for the review of premises licences in cases where relevant representations (within the meaning of Section 52(7)) have been made.
16. To discharge the functions under Section 88(2) or (3) relating to the determination of applications for review of club premises certificates in cases where relevant representations (within the meaning of Section 88(7)) have been made.
17. To discharge the functions under Section 167(5) relating to review following closure order in cases where relevant representations (within the meaning of Section 167(9)) have been made.

**Decision Making Body: Electoral Matters Committee**

**Membership:** 5 for other number to be agreed by Council Members of the Authority.

**Functions:**

1. To consider electoral matters and Boundary Reviews and make recommendations to the Council.
2. To make recommendations on electoral boundaries and associated issues.

## Overview and Scrutiny Committees

Comparison with Kent Authorities and CIPFA ‘Nearest Neighbours’

It should be noted that Canterbury City Council, Maidstone Borough Council, Newark & Sherwood District Council and North Devon District Council operate the ‘committee system’<sup>1</sup> of governance arrangements and therefore, as they do not have a Cabinet, they have no scrutiny committees.

**Table 1: Kent Authorities Comparison**

Authority	Number of Cllrs (authority)	Number of Scrutiny Committee	Number of Cllrs (on scrutiny)	Percentage of Council on Scrutiny
Ashford Borough Council	47	1	12	25.53%
Canterbury City Council	39	n/a	n/a	n/a
Dartford Borough Council	42	2	(i) 17 (ii) 8	40.47% 19.04%
Folkestone & Hythe District Council	30	1	10	33.33%
Gravesham Borough Council	44	2	(i) 9 (ii) 13	20.45% 29.54%
Maidstone Borough Council	55	n/a	n/a	n/a
Sevenoaks District Council	54	1	11	20.37%
Swale Borough Council	47	1	13	27.65%
Thanet District Council	56	1	14	25.00%
Tonbridge & Malling Borough Council	54	1	18	33.33%
Tunbridge Wells Borough Council	48	1	12	25.00%

(i) *Scrutiny Committee (meets 11 times per year)*

(ii) *Crime & Disorder ([Overview &] Scrutiny) Committee (meets 2 times per year)*

### Kent Summary

The countywide median average is 1 scrutiny committee (mean average - 1.22 scrutiny committees), with 12 members (mean average - 12.45 councillors) equating to an average of 25.53% (mean average - 27.25%) of the total number of councillors. This is against a median average council size of 47 (mean average 46.90). There are 7 authorities with 1 scrutiny committee and 2 authorities with 2 scrutiny committees.

**Table 2: CIPFA Nearest Neighbours Comparison**

Authority	Number of Cllrs (authority)	Number of Scrutiny Committee	Number of Cllrs (on scrutiny)	Percentage of Council on Scrutiny
Adur District Council	29	1	8	27.58%
Allerdale Borough Council	49	1	12	24.48%
Bassetlaw District Council	48	1	10	20.83%
Fenland District Council	39	1	9	23.07%
Havant Borough Council	38	3	10 (x3)	26.31% (x1)

<sup>1</sup> “Under the committee system, a local authority is able to decide how its functions, i.e. the powers given to it by central government, are delivered. It is possible for the full council to make all of its decisions. Or it can delegate certain responsibilities to a committee, sub-committee or an officer.” (LGIU Policy Briefing, 2014)

Authority	Number of Cllrs (authority)	Number of Scrutiny Committee	Number of Cllrs (on scrutiny)	Percentage of Council on Scrutiny
			30 (total)	78.94% (x2)
Lancaster City Council	60	2	9 (x2) 18 (total)	15.00% (x1) 30.00% (x2)
Newark & Sherwood District Council	39	n/a	n/a	n/a
North Devon District Council	42	n/a	n/a	n/a
Sedgemoor District Council	48	2	11 (x2)	22.91% (x1) 45.83% (x2)
East Suffolk Council	55	1	13	23.63%
West Lancashire Borough Council	54	2	12 (x2) 24 (total)	22.22% (x1) 44.44% (x2)
Wyre Forest District Council	33	1	5	15.15%

#### CIPFA Nearest Neighbour Summary

The CIPFA Nearest Neighbour median average is 1 scrutiny committee (mean average - 1.50 scrutiny committees), with 10 members (mean average – 9.90 councillors) equating to an average of 22.99% (mean average - 22.12%) of the total number of councillors. This is against a median average council size of 48 (mean average 45.30). There are 6 authorities with 1 scrutiny committee, 3 authorities with 2 scrutiny committees and 1 authority with 4 scrutiny committees.

## Constitutional Amendments Required for a Potential Single Scrutiny Committee

Please note that the proposed amendments are based on the assumption that a single scrutiny committee will be known as the 'Overview and Scrutiny Committee'.

The constitutional amendments set out in this appendix relate to Article 6 – Overview and Scrutiny Committees, Part 3 Responsibility for Council Functions and the Overview and Scrutiny Procedure Rules.

