
Subject: RULES FOR SUBSTITUTES ON THE PLANNING COMMITTEE, REGULATORY FUNCTION COMMITTEES AND OTHER COMMITTEES

Meeting and Date: Governance Committee – 27 September 2012
Extraordinary Council – 3 October 2012

Report of: David Randall, Director of Governance

Classification: Unrestricted

Purpose of the report: To review the rules governing the arrangements for appointing substitute members on Committees of the Council.

Recommendation: That it be recommended to the Council that Council Procedure Rule 4 (3) be deleted and replaced with a new 4(3) as follows:

"For each committee, with the exception of the Cabinet, the Council will allow the same number of substitutes in respect of each political group as that group holds ordinary seats on that committee."

1. Summary

The Leader of the Council has requested that the rules concerning the number of substitutes that can be used on a committee be reviewed with a view to introducing increased flexibility in the use of substitutes while still maintaining the required level of knowledge and expertise where appropriate.

2. Introduction and Background

Why does the Council have substitutes?

- 2.1 The primary purpose of appointing substitute members is to ensure at a basic level that a committee can achieve a functioning quorum of members in order to transact its business. However, it also serves to preserve the political proportionality of an individual committee which in turn is a reflection of the political proportionality of the authority as a whole.

What is the constitutional and legal basis for substitutes?

- 2.2 The rules governing the use of substitute members are set out in the Council Procedure Rules contained within the Council's Constitution. The current constitution is based on the Modular Constitution for English Local Authorities issued in 1999 by the former Office of the Deputy Prime Minister. Rule 4 (Appointment of substitute members of committees and sub-committees) of the Modular Constitution contains both statutory and non-statutory provisions and states:

"The Local Government Act 2000 does not allow for substitute or co-opted members of an executive but Councils may wish to consider the appointment of substitute members to other committees. The legal basis for substitute member schemes has been considered by a number of apparently conflicting counsels' opinions over the years. A definitive

view cannot be given until either the issues are tested in court or covered by legislation and Councils are advised to take their own legal advice on the issue."

- 2.3 In accordance with the Local Government Act 2000, the Council's Constitution does not allow for substitute members on the Cabinet and nothing in this report seeks to change this arrangement. In addition, members of Executive Committees may appoint substitutes from amongst the Cabinet only. For obvious reasons, no provision is made for substitutes at Council meetings.
- 2.4 In reviewing the arrangements for the appointment of substitute members, it is clear that the Modular Constitution upon which the Council's Constitution is based did not prescribe the arrangements under which non-executive substitutes could be appointed, leaving that decision to individual authorities. As a consequence, this report seeks to consider all options open to the Council.
- 2.5 The Council Procedure Rules permit substitutes on all committees other than the executive / council and the rules used for this are based upon the practices adopted in the pre-2002 Modular Constitution Standing Orders.
- 2.6 The Standing Orders of the Council largely reflected the contents of the Model Standing Orders Proceedings and Business of Local Authorities (2nd Edition) issued by the then Ministry of Housing and Local Government in 1963 and reprinted by HMSO in 1973. The arrangements governing the appointment of substitute members were added to the Standing Orders by the Policy and Resources Committee at its meeting held on 6 April 1999. Initially adopted for a six month trial period the rules governing the appointment of substitute members were permanently codified in November 1999 as Standing Order 34, set out as follows:
- (1) *A full member of a Committee, Sub-Committee or Working Group who is unable to attend a meeting and wishes a substitute member to attend the meeting in his/her place, shall make the necessary arrangements with any other member of his/her political group and shall either give, or arrange for the nominated substitute member or any other member of his/her political group, to give notice of the substitution before the time when the meeting is to commence, either in written or oral form to the Committee Officer named on the agenda.*
 - (2) *In no case shall the number of Substitute Members appointed by a political group to a Committee, Sub-Committee or Working Group exceed one third of the number of seats allocated to the political group calculated to the nearest whole number save that each political group shall have the right to appoint at least one Substitute Members in all cases.*
 - (3) *The effect of a valid notice of substitution (whether written or oral) shall be that the full member shall cease to be a member of the Committee, Sub-Committee or Working Group (as the case may be) for the duration of that meeting (and for the duration of any adjournment of that meeting) and that the substitute member shall be a full member of the Committee, Sub-Committee or Working Group (as the case may be) for the same period; and that the full member shall resume membership of that Committee, Sub-Committee or Working Group after the conclusion of that meeting (including any adjournment thereof).*

