

Rother District Council

Report to	-	Overview and Scrutiny Committee
Date	-	22 July 2019
Report of the	-	Executive Directors
Subject	-	Proposed Formal Substitute Procedure for Committees

Recommendation: It be **RESOLVED:** That Cabinet be requested to recommend to Council that:

- 1) the proposed substitute procedure for formal committees, set out at Appendix E be recommended to Cabinet for approval and adoption by full Council;
 - 2) the system be implemented with effect from 17 September 2019;
 - 3) Group Leaders be requested to nominate one substitute Member each in respect of the Licensing and General Purposes Committee, the Overview and Scrutiny Committee and the Planning Committee at the full Council meeting to be held on 16 September 2019; and
 - 4) consequential amendments be made to the Council's Constitution.
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Introduction

1. Following a reference from the Member Development Task Group concerning the prospect of introducing a substitute procedure for formal committee meetings, this Committee agreed in March to add this to the Work Programme for consideration at the July meeting (Minute OSC18/48 refers). In particular, at that time, reference was made to the procedure currently in use at East Sussex County Council (ESCC).
2. Given the procedural nature of this matter, officers have undertaken a desk-top review into a formal substitute procedure and propose a preferred model, subject to Members' consideration and approval.

Research with Neighbouring Authorities

3. All our neighbouring local authorities operate formal substitute arrangements. Attached at Appendices A to D are extracts from their constitutions (ESCC, Hastings Borough Council, Lewes District Council and Wealden District Council respectively) which set out their substitute systems. As Members can see the procedures do vary in length and complexity, although there are common themes. One difference between the ESCC's scheme and all others is that their scheme does not apply to meetings of their Overview and Scrutiny Committees (OSC), for the reasons stated in their scheme.
4. Members are reminded that the East Sussex Councils operate quite differently to each other, have different decision making structures and political compositions; the human resources supporting the democratic machinery across the authorities is also quite varied.

5. Whilst the arrangements are different, the common themes include the following:
 - there are no substitute arrangements for Cabinet Members (all); standards (most); licensing (unless trained) (all);
 - formal notification, prior to the commencement of the meeting is required;
 - regulatory Committee substitutes must have received the relevant training;
 - Cabinet Members are unable to substitute for OSC Members; and
 - must be from the same political group.

Considerations and Proposed Procedure

6. The research undertaken with our neighbouring authorities' procedures has provided the opportunity to devise a simplistic, uncomplicated procedure that suits the Council's decision making structure and available resources and takes the best elements from the examples shown.
7. Whilst ESCC's stance regarding substitutes on their OSCs is worthy for the rationale outlined in their procedure, if substitution on this Council's OSC was not permitted, the procedure would only apply to the regulatory committees (Planning and Licensing and General Purposes Committees) of this Council.
8. Provision already exists in the Council's Constitution for Group Leaders to change membership and appoint substitute Members to informal Task and Finish Groups. However, it is noted that it is not conducive to continuity and understanding of Members if the substitution arrangements are used on Task and Finish Groups on an ad hoc basis for the very reasons given by ESCC in relation to their OSCs.
9. Attached at Appendix E is a draft procedure for Members' consideration; the main points to note are as follows:
 - the procedure will NOT be applicable to Cabinet and Audit and Standards Committee; or the Joint Waste Committee and Joint Waste and Recycling Committee (which already have a formal substitute system in place);
 - Overview and Scrutiny Committee substitutes must be Non-Executive Members;
 - Licensing and General Purposes (main Committee only – NOT Panels) and Planning;
 - prior notification must be received at least one clear working day prior to the commencement of the meeting (unless there are extenuating circumstances such as a medical emergency or some other family-related emergency); and
 - onus is on the Member who is unable to attend meeting to arrange and confirm the substitution arrangements to Democratic Services.
10. It is not proposed to allow substitution arrangements in respect of the Licensing Panels (Sub-Committees of the Licensing and General Purposes Committee). These are convened on an ad hoc basis, without the requirement to be politically balanced and any three Members of the main Committee are selected based on diary availability, experience and in light of any interests they may have in relation to the matter in question. The need for

a substitution on a Panel will not therefore arise; should a Panel Member be unable to attend a convened Panel at short notice, an alternative Substantive Member of the Licensing and General Purposes Committee would be selected.

11. For the substitute procedure to be operational there needs to be a nomination process for the named substitutes to be confirmed. It is recommended that in a normal year this will take place at the Annual Council meeting when the substantive appointments to committees are made.
12. Given the relatively few Committees to which a substitute system would be permitted, and the number of available Councillors to act as substitutes, it is recommended that each political group nominate one substitute Member from their Group on each of the relevant committees – Planning, Licensing and General Purposes (main committee only) and the Overview and Scrutiny Committee.
13. Where a substantive Member is substituted on a relevant Committee for more than 50% of the scheduled meetings of that Committee in any civic year, it is proposed that the Group Leader is alerted and consideration is given to the removal of the substantive Member from the relevant Committee.