## Article 6 – Overview and Scrutiny Committees

### OVERVIEW AND SCRUTINY – GENERAL COMMENTS

- 6.01 The overview and scrutiny function is central to the constitution. Government guidance makes it clear that overview and scrutiny committees should be powerful committees which meet in public to discuss and make recommendations on the development of policies and hold the executive to account for its actions. They also have a key role in considering other matters of local concern. The only other specific function which they may be empowered to undertake is the conduct of best value reviews.
- 6.02 The rules for how overview and scrutiny committees operate are set out in the overview and scrutiny procedure rules which are contained in Part 4 of the constitution.

### CO-ORDINATING OVERVIEW AND SCRUTINY

- 6.03 The Council acknowledges the need to co-ordinate overview and scrutiny arrangements within the Council's decision-making structure. The co-ordination of overview and scrutiny shall be the responsibility of the ~~Scrutiny (Policy and Performance) Committee~~ Overview and Scrutiny Committee whose role will include:
- (a) To co-ordinate call-in arrangements;
  - (b) To identify the need for resources to support scrutiny arrangements;
  - ~~(c) To facilitate the allocation of issues for scrutiny to the relevant Scrutiny Committee(s);~~
  - ~~(d)~~ (e) To oversee the work programmes of the Scrutiny Committees;
  - ~~(e)~~ (d) To ensure that scrutiny arrangements support the Council's decision-making processes.

### 6.04 Terms of reference

The Council will appoint ~~the an~~ the Overview and Scrutiny Committees ~~set out in the left hand column of the table below~~ to discharge the functions conferred by section 21 of the Local Government Act 2000 in relation to the matters set out ~~below in the right hand column of the same table.~~

<b>Scrutiny – Areas of remit</b>	
<u>1. Budget and Major Policy</u> <u>2. Call-in</u> <u>3. Performance Monitoring and Improvement</u> <u>4. Public Health</u> <u>5. Major Projects</u> <u>6. Crime and Disorder</u>	
Scrutiny (Policy and Performance) Committee	<del>1. Budget and Major Policy</del> <del>2. Call-in</del> <del>3. Performance Monitoring and Improvement</del> <del>4. Scrutiny Co-ordination (including the allocation of all overview and scrutiny functions not within the specific remit of the Scrutiny (Community and Regeneration) Committee)</del>
Scrutiny (Community and Regeneration) Committee	<del>1. Community Reviews and Accountability</del> <del>2. Public Health</del> <del>3. Major Projects</del> <del>4. Crime and Disorder</del>

#### 6.05 General role

Within their terms of reference, ~~the~~ ~~o~~Overview and ~~s~~Scrutiny ~~e~~Committees will:

- (i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- (ii) make reports and/or recommendations to the full Council and/or the executive in connection with the discharge of any functions;
- (iii) consider any matter affecting the area or its inhabitants; and
- (iv) reconsider decisions made but not yet implemented by the executive (following the exercise of the right of call-in).

#### 6.06 Specific functions

(a) **Policy development and review.** ~~The~~ Overview and ~~s~~Scrutiny ~~C~~committees may:

- (i) assist the Council and the executive in the development of its Budget and Policy Framework by in-depth analysis of policy issues;
- (ii) conduct research and undertake community and other consultation in the analysis of policy issues and possible options;
- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) question members of the executive and/or committees and chief officers about their views on issues and proposals affecting the area; and

- (v) 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.
- (b) **Scrutiny.** The Overview and ~~s~~Scrutiny ~~e~~Committees may:
- (i) review and scrutinise the decisions made by and performance of the executive and/or committees and council officers both in relation to individual decisions and over time;
  - (ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
  - (iii) question members of the executive and/or committees and chief officers 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;
  - (iv) make recommendations to the executive and/or appropriate committee and/or Council arising from the outcome of the scrutiny process;
  - (v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the overview and scrutiny committee and local people about their activities and performance; and
  - (vi) question and gather evidence from any person (with their consent).
- (c) **Finance.** The Overview and ~~S~~scrutiny ~~C~~ommittees may exercise overall responsibility for the finances made available to ~~them~~it.
- (d) **Annual report.** The Overview and ~~s~~Scrutiny ~~e~~Committees must report annually to full Council on ~~their-its~~ workings and make recommendations for future work programmes and amended working methods if appropriate.
- (e) **Officers.** The Overview and ~~s~~Scrutiny ~~e~~Committees may exercise overall responsibility for the work programme of the officers employed to support ~~their-its~~ work.

#### 6.07 Proceedings of overview and scrutiny committees

Overview and scrutiny committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

*References: Section 21 and Schedule 1 (Paragraphs 7, 8, 10 and 11), Local Government Act 2000  
Chapters 3 and 9, DETR Guidance*

## PART 3 RESPONSIBILITY FOR FUNCTIONS

### SECTION 2: RESPONSIBILITY FOR COUNCIL FUNCTIONS

#### Decision Making Body: **Overview and Scrutiny Committees**

**A. Committee: Overview and Scrutiny Committee ~~(Policy and Performance)~~**

**Membership:** ~~40~~ [number to be agreed by full Council] Members of the Authority.

**Functions:** 1. To discharge the functions conferred by section 21 of the Local Government Act 2000.

2. Budget and Major Policy

3. Call-in

4. Performance Monitoring and Improvement

5. Public Health

6. Major Projects

7. Crime and Disorder

~~1. Budget and Major Policy~~

~~2. Call-in~~

~~3. Performance Monitoring and Improvement~~

~~4. Scrutiny Co-ordination (including the allocation of all overview and scrutiny functions not within the specific remit of the Scrutiny (Community and Regeneration) Committee)~~