- (4) *A valid notice of substitution (whether written or oral) once given in respect of a meeting of a Committee, Sub-Committee or Working Group may not be revoked in respect of such meeting or any adjournment of it.*
- (5) *The Chairman of the Committee, Sub-Committee or Working Group (as the case may be) shall announce the appointment of any substitute members made in accordance with this Standing Order at the commencement of the meeting.*
- (6) *In the event of the Chairman of a Committee, Sub-Committee or Working Group being absent and appointing a substitute member to attend in his/her place, the substitute member may only act as an ordinary member and will not assume any rights of the full member to act as Chairman (and in such event the normal rules as to the Vice-Chairman taking the chair will apply). In the absence of both the Chairman and Vice-Chairman from a meeting (and the appointment of substitute members to attend in their place) the meeting shall appoint a Chairman for the meeting who may be drawn from any members (including any substitute member) present and with voting rights.*
- (7) *No substitute members may be appointed in respect of the following bodies:-*

Audit and Performance Review Sub-Committee (in cases where it is conducting hearings under the Complaints Procedure)

Housing Benefit and Council Tax Benefit Review Boards

Licensing Sub-Committee

Appeals Panel

Rent Arrears Group

- 2.7 The underlining in the above is to highlight the restriction adopted by the Standing Order on the maximum number of substitutes that could be appointed to any given committee. It should be noted that as Standing Order 34 pre-dates the introduction of executive arrangements it does not include provisions for substitutes on Cabinet or Overview and Scrutiny Committees.
- 2.8 As part of the report to the Policy and Resources Committee on the adoption of Standing Order 34, a number of counsel's opinions which were in circulation at the time were considered by officers. These were to a certain degree in conflict with one another and, as stated in the notes on the modular constitution "*a definitive view cannot be given until either the issues are tested in court*". This did not deter this council or the majority of other councils in the country from proceeding to introduce rules making provision for substitute members. To this date, the position remains untested in the courts.

What are the current rules governing the appointment of substitute members?

- 2.9 The current rules governing the appointment of substitute members are set out in Appendix 1 and reflect the core parts of Standing Order 34. The rule limiting the number of substitute members that may be appointed to a committee is Council Procedure Rule 4(3) as follows:

"In no case shall the number of Substitute Members appointed by a political group to a Committee or Sub-Committee or Panel/Group exceed one third of the number of seats allocated to the political group calculated to the nearest whole number save that each political group shall have the right to appoint at least one Substitute Member in all cases."

- 2.10 Subsequent to the adoption of the Modular Constitution, the Council has adopted eligibility criteria for substitute members of Planning Committee, Regulatory Function Committees (Licensing, Regulatory and Governance) and the Standards Committee so that Members wishing to substitute on these committees must have undergone appropriate training before being eligible to be appointed as a substitute.
- 2.11 The Council's Constitution is consistent with the statutory position of the Local Government Act 2000 which prevents members of the executive from sitting (and therefore substituting) on Overview and Scrutiny Committees.

What do other authorities in Kent do?

- 2.12 A comparison was undertaken between the Dover District Council's arrangements on the appointment of substitutes and those in place at other Kent authorities. The results of this comparison are set out in Appendix 2 of this report; however the only consistency in the findings is the inconsistency of the arrangements, ranging from authorities offering no provision for substitutes through to those offering no limitation on the number of substitutes on 'Ordinary Committees' of the Council.