Conclusion

14. The wish for the Council to adopt a substitution procedure for formal committees and sub-committees has come from Members, via the Member Development Task Group; the adoption of such a procedure would bring the Council into line with our neighbouring local authorities who all operate such a procedure.
15. Officers have undertaken a desk-top review of local authorities' procedures and produced a draft scheme for this Council to consider, taking into account the Council's decision making structure and available resources to administer.
16. Should Members be minded to recommend that the procedure at Appendix E be approved and adopted by Council, Group Leaders will be requested to nominate one substitute Member each in respect of the Licensing and General Purposes Committee, the Overview and Scrutiny Committee and the Planning Committee at the full Council meeting being held on Monday 16 September 2019. The procedure will be incorporated into the Council's Constitution as part of the Council Procedure Rules.

Malcolm Johnston
Executive Director

Dr Anthony Leonard
Executive Director

Risk Assessment Statement

Failure to implement a substitute system may result in some political groups being under-represented on committees in cases where there is substantive committee membership absence.

East Sussex County Council

“Substitutes” on Committees

Where a member is unable to attend a meeting, it is possible for them to resign temporarily and for their political group to nominate a replacement on the basis that the permanent member will subsequently resume his or her seat on the committee. Notice of the change must be given in writing to the Assistant Chief Executive before the start of the meeting. The notice must be signed by the Leader or Deputy Leader of the appropriate political group. Forms for this purpose are available from the Democratic Services Team. The arrangements are formalised in Standing Order 48.5, although the following specific points need to be borne in mind:

- “substitutes” are not permitted in relation to the Cabinet;
- the chairs of the scrutiny committees have agreed that there should be a presumption against the appointment of “substitutes” on scrutiny committees. This is on the basis that it will be very difficult for a member attending a meeting on a one-off basis part way through an investigation to make a meaningful contribution. Given the strong desire on the part of all party groups to work together on these committees, the chairs feel that full representation from each party group is less important than in other situations;
- only members of the Regulatory Committee may perform the functions of that committee or its sub-committees or panels. Accordingly, if a member is unable to attend, say, the Planning Committee any “substitute” must be drawn from the Regulatory Committee.

48.5 (i) Subject to Standing Order 48.5 (ii) and (iii) below, when a member is unable to attend a meeting, he or she may resign temporarily and the Assistant Chief Executive may appoint a replacement on the nomination of the Leader or Deputy Leader of the appropriate political group. The permanent member shall resume his or her place on the Committee following the meeting(s) for which he or she is absent.

(ii) Standing Order 48.5(i) shall not apply to the Cabinet or the Regulatory Committee.

(iii) Only members of the Regulatory Committee may perform the functions of that Committee or its sub-committees or Panels.

Hastings Borough Council

Appointment of Substitute Members of Committees and Sub-Committees

- 4.1 There shall be no substitution of members of the Standards Committee, Licensing Committee or the Cabinet. Members of the Cabinet may not be substitutes on Overview and Scrutiny Committee.
- 4.2 The political groups may appoint substitute members in accordance with this Rule on committees and sub-committees. Only Members who have undergone related training may be substituted to Planning Committee, Charity Committee and Environment and Safety Committee. Only members of Cabinet may be substituted to Charity Committee.
- 4.3 Substitute members will have all the powers and duties of any ordinary member of the committee.
- 4.4 Substitute members may attend meetings in that capacity only:
 - i. to take the place of the ordinary member for whom they are the designated substitute;
 - ii. where the ordinary member will be absent for the whole of the meeting or, in the case of the Charity Committee, for such item or items as shall be notified to the Chief Legal Officer under iii. below; and
 - iii. after notifying the Chief Legal Officer no later than the commencement of the relevant meeting in the form supplied.

Lewes District Council

Substitute Members

- 4.1 The Council may, from time to time, approve a list of members of the Council who are appointed to act as substitute members at meetings of committees and other bodies, the list being referred to as “the approved list” in this Procedure Rule.
- 4.2 A Councillor on the Cabinet or a Standards Panel is not entitled to appoint a substitute. A Councillor on the Cabinet may not be appointed to act as a substitute on the Scrutiny Committee or the Audit and Standards Committee.

No Councillor on the approved list shall sit on or act as substitute on the Licensing Committee or Licensing Sub-Committee, or no Councillor on the approved list shall sit on or act as substitute for the Planning Applications Committee unless they have undertaken appropriate training and a list of those Councillors who have been trained will be maintained by the Head of Democratic Services.

A councillor appointed to serve on a Sub-Committee of the Cabinet shall be permitted to appoint a substitute, who must also be a member of the Cabinet and of the same political group as the member unable to attend the meeting.