~~**B. Committee: Scrutiny Committee (Community and Regeneration)**~~

~~**Membership:** 10 Members of the Authority.~~

~~**Functions:**~~

~~1. Community Reviews and Accountability~~

~~2. Public Health~~

~~3. Major Projects~~

~~4. Crime and Disorder~~

## Overview and Scrutiny Procedure Rules

### 1. What will be the number and arrangements for overview and scrutiny committees?

The Council will appoint ~~2-1~~ standing scrutiny committees with terms of reference as set out in Article 6 and will appoint to ~~them it~~ as it considers appropriate from time to time. Such committees may appoint sub-committees.

Overview and scrutiny committees or sub-committees may also be appointed for a fixed period, on the expiry of which they shall cease to exist.

The arrangements for the co-ordination of overview and scrutiny will be undertaken through the Overview and Scrutiny (~~Policy and Performance~~)-Committee.

For the purposes of Section 19 of the Police and Justice Act 2006, the Overview and Scrutiny (~~Community and Regeneration~~)-Committee shall be designated as the Crime and Disorder Committee.

### 2. Who may sit on overview and scrutiny committees?

All councillors except (a) members of the Executive and (b) the Chairman and Vice-Chairman of the Council may be members of an overview and scrutiny committee or serve as substitutes on an overview and scrutiny committee. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

### 3. Co-optees

(a) ~~Each~~The overview and scrutiny committee or sub-committee (or working group) shall be entitled to

- (i) appoint up to 4 people who are not members of the Council as non-voting co-optees;
- (ii) appoint up to 4 additional members of the Council (who shall be eligible to serve as voting co-optees) from among those members who are eligible to assist with their work where those additional members are considered to have particular skills, knowledge or experience relevant to the matter assigned to the committee, sub-committee (or working group).

(b) In relation to crime and disorder matters, the ~~designated~~ overview and scrutiny committee shall not be entitled to co-opt:

- (i) Any individual who was wholly or partly responsible (or otherwise directly involved) in the decision or action for which the Committee is exercising its powers;
- (ii) Any member of the Council's Executive; or

- (iii) Anyone who is NOT an officer of a responsible authority or co-operating person/body.

References: Police and Justice Act 2006

Local Government and Public Involvement in Health Act 2007

- (c) The political balance rules shall be maintained if additional voting members are appointed.
- (d) The terms of appointment of each co-optee shall specify whether he/she is appointed for a single issue, single meeting or on a permanent or semi-permanent basis.
- (e) For the avoidance of doubt, the number of external co-optees serving on an overview and scrutiny committee or sub-committee (or working group) at any time shall not exceed 4; and the number of additional member co-optees serving on an overview and scrutiny committee or sub-committee (or working group) at any time shall not exceed 4.
- (f) In the event that the overview and scrutiny committee designated as the crime and disorder committee decides to co-opt someone from a responsible authority or co-operating person/body, they must be consulted as to the most suitable person before co-opting any additional member. The definition of a 'responsible authority' is those bodies which are responsible for crime and disorder strategies.
- (g) For the avoidance of doubt, the number of external co-optees serving on an overview and scrutiny committee or sub-committee (or working group) at any time shall not exceed 4; and the number of additional member co-optees serving on an overview and scrutiny committee or sub-committee (or working group) at any time shall not exceed 4. The total number of co-optees shall not exceed the total number of permanent members on the committee or sub-committee (or working group).
- (h) A co-optee's membership may be withdrawn at any time by the appointing committee.

#### 4. **Meetings of the overview and scrutiny committee**

There shall be 11 ordinary meetings in total of the overview and scrutiny committees in each year and no fewer than two meetings of the overview and scrutiny committee designated as the crime and disorder committee in each twelve months. 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 chairman of the relevant overview and scrutiny committee, by any 3 members of the committee or by the proper officer if he/she considers it necessary or appropriate.

#### 5. **Quorum**

The quorum for an overview and scrutiny committee shall be as set out in Rule 8 of the Council Procedure Rules in Part 4 of this Constitution. The quorum for a sub-committee shall be one half of the membership provided that a quorum shall never be less than two.

## 6. Who chairs overview and scrutiny committee meetings?

Subject to the Council Rules of Procedure, the overview and scrutiny committees/sub-committees will be chaired by a councillor who is not a member of the largest political group on the Council, unless there is no such person serving on the committee/sub-committee. In such cases, the committee/sub-committee may appoint such person to chair it from amongst the councillors sitting on it.

## 7. Work programme

The overview and scrutiny committees/sub-committees shall (subject to any Guidance/Protocol for setting Work Programmes issued by the Council from time to time) be responsible for setting their own work programmes and reporting to the Council thereon and in doing so they shall take into account the wishes of members on that committee who are not members of the largest political group on the Council.

In respect of each topic review contained in the Work Programme of ~~each the~~ overview and ~~Scrutiny~~ Committee, regular briefing meetings shall be held between the relevant Portfolio Holder(s), the Chairman and Controlling Group Spokesperson of the Scrutiny Committee (or sub-committee if appropriate) and the advisory officer for the review.