Why change the arrangements governing the appointment of substitute members?

(a) *Why do we need substitutes?*

- 2.13 In reviewing the current arrangements governing the appointment of substitute members, it is useful to consider the most common reasons for appointing a substitute member. These are in general terms either:
- (a) the unavailability of a member to attend a specific meeting – whether due to a clash with a personal or another council commitment; or
- (b) the inability of a member to participate in a significant portion of the business of a meeting and any votes upon the matter. This is usually due to a Disclosable Pecuniary Interest (DPI), Other Significant Interest (OSI) or other conflict of interest (such as pre-determination/bias) arising.

(b) *How often are substitutes used?*

- 2.14 The Planning Committee has the greatest number of scheduled meetings during a municipal year (13) and it is not uncommon for it to have a number of additional special meetings called each year, sometimes at relatively short notice (subject to the maintenance of statutory notice periods for agenda publication). An analysis of attendance at the Planning Committee over the municipal years 2012/13 and 2011/12 reveals a picture of significant use of substitute members.
- 2.15 The Planning Committee is currently composed of 10 Members (6 Conservative, 4 Labour), which permits 2 substitutes from the Conservative Group and 1 substitute from the Labour Group. During the 5 meetings so far of the municipal year 2012/13, 3

meetings had 2 substitute members present and the other 2 meetings had the maximum 3 substitute members present.

- 2.16 The trend for a high number of substitutes was sustained in the municipal year 2011/12, in which only 4 of the 16 meetings held had no substitute members present. There were 5 meetings with 1 substitute present, 6 meetings with 2 substitute members present and 1 meeting with 3 substitute members present. In addition, the meeting with 3 substitute members present was only attended by a total of 8 members including the substitutes. Whilst the number of non-substituted members prevented the issue of a failure to achieve a quorum without the substitutes arising, the use of substitute members clearly does play a significant part in the membership of the Planning Committee.
- 2.17 In terms of Regulatory Function Committees, the Licensing Sub-Committees are small enough (3 members) that the current rules governing the appointment of substitute members actually allows for the majority of the Sub-Committee to be composed of substitute members.
- 2.18 The Overview and Scrutiny Committees (which form part of the 'Other Committee' group for the purposes of this report) also have a pattern of regular substitute usage. The Scrutiny (Policy and Performance) Committee has had substitutes at every meeting this year, although no meeting has had more than 2 substitutes present. For the municipal year 2011/12, there were 3 out of 12 meetings where no substitutes were present. Again, no meeting had more than 2 substitutes present.

(c) *Proportionality?*

- 2.19 Although up to a third of the seats on any given committee can be substituted (with a minimum of one seat) due to the current political balance of the Council this means in numerical terms that the minority group will usually be limited to a maximum of one substitute member. For short notice meetings, this can have a disproportionate impact on one political group over another.

What are the risks in changing the limit on the number of substitute members?

- 2.20 If the limit on the number of substitutes was removed there is the potential for an entire committee to be composed of substitute members. The risk in such a situation is the loss of continuity in decision making and the public perception that substitutions have been made for purposes other than the transaction of the business of the authority (although arguably this risk also exists with any substitution). The primary mitigation for this risk is self-awareness / self-regulation by Members of how the use of a high number of substitutes appears to the public and to date on committees of 3 members where majority substitution could arise under the current substitution rules this has never been an issue.
- 2.21 Further, the greater the proportion of members who substitute the greater the risk that the committee looks less like the committee which was actually appointed by the Council. Arguably, this increases the likelihood of successful challenge of an unpopular decision.

What alternatives are there to changing the rules governing the appointment of substitute members?