- 4.3 The substitute member shall be the member ascertained as follows, namely, the substitute member:
- (a) will be on the approved list;
 - (b) with the exception of the Audit and Standards, Employment, and Planning Applications Committees will be of the same political group as the member unable to attend the meeting;
 - (c) will be the first person able to attend the meeting who is contacted by the member unable to attend and who has not already agreed to act as substitute for another member, and (d) will not already be a member of the committee or other body on which he/she is intending to serve as substitute.
- 4.4 The agenda for each meeting of the committee or other body shall contain as its first item “Declaration of Substitute Members” and as the first business of the meeting the Chair of the meeting shall ask if any member present is substituting for another member and, if so, to declare his/her name as substitute member and the name of the absent member.
- 4.5 If a member intending to act as a substitute joins a meeting after consideration by the meeting of the “Declaration etc” item the member shall forthwith be required to make the declaration and, if necessary, the Chair shall interrupt the proceedings of the meeting for that purpose.
- 4.6 Subject to compliance with the foregoing and any statutory or other requirements, a substitute member may attend, speak and vote as a member of the committee or other body at the meeting for which he/she is a substitute member, including any adjournment thereof. The member who is unable to

attend the meeting shall not be a member of the committee or other body concerned for the meeting, or an adjournment of that meeting.

- 4.7 A member who is unable to attend a meeting shall notify that fact and the name of the substitute member to the Head of Democratic Services, who will arrange for agenda papers to be sent to the substitute member if time permits or for the papers to be available for the substitute member at the meeting.

Wealden District Council

15. Substitute Members

- (1) The Council will keep a list of approved substitutes, as suggested by Group Leaders, the list being referred to as “the approved list” in this Procedure Rule. Substitutions can only be made in accordance with political balance regulations and do not affect the powers of group leaders to appoint Members of their group to places allocated to their group under these regulations.
- (2) A Member who wishes to arrange a substitution shall notify that fact and the name of the substitute Member to the Democratic Services Manager, or nominee.
- (3) The substitute Member shall be the Member ascertained as follows, namely, the substitute Member:
 - (a) will be on the approved list;
 - (b) will be of the same political group as the Member unable to attend the meeting;
 - (c) will be the first person able to attend the meeting who is contacted by the Member unable to attend and who has not already agreed to act as substitute for another Member; and
 - (d) will not already be a member of the Committee or other body on which he/she is intending to serve as substitute.
- (4) The agenda for each meeting of the Committee or other body shall contain as its first item “Declaration of Substitute Members” and as the first business of the meeting the Chairman of the meeting shall ask if any Member present is substituting for another Member and, if so, to declare his/her name as substitute Member and the name of the absent Member.
- (5) If a Member intending to act as a substitute joins a meeting after consideration by the meeting of the “Declaration etc” item, the Member shall forthwith be required to make the declaration and, if necessary, the Chairman shall interrupt the proceedings of the meeting for that purpose. A Member that has commenced a meeting cannot be replaced by a substitute during that meeting.
- (6) Subject to compliance with the foregoing and any statutory or other requirements, a substitute Member may attend, speak and vote as a member of the Committee or other body at the meeting for which he/she is a substitute Member, including any adjournment thereof. The Member who is unable to attend the meeting shall not be a member of the Committee or other body concerned for the meeting, or an adjournment of that meeting.
- (7) Substitution of a Chairman or a Deputy Chairman shall not automatically create a vacancy for that post.
- (8) Substitutes shall be subject to the same standards as the principal appointment, be that training, conduct or similar.

- (9) Substitutes shall not be entitled to any Special Responsibility Allowances applying to the Member being substituted.
- (10) The Substitution rules shall not apply to the Licensing Committee or the Cabinet.
- (11) A Councillor on the Cabinet may not be appointed to act as a substitute on the Licensing Committee or its Sub-Committees, or Standards Committee. Additionally, a Councillor on the Cabinet may not be appointed to act as a substitute on the Personnel Committee, where this means that over half the Membership of the Committee will be made up of Cabinet Members.

Rother District Council

Appointment of Substitute Members of formal Committees and Sub-Committees

1. There shall be no substitution of members of the Audit and Standards Committee, Cabinet or Licensing Panels. Members of the Cabinet may not be substitutes on Overview and Scrutiny Committee.
2. The political groups may appoint substitute Members from their own group in accordance with this Procedure Rule on committees and sub-committees. Only substitute Members who have undergone related training may be substituted to the Planning Committee.
3. Substitute Members will have all the powers and duties of any ordinary Member of the committee.
4. Political Groups will be permitted to nominate one substitute Member for each relevant Committee on which they have an allocated seat(s).
5. Substantive Members must organise their own substitute arrangements and confirm the attendance of a substitute to the Democratic Services Manager or Officer at least one clear working day prior to the commencement of the meeting (unless there are extenuating circumstances such as a medical emergency or some other family-related emergency); notification by electronic mail or telephone will suffice for these purposes.
6. The Chairman of a relevant meeting will seek confirmation of substitute Members present at the "Apologies and Substitutes" Agenda Item.
7. Substitutes arriving after the commencement of the meeting and for which prior notification has not been received will not be permitted to act as a substitute.
8. Where a substantive Member is substituted on a relevant Committee for more than 50% of the scheduled meetings of that Committee in any civic year, Group Leaders will be alerted and consideration given to the removal of the substantive Member.
9. Substitute Members may attend meetings in that capacity only:
 - i. to take the place of the substantive Member for whom they are the designated substitute;
 - ii. where the substantive Member will be absent for the whole of the meeting;
 - iii. has undertaken the mandatory training in the case of the Planning Committee; and
 - iii. after notifying the Democratic Services Manager no later than 1 clear working day prior to the commencement of the relevant meeting.