## 8. Major Reviews

All major reviews will be supported by a project plan developed in consultation with the appropriate agenda officer or an officer designated by them and a realistic assessment should be made at the outset of the resources required to support the review and the availability of them.

## 9. Minor Review

All minor reviews will be assessed on a case by case basis to determine whether a project brief will be required. The relevant scrutiny committee in conjunction with Democratic ~~Support~~ Services will co-ordinate all aspects of any minor review undertaken and be empowered to prioritise workload and use of resources.

## 10. Agenda Setting

- (1) (a) The Chairman, with the assistance of Officer Support, shall be responsible for setting the Agenda.
- (b) For each item of scrutiny contained in the Agenda, a Chairman's Meeting may be held to identify a list of Key Questions or Key Areas for scrutiny; these shall be set out in the Agenda. (See Appendix for the circumstances in which a key questions meeting shall be held.)
- (c) At meetings with Officer Support e.g. to settle the Agenda or the Key Questions/Key Areas, the Chairman shall invite the Controlling Group Spokesperson; the Chairman may also invite other members of the Committee to attend a Key Questions Meeting.
- (d) The Chairman may hold a Scrutiny Committee pre-meeting (at which all Members of the Scrutiny Committee are invited) in order to verify

that all matters of concern have been covered by the Key Questions/Key Areas.

- (2) The Chairman and Controlling Group Spokesperson for each committee, in consultation with the relevant Head of Service, shall develop a programme of meetings (or other arrangements) to deal with agenda setting, pre-committee briefings and work programme monitoring.

## 11. Agenda items

Subject to the Protocol set out below:

- (a) 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. If, following the observance of the Protocol, the member wishes the item to be included on the agenda; the proper officer will ensure that it is included on the next available agenda.
- (b) Any member of the Council who is not a member of the overview and scrutiny committee may give written notice to the proper officer that they wish an item relating to his or her ward and which is relevant to the functions of the committee to be included on the agenda of an overview and scrutiny committee. If, following the observance of the Councillor Call for Action Protocol, the members wish the item to be included on the agenda, the Proper Officer shall make arrangements for the matter to be included on the agenda at the next available meeting of the overview and scrutiny committee/sub-committee.

### Protocol on Submission of Agenda Items for Scrutiny

- (1) Member wishes to bring item/issue to Scrutiny.
- (2) Detailed correspondence (e-mail/letter) sent to Democratic Support Services Officer to include the following:
- Background/History of issue
  - Explanation of issue
  - Reason for being brought to Scrutiny
  - Desired outcome from scrutinising the issue
  - Officer contact (if known)
- (3) Democratic Support Services Officer to pass information to relevant Officer(s) and request contact with Member.
- (4) Discussion between Member and Officer to determine whether it is the right time for the item to come to Scrutiny (reports may be pending, issue held up due to involvement with outside bodies etc) and what benefits could be achieved by subjecting the item to scrutiny.
- (5) Democratic Support Services Officer to be kept informed of discussions and pass information to the Chairman of the Committee.

- (6) Member to make informed decision whether they wish item to be placed on agenda, taking into account discussions with relevant Officer(s).

The overview and scrutiny committees shall also respond, as soon as their work programme permits, to requests from the Council and if it considers it appropriate the executive to review particular areas of Council activity. Where they do so, the overview and scrutiny committee shall report their findings and any recommendations back to the executive and/or Council. The Council and/or the executive shall consider the report of the overview and scrutiny committee within one month of receiving it.

## 12. Policy review and development

- (a) 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.
- (b) 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 committee or sub-committees may make proposals to the executive for developments insofar as they relate to matters within their terms of reference.
- (c) The 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.

## 13. Reports from overview and scrutiny committees

- (a) 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 executive (if the proposals are consistent with the existing Budgetary and Policy Framework), or to the Council as appropriate (eg if the recommendation would require a departure from or a change to the agreed Budget and Policy Framework).
- (b) If an overview and scrutiny committee cannot agree on one single final report to the Council or executive as appropriate, then up to one minority report may be prepared and submitted for consideration by the Council or executive with the majority report subject to the following conditions:
- (i) minority reports must be determined at the Overview and Scrutiny Committee;
  - (ii) minority reports must be supported by a minimum of two members (a proposer and a seconder) and recorded in the minutes of the meeting.
- (c) The Council or executive shall consider the report of the overview and scrutiny committee within one month of it being submitted to the proper officer.

#### 14. **Making sure that overview and scrutiny reports are considered by the executive**

- (a) Once an overview and scrutiny committee has completed its deliberations on any matter it will forward a copy of its final report to the proper officer who will allocate it to either or both the executive and the Council for consideration, according to whether the contents of the report would have implications for the Council's Budget and Policy Framework. If the proper officer refers the matter to Council, he/she will also serve a copy on the Leader with notice that the matter is to be referred to Council. The executive will have 4 weeks 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 executive to the overview and scrutiny proposals.
- (b) The agenda for executive meetings shall include an item entitled 'Issues arising from overview and scrutiny'. The reports of overview and scrutiny committees referred to the executive shall be included at this point in the agenda (unless they have been considered in the context of the executive's deliberations on a substantive item on the agenda) within 4 weeks of the overview and scrutiny committee completing its report/recommendations.
- (c) In considering a report from Overview and Scrutiny, the Cabinet must either accept, reject or amend the recommendations and where it rejects a recommendation it must give reasons for it.
- (d) Where an overview and scrutiny committee or sub-committee prepares a report for consideration by the executive in relation to a matter where an individual member has delegated decision making power, 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 executive for debate before exercising his/her decision making power and responding to the report in writing to the overview and scrutiny committee. The executive member to whom the decision making power has been delegated will respond to the overview and scrutiny committee within 4 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.
- (e) Overview and scrutiny committees will in any event have access to the executive'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 executive's consultation process in relation to any key decision.