- 2.22 Where the appointment of a substitute member arises due to a declared interest, whether DPI or OSI, a Member would not be able to participate in the debate or vote

upon, the matter to which their interest applied. However, the Localism Act 2011 does require the Code of Conduct to put in place arrangements for the granting of Dispensations and the Council delegated to the Monitoring Officer responsibility for awarding Dispensations. The Localism Act permits Dispensations to be granted in the following circumstances:

- (a) considers that without the dispensation the number of persons prohibited by section 31(4) [a Disclosable Pecuniary Interest] from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive; or
- (e) considers that it is otherwise appropriate to grant a dispensation.

2.23 However, while such provision exists to grant Dispensations, Members should be mindful that it may not always be desirable in terms of public perception and good governance to permit a Member to participate in a decision of or vote upon to a matter in which they have an interest.

3. Identification of Options

3.1 In reviewing the rules governing the limit on the number of substitute members that can be appointed to any given Committee, Sub-Committee or Working Group it is clear that any change to the existing arrangement must achieve a sensible, legal, transparent and workable arrangement. To that end it is suggested that any change to the rules governing the use of substitute members be the subject to review by the Governance Committee after a period of 12 months.

3.2 In addition, nothing in this report would change the requirement for Members to provide notice (either oral or in writing) to the Democratic Support Officer named on the agenda of a substitution prior to the start of the meeting or allow such notice to be revoked in respect of a meeting.

4. Evaluation of Options

4.1 There are 3 options open to Members in respect of the arrangements governing the appointment of substitutes for the Planning Committee, Regulatory Function and Other Committees as follows:

4.2 **Option 1** – To make no change to the existing arrangements governing the appointment of substitute members. This is not the recommended option as it does not increase flexibility.

- 4.3 **Option 2** – To remove the rules limiting the number of substitutes to allow the same number of substitutes in respect of each political group as that group holds ordinary seats on a Committee (i.e. excluding Cabinet), while still keeping the requirement that to be eligible to substitute a member must have undergone training for those committees that this requirement is specified for in the Constitution. This is the recommended option as it provides the most flexibility in arrangements for conducting meetings.
- 4.4 **Option 3** – To determine a different limit for all committees or for individual committees within the groups of Planning Committee, Regulatory Function Committees and Other Committees. This option offers a range of possibilities from removing the ability to appoint any substitutes to introducing an alternative numerical limit or percentage.
- 4.5 This is not the recommended option as it still provides restrictions in the number of substitutes and if different limits were to be favoured for each type of committee it would make them administratively cumbersome to support and confusing to Members.
5. **Resource Implications**
- 5.1 There are no resource implications for this report.
6. **Appendices**
- Appendix 1 – Extract of Rule 4 of the Council Procedure Rules
- Appendix 2 – Comparison of the rules governing the appointment of substitute members in Kent.
7. **Background Papers**
- Constitution of the Council

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

- (1) A full member of a Committee or Sub-Committee or Panel/Group who is unable to attend a meeting and wishes a substitute member to attend the meeting in his/her place, shall make the necessary arrangements with any other member of his/her political group and shall either give, or arrange for the nominated substitute member or any other member of his/her political group, to give notice of the substitution before the time when the meeting is to commence, either in written or oral form to the Committee Officer named on the agenda.
- (2) Neither the Chairman or Vice-Chairman of the Council nor any member of the executive shall act as Substitutes for any member of any Scrutiny Committee.
- (3) In no case shall the number of Substitute Members appointed by a political group to a Committee or Sub-Committee or Panel/Group exceed one third of the number of seats allocated to the political group calculated to the nearest whole number save that each political group shall have the right to appoint at least one Substitute Member in all cases.
- (4) The effect of a valid notice of substitution (whether written or oral) shall be that the full member shall cease to be a member of the Committee or Sub-Committee or Panel/Group (as the case may be) for the duration of that meeting (and for the duration of any adjournment of that meeting) and that the substitute member shall be a full member of the Committee or Sub-Committee or Panel/Group (as the case may be) for the same period; and that the full member shall resume membership of that Committee or Sub-Committee or Panel/Group after the conclusion of that meeting (including any adjournment thereof).
- (5) A valid notice of substitution (whether written or oral) once given in respect of a meeting of a Committee or Sub-Committee or Panel/Group may not be revoked in respect of such meeting or any adjournment of it.
- (6) The Committee Officer (or his/her representative) shall announce the appointment of any substitute members made in accordance with this Standing Order at the commencement of the meeting.
- (7) In the event of the Chairman of a Committee or Sub-Committee or Panel/Group being absent and appointing a substitute member to attend in his/her place, the substitute member may only act as an ordinary member and will not assume any rights of the full member to act as Chairman (and in such event the normal rules as to the Vice-Chairman taking the chair will apply). In the absence of both the Chairman and Vice-Chairman from a meeting (and the appointment of substitute members to attend in their place) the meeting shall appoint a Chairman for the meeting who may be drawn from any members (including any substitute member) present and with voting rights.
- (8) In respect of the Standards and Governance Committees, substitutions may only be made from a pool of named substitutes appointed by the Council.