**15. Rights of overview and scrutiny committee members to documents**

- (a) 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 Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the executive and overview and scrutiny committee as appropriate depending on the particular matter under consideration.
- (c) The overview and scrutiny committee designated as the crime and disorder committee has rights of access to information relevant to the exercise of its functions from responsible authorities or the co-operating persons/bodies in accordance with the provisions of the agreed Councillor Call for Action protocol.

**16. Members and officers giving account**

- (a) 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 executive, the head of paid service and/or any chief officer or senior 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; and/or
  - (iii) their performanceand it is the duty of those persons to attend if so required.
- (b) Where any member or officer is required to attend an overview and scrutiny committee or sub-committee under this provision, the chair of that committee or sub-committee will inform the proper officer. The proper officer shall inform the member or officer in writing giving reasonable notice (having regard to the protocol set out in Rule 18) 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 or sub-committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (c) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the overview and scrutiny committee or sub-committee shall in consultation with the member or officer arrange an alternative date for attendance.
- (d) Regard shall be had to Paragraph 50 of the Protocol on Member/Officer Relations and to the Protocol set out in Rule 18 below).

- (e) An overview and scrutiny committee may require the attendance of any member to answer questions in regard to the exercise of powers granted under Section 236 of the Local Government and Public Involvement in Health Act 2007.”

## 17. Attendance by others

An overview and scrutiny committee or sub-committee may invite people other than those people referred to in paragraph 16 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 officers in other parts of the public sector and shall invite such people to attend. Regard shall be had to the Protocol set out in Rule 18 below.

The overview and scrutiny committee designated as the crime and disorder committee may require the attendance before it of an officer or employee of a responsible authority or co-operating person or body, in order to answer questions or otherwise provide information in accordance with the provisions of the agreed Councillor Call for Action protocol.

## 18. Call-in

- (a) When a decision is made by the Leader of the Council, executive, an individual member of the executive or a committee of the executive, or a Councillor with delegated Executive authority, or a key decision is made by an officer with delegated authority from the executive, or an area committee 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 2 days of being made. The Chairs of all the overview and scrutiny committees (and all other members of the Council) will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.
- (b) 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 at 12.00 noon, on the fourth working day after the publication of the decision, unless it is called-in.
- (c) By 10.00 am on the fourth working day after publication of the decision, the proper officer shall call-in a decision for scrutiny by the Overview and Scrutiny (Policy and Performance) Committee if so requested in writing by the chairman or controlling group spokesperson of the Overview and Scrutiny (Policy and Performance) Committee or, in their absence, the Vice-Chairman and Deputy Controlling Group Spokesperson, or by any three non-executive members of the Council, and shall then notify the decision-taker of the call-in. A meeting of the Overview and Scrutiny (Policy and Performance) Committee shall then be held within 15 working days of the decision to call-in. Reasons for calling-in an executive decision should be given and recorded in the agenda.
- (d) If, having considered the decision, the Overview and Scrutiny (Policy and Performance) Committee ~~(or the Scrutiny (Community and Regeneration) Committee to which the matter may have been referred by the Scrutiny (Policy and Performance) 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 within a further 10 working days, amending the decision or not, before adopting a final decision.

- (e) If following an objection to the decision, the Overview and Scrutiny (Policy and Performance) Committee ~~(or the Scrutiny (Community and Regeneration) Committee to which the matter may have been referred by the Scrutiny (Policy and Performance) Committee)~~ does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the overview and scrutiny meeting, or the expiry of that further 10 working day period, whichever is the earlier.
- (f) If the matter was 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 body, together with 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 executive as a whole or a committee of it, a meeting will be convened to reconsider within 10 working days of the Council request. Where the decision was made by an individual, the individual will reconsider within 10 working days of the Council request.
- (g) If the Council does not meet, or if it does 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 or expiry of the period in which the Council meeting should have been held, whichever is the earlier.
- (h) Where an executive decision has been taken by an area committee, then the right of call-in shall extend to any 5 members of another area committee if they are of the opinion that the decision made but not implemented will have an adverse effect on the area to which their committee relates. In such cases, those 5 members may request the proper officer to call-in the decision. He/she shall call a meeting of the Overview and Scrutiny (Policy and Performance) Committee on such a date as he/she may determine, where possible after consultation with the chairman of the committee, and in any case within 10 working days of the decision to call-in. All other provisions relating to call-in set out above shall apply.

## GUIDELINES

- (j) Call-in should only normally be exercised in exceptional circumstances; for example where the relevant chairman or controlling group spokesperson or non-executive members are satisfied that the executive decision maker failed to make the decision in accordance with the principles set out in Article 13 (Decision Making).

- (k) To avoid the possibility of many emergency Council meetings, overview and scrutiny committees should only use the power to refer matters to the full Council if they consider that the decision is contrary to or not wholly in accordance with the Budget or Policy Framework.

### **CALL-IN AND URGENCY**

- (l) The call-in procedure set out above shall not apply where the decision being taken by the executive 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 chairman of the Council 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 chairman, the vice-chair's consent shall be required. In the absence of both, the head of paid service or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (m) 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.

## **19. 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.

## **20. Procedure Framework**

- (a) 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 executive to reports of the overview and scrutiny committee; and
  - (v) the business otherwise set out on the agenda for the meeting.
- (b) Where the overview and scrutiny committee conducts investigations (eg 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 guidelines:

(i) Stages: There is a recommended four stage process for scrutiny investigations:

- Definition of the scope and methodology
- A research paper providing background information
- Documentation showing the extent of the investigation
- A final analysis

(ii) Determination of the date/time on which oral evidence is to be provided and the length of notice to be given to parties.

For those representing outside bodies a minimum of ten working days notice shall be given and for internal reviews involving Members and Officers a minimum of two clear working days notice shall be given. For topic reviews every effort will be made to determine a time/date which is convenient for the majority of persons/parties due to attend.

(iii) Expectations regarding the investigation and the level of courtesy and respect to be shown to witnesses.

- (a) The investigation shall be conducted so as to maximise the efficiency of the investigation or analysis;
- (b) The investigation shall be conducted fairly and in a focused and respectful manner and all members of the committee shall be given the opportunity to ask questions of attendees, and to contribute and speak; and
- (c) Those assisting the committee by giving evidence shall be treated with respect and courtesy.

(iv) Provision for written evidence to be submitted.

Written evidence in support, or in place of, oral evidence by witnesses, will only be included within the Committee's (or sub-committee's) report where the witnesses consent has been obtained.

(v) Requirement to give appropriate notice to witnesses regarding the questions they are to be asked and the issues they are expected to respond to before the Committee.

For all reviews a minimum of two clear working days notice shall be given.

(vi) Procedures for the validation of evidence by witnesses prior to its inclusion within the Committee's final report.

The witness should give prior consent for inclusion of any information attributed to him/her.

(vii) Final Report: Following any investigation or review, the committee/sub-committee shall prepare a report, for submission to the executive and/or Council as appropriate and shall make its report and findings public; including the circulation of the final report to all parties that participated in the review.

(c) Officer Support

(i) Scrutiny Committees will receive Officer Support as follows:

- Democratic ~~Support Services~~ Officer.
- second tier officers designated by the Corporate Management Team according to a particular major subject called for Scrutiny.

(ii) Support services shall include:

- assistance with the compilation of and circulation of agendas.
- organisation of meetings – including procurement as necessary of
  - (i) members/officers/third parties invited to attend;
  - (ii) documents or other information required for the meeting.
- research/reports.
- advising on protocols/procedure.
- taking minutes/acting thereon.

(iii) It is agreed that:

- Officer Support must remain neutral and owe a duty at all times to the whole Council.
- Officer Support will assist scrutiny as necessary in the delivery of its role to the Council.
- Council resources will not be used for any party political purposes.

(d) The Chairman

(i) The Chairman of ~~the Overview and~~ Scrutiny Committee (or sub-committee) shall at all times use his/her own discretion and act in the interests of the Council and not of his/her political group.

- (ii) The Chairman shall take a lead role in facilitating and co-ordinating scrutiny and in drawing up an annual programme of subjects for scrutiny.

(e) Training and Development

All Members of the Council shall be provided with relevant training and development in the scrutiny function.

~~21. Matters within the remit of more than one overview and scrutiny committee~~

~~Where the matter for consideration by an overview and scrutiny committee [sub-committee] also falls within the remit of the other overview and scrutiny [sub] committee, the decision as to which overview and scrutiny [sub] committee will consider it will be resolved by the Scrutiny (Policy and Performance) Committee.~~

~~In the case of cross cutting themes falling within the remit of more than one overview and scrutiny committee, it may be agreed that the matter shall be the subject of report from more than one overview and scrutiny committee, or a report shall be made by one overview and scrutiny committee but only after consultation with another overview and scrutiny committee.~~

~~22. Public Petitions~~

~~(a) All petitions which members of the public wish to present to the Council shall be submitted to the Scrutiny (Policy and Performance) Committee in accordance with the following rules:-~~

~~(i) Any petition must be presented by a member of the public in person to the Scrutiny (Policy and Performance) Committee.~~

~~(ii) The petition must bear the signatures of at least 20 citizens of the District. A single list of names of 20 or more citizens or letters submitted on similar headed paper by 20 or more citizens addressing a common theme shall constitute a petition. In addition to a signature, the petitioners must also state their name, address and the date on which they signed the petition.~~

~~(iii) One of the persons who have validly signed the petition must be designated as the 'petition organiser'. The petition organiser is the designated person with whom the Council will deal in relation to the petition.~~

~~(iv) Should a petition be received from 20 or more citizens it shall be reported to the Scrutiny (Policy and Performance) Committee for information).~~