- (9) (a) Only members who have received the appropriate training may be appointed to act as substitutes on:
 - (i) the Planning Committee
 - (ii) the Regulatory Committee
 - (iii) the Licensing Committee
 - (iv) the Governance Committee.
 - (b) Only members of the Regulation and Licensing Committee who have received the appropriate training may be appointed to act as substitutes on the Licensing Sub-Committee.
- (10) In the case of a joint meeting between two or more Committees, a Member who is a full Member of more than one of those Committees may appoint a substitute in respect of his/her place on one or more of those Committees (notwithstanding that he/she is able to attend the meeting as a full Member of one of those Committees).

Substitutes – Comparison with other Local Authorities in Kent

Local Authority	Extract from Constitution regarding Substitutes or Position of Local Authority
Ashford Borough Council	<i>Have no limit on the number of substitutes (confirmed by telephone on 5/9/12).</i>
Canterbury City Council	For each committee, the council will allow the same number of substitutes in respect of each political group as that group holds ordinary seats on that committee.
Dartford Borough Council	Substitution for each Committee, Sub-committee, Board and Panel will not normally be applied to more than three members in each Political Group.
Gravesham Borough Council	For each committee or sub-committee the Council will appoint the same number of substitutes in respect of each political group as that group holds ordinary seats on that committee or sub-committee, up to a maximum of three.
Maidstone Borough Council	For each Committee (except the Standards Committee), the Council will appoint six substitutes for each political group. For each Sub-Committee (except the Standards Sub-Committees), Committees will appoint five substitutes for each political group. The Council will appoint three substitute members (one from each political group) to the Standards Committee who can each be called upon to substitute for any member of the Standards Committee.
Medway Council	The political parties shall substitute no more than one-half of their members at any Committee or Sub-Committee (all figures to be rounded up to the nearest whole number).
Sevenoaks District Council	<i>Do not allow substitutes (confirmed by telephone on 5/9/12).</i>
Shepway District Council	<i>Have no limit on the number of substitutes (confirmed by telephone on 5/9/12)</i>
Swale Borough Council	<i>Have no limit on the number of substitutes (confirmed by telephone on 5/9/12)</i>

Local Authority	Extract from Constitution regarding Substitutes or Position of Local Authority
Thanet District Council	The Council will appoint as substitute members of Committees and Sub-Committees those members nominated by each political group. Political groups may nominate every other member of the group provided that neither the Chairman nor Vice-Chairman of Council nor any member of the Cabinet shall be eligible to be a substitute member at any Committee or Sub-Committee on which either the Chairman or Vice-Chairman or a member of the Cabinet may not sit.
Tonbridge and Malling Borough Council	<i>Do not allow substitutes (confirmed by telephone on 5/9/12).</i>
Tunbridge Wells Borough Council	<i>Substitutes permitted from a named pool which is appointed at Annual Council when the membership of the committee is determined (confirmed by telephone on 5/9/12).</i>