~~(v) The petition must be addressed to Dover District Council and relate:~~

- ~~• to a matter(s) in respect of which the Council exercises functions; and~~

- ~~to a matter(s) which affects the inhabitants of the whole or a part of the District~~
- ~~and request the authority to either take, or cease to take, an action as described in the petition.~~
- ~~Petitions relating to highways are a function of KCC and outside the scope of the scheme. Petitions relating to planning and licensing will be submitted and considered through existing decision making procedures and are also outside the scope of the scheme.~~
- ~~(vi) The petition must not:~~
  - ~~relate to court or legal proceedings.~~
  - ~~disclose confidential or exempt information.~~
  - ~~be defamatory, frivolous or offensive.~~
  - ~~be about the same subject as an active petition or have substantially similar effect to a petition that has been made to the Council within the period of six months ending with the date on which the petition was considered by the Scrutiny (Policy and Performance) Committee.~~
- ~~(vii) A person wishing to present a petition to the Scrutiny (Policy and Performance) Committee must submit it in writing to the Head of Democratic Services explaining details of the petition.~~
- ~~(viii) The petition organiser will receive a written acknowledgement of a valid petition (referred to as an 'active petition' once accepted) within 20 clear days of its receipt. The acknowledgement will provide such information as the Council considers appropriate in respect of what the authority has done or proposes to do in response to the petition.~~
- ~~(ix) If a petition is deemed inadmissible, the petition organiser will be informed of the reasons for that decision.~~
- ~~(x) The petition organiser will be allowed to speak for 10 minutes at the Scrutiny (Policy and Performance) Committee in support of an active petition.~~
- ~~(b) After presentation of an active petition, the Scrutiny (Policy and Performance) Committee may select one or more of the following options:~~
  - ~~Consider the petition and agree to take no further action.~~
  - ~~Consider the petition and forward it to another Committee of the Council or person within the Council for consideration.~~
  - ~~Consider the petition and forward it to another body or organisation outside the Council for consideration and response.~~

- ~~• Invite the petition organisers to provide additional information to assist it in reaching a decision on the action to be taken in relation to the petition.~~
  - ~~• Request a report or research in relation to the petition.~~
  - ~~• Take any other action that it considers appropriate.~~
- ~~(c) The Scrutiny (Policy and Performance) Committee shall after considering an active petition at a scheduled meeting notify the petition organiser in writing of the steps the authority has taken or proposes to take in response to the petition and of the authority's reasons for doing so.~~

### **231. Health Scrutiny**

Scrutiny of health issues shall be conducted in accordance with a protocol developed by Kent County Council and Borough/District Councils through the County.

### **242. Councillor Call for Action**

The Councillor Call for Action function shall be conducted in accordance with the agreed protocol (Appendix 2).

### **253. Public Speaking**

The Council has adopted a protocol for public speaking at meetings of the Overview and Scrutiny Committee. ~~(Policy and Performance) Committee and Scrutiny (Community and Regeneration) Committee.~~ This is set out in full in Appendix 3 of these procedure rules.

**Terms of Reference for  
Scrutiny (Policy and Performance) Committee and  
Scrutiny (Community and Regeneration) Committee**

**Terms of reference**

The Council will appoint the Overview and Scrutiny Committees set out in the left hand column of the table below to discharge the functions conferred by section 21 of the Local Government Act 2000 in relation to the matters set out in the right hand column of the same table.

<b>Scrutiny – Areas of remit</b>	
Scrutiny (Policy and Performance) Committee	<ol style="list-style-type: none"> <li>1. Budget and Major Policy</li> <li>2. Call-in</li> <li>3. Performance Monitoring and Improvement</li> <li>4. Scrutiny Co-ordination (including the allocation of all overview and scrutiny functions not within the specific remit of the Scrutiny (Community and Regeneration) Committee)</li> </ol>
Scrutiny (Community and Regeneration) Committee	<ol style="list-style-type: none"> <li>1. Community Reviews and Accountability</li> <li>2. Public Health</li> <li>3. Major Projects</li> <li>4. Crime and Disorder</li> </ol>

## Potential Constitutional amendments in respect of informal executive posts and scrutiny committees

The following constitutional amendments would be required if Council wished to implement the statutory guidance in respect of informal executive posts ('lead members') on scrutiny:

### Council Procedure Rule 4 (2)

#### 4. APPOINTMENT OF SUBSTITUTE MEMBERS OF COMMITTEES, SUB-COMMITTEES AND PANELS/GROUPS

*This rule applies to Committees, Sub-Committees (excluding Licensing Sub-Committees) and Panels/Groups.*

- (2) Neither the Chairman or Vice-Chairman of the Council, ~~nor~~ any member of the executive nor any lead Member shall act as a substitute for any member of any Scrutiny Committee.

### Overview and Scrutiny Procedure Rule 2

#### 2. Who may sit on overview and scrutiny committees?

All councillors except (a) members of the Executive; ~~and~~ (b) the Chairman and Vice-Chairman of the Council and (c) lead members may be members of an overview and scrutiny committee or serve as substitutes on an overview and scrutiny committee. However, no member may be involved in scrutinising a decision in which he/she has been directly involved.

## Election of a Scrutiny Committee Chairman and Vice-Chairman

### Overview and Scrutiny Procedure Rule 6

#### 6. Who chairs overview and scrutiny committee meetings?

6.1 Subject to the Council Rules of Procedure, the overview and scrutiny committees/sub-committees will be chaired by a councillor who is not a member of the largest political group on the Council, unless there is no such person serving on the committee/sub-committee. In such cases, the committee/sub-committee may appoint such person to chair it from amongst the councillors sitting on it.

6.2 The Chairman and Vice-Chairman of an overview and scrutiny committee will be elected by secret ballot. The procedure for this is set out at Appendix 4 to the Overview and Scrutiny Procedure Rules.

### **Appendix 4 Overview and Scrutiny Procedure Rules (New Appendix)**

1.1 The election of the Chairman and the Vice-Chairman by secret ballot shall be the first and second items of business respectively transacted at the first meeting of a scrutiny committee following Annual Meeting of Council each year.

#### Election of a Chairman

1.2 A member of the committee will be elected by show of hands to preside over the election of the Chairman. This member cannot be a candidate for Chairman as nominees cannot preside over their own election.

1.3 The person presiding at the meeting shall invite nominations for Chairman from those present at the meeting.

1.4 In accordance with Overview and Scrutiny Procedure Rule 6, eligible nominees must not be a member of the largest political group on the Council, unless there is no such person serving on the committee.

1.5 A Member must be proposed and seconded to be eligible.

1.6 A Member shall not be nominated in their absence for the position of Chairman without their written consent.

1.7 Once nominations are complete, any Member nominated will be given the opportunity to withdraw their name. In event of any withdrawal the election shall be from among the remaining nominees.

1.8 The Chairman shall be elected by the vote of a majority of those Members present and voting.

- 1.9 Each Member present shall vote by writing the name of one of the Members nominated upon a ballot paper which shall then be placed in the ballot box. Democratic Services will oversee the conduct of the voting.
- 1.10 When, in the opinion of the person presiding at the election, each Member present has had a reasonable time in which to vote, the ballot box should be delivered to the person presiding whereupon the voting shall be deemed to have been completed except that this shall not preclude the person presiding from exercising their casting vote (if required).
- 1.11 The ballot papers shall then be counted by Democratic Services.
- 1.12 If only one Member is nominated, the person presiding shall declare that Member elected as Chairman. If two Members are nominated the Member receiving the vote of the majority of those Members present and voting shall be declared elected.
- 1.13 If more than two Members are nominated, the person presiding shall announce the name of the Member with the lowest number of votes and that Member shall be eliminated. A further ballot or ballots shall then be taken and after each ballot the Member receiving the lowest number of votes shall be eliminated, in accordance with the foregoing procedure, until only two Members remain which shall be submitted to the final vote. At the conclusion of the final vote the person presiding shall declare that Member elected as Chairman.
- 1.14 In the event of an equality of votes in any of the ballots, the person presiding shall give a second or casting vote and where there are three or more Members with an equal number of votes the person presiding shall give a second casting vote to each of such Members except one.
- 1.15 The Chairman will take the Chair on the declaration of result.

#### Election of a Vice-Chairman

- 1.16 The Chairman or person presiding at the meeting shall invite nominations for Vice-Chairman from those present at the meeting.
- 1.17 In accordance with Overview and Scrutiny Procedure Rule 6, eligible nominees must not be a member of the largest political group on the Council, unless there is no such person serving on the committee.
- 1.18 A Member must be proposed and seconded to be eligible.
- 1.19 A Member shall not be nominated in their absence for the position of Vice-Chairman without their written consent.

- 1.20 Once nominations are complete, any Member nominated will be given the opportunity to withdraw their name. In event of any withdrawal the election shall be from among the remaining nominees.
- 1.21 The Vice-Chairman shall be elected by the vote of a majority of those Members present and voting.
- 1.22 Each Member present shall vote by writing the name of one of the Members nominated upon a ballot paper which shall then be placed in the ballot box. Democratic Services will oversee the conduct of the voting.
- 1.23 When, in the opinion of the person presiding at the election, each Member present has had a reasonable time in which to vote, the ballot box should be delivered to the person presiding whereupon the voting shall be deemed to have been completed except that this shall not preclude the person presiding from exercising their casting vote (if required).
- 1.24 The ballot papers shall then be counted by Democratic Services.
- 1.25 If only one Member is nominated, the person presiding shall declare that Member elected as Vice-Chairman. If two Members are nominated the Member receiving the vote of the majority of those Members present and voting shall be declared elected.
- 1.26 If more than two Members are nominated, the person presiding shall announce the name of the Member with the lowest number of votes and that Member shall be eliminated. A further ballot or ballots shall then be taken and after each ballot the Member receiving the lowest number of votes shall be eliminated, in accordance with the foregoing procedure, until only two Members remain which shall be submitted to the final vote. At the conclusion of the final vote the person presiding shall declare that Member elected as Vice-Chairman.
- 1.27 In the event of an equality of votes in any of the ballots, the person presiding shall give a second or casting vote and where there are three or more Members with an equal number of votes the person presiding shall give a second casting vote to each of such Members except one.