

# SCRUTINY COMMISSION – 11th NOVEMBER 2019

## Report of the Head of Strategic Support

### Part A

#### ITEM 6 STATUTORY GUIDANCE ON OVERVIEW AND SCRUTINY IN LOCAL AND COMBINED AUTHORITIES

##### Purpose of Report

To provide the Commission with information regarding guidance from the Ministry of Housing, Communities and Local Government, clarifying the role and benefits of scrutiny to local authorities.

To consider the existing Scrutiny Protocol setting out the Council's approach to scrutiny and good practice guidance.

##### Background

The statutory guidance on overview and scrutiny in local government has been published by the Ministry of Housing, Communities and Local Government (MHCLG).

The guidance has been produced following a commitment that Government made in early 2018, following on from the Communities and Local Government Select Committee's inquiry into Overview and Scrutiny and it aims to provide local authorities and combined authorities in England help for them carry out their overview and scrutiny functions effectively. In particular, it provides advice for senior leaders, members of overview and scrutiny committees, and support officers

It is also timely that the Commission review the existing Scrutiny protocol setting out some of the Council's approaches to scrutiny and some principles which underpin effective scrutiny. The Scrutiny protocol was approved by the former Scrutiny Management Board in January 2014 (Minute 41 2013/14 refers).

##### Actions Requested

1. To consider the Statutory Guidance published by the Ministry of Housing, Communities and Local Government (MHCLG) and its impact on existing overview and scrutiny arrangements.
2. To consider whether to amend the existing Scrutiny Protocol appended to this report and, if so, how to promote it.

##### Reasons

1 & 2 To ensure the scrutiny function operates effectively.

## Report Implications

### *Risk Management*

There are no risks associated with this report as any issues that need to be taken forward will be the subject of a further report.

### *Equality and Diversity*

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups

### *Financial*

There are financial and resource implications in respect of officer and member time in dealing with these matters. These are currently being contained within existing resources.

Background Papers:                      The Good Scrutiny Guide – Centre for Public Scrutiny (CfPS) <https://www.cfps.org.uk/the-good-scrutiny-guide/>

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## Part B

### Background

The Ministry of Housing, Communities and Local Government has recently published new statutory guidance on Overview and Scrutiny, which is attached as Appendix A.

The guidance states that effective overview and scrutiny should:

- 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.

The guidance is comprehensive and includes chapters on the following:

- Culture;
- Resourcing;
- Selecting Committee Members;
- Power to Access Information
- Planning Work; and
- Evidence Sessions

### The new Statutory Guidance

In May 2019, the Ministry of Housing, Communities and Local Government published new Statutory Guidance on Overview and Scrutiny and extended this to include the new combined authorities now in existence. The Guidance was prepared with the assistance of the CPfS and the Association of Democratic Services Officers (ADSO) who also co-ordinated input with local councils.

The Statutory Guidance is attached in Appendix A for all Members to fully consider. In the Guidance, the Government stresses the strong organisational culture that should underpin overview and scrutiny, the role it can play in holding an authority’s decision-makers to account, ensuring the efficient delivery of public services and driving improvements within a council and beyond. Fundamentally, the Government also recognises that councils have their own democratic mandates and are ultimately accountable to their electorate, and that councils themselves are best-placed to decide their arrangements based on local circumstances. However, the Government does ask that all councils cast a critical eye over their existing arrangements to ensure a culture that allows overview and scrutiny to flourish. The Statutory Guidance is based around key sections of:

- Culture – how a strong organisational culture can support scrutiny’s work to add value and the relationship with the executive;
- Resourcing – best using organisational resources to sustain an effective scrutiny function;
- Members - selecting committee members, chairmen, training and coopted members;
- Information - power to access council information and information and attendance from external partners and contractors;

- Planning – co-ordinating work programmes, witnesses, information sources, shortlisting topics to review etc...and;
- Evidence – planning for witness sessions, developing recommendations.

The Statutory Guidance also includes hypothetical illustrative scenarios on creating an executive-scrutiny protocol setting out their relationship, along with guidance on how committees can secure independent advice for their reviews and approaches to external organisation to appear before a committee.

As Statutory Guidance, by law Councils must have regard to it when exercising their functions. 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 do so in a particular case. In addition, the Guidance advises that councils may have regard to other material they might choose to consider, including that issued by the CfPS, when exercising their overview and scrutiny functions.

In light of this, therefore Members should note that the Centre for Public Scrutiny (CfPS) and the Association of Democratic Services Officers (ADSO) have been engaged in updating the Good Scrutiny Guide which was published in June 2019. It is a background paper to this report should Members wish to read it further.

It is advised that the new Statutory Scrutiny Guidance does not require the Council to make any changes to its current overview and scrutiny arrangements. Furthermore, overview and scrutiny legislation is flexible in that it recognises that councils are democratically elected and best placed to determine their own arrangements.

It is considered that many aspects of the Guidance are best practice in nature are best taken forward by individual Chairmen, Committee Members and Democratic Services Officers, having due regard to it mapping out work programmes and setting up Panels.

### Scrutiny Protocol

Charnwood Council has in place a scrutiny protocol which sets out some of the Council's approaches to scrutiny and some principles which underpin effective scrutiny. The Scrutiny protocol was approved by the former Scrutiny Management Board in January 2014 (Minute 41 2013/14 refers). It is therefore timely to review the content of this document in light of the new statutory guidance.

The protocol includes the principles of effective scrutiny promoted by the CfPS, some of the approaches to effective scrutiny advanced by the Council, the Council's arrangements to managing the interaction between the scrutiny function and the Cabinet and a description of the way in which officer involvement in scrutiny is managed.

The protocol is attached at appendix B. The bold and underlined text indicates changes to reflect the Councils new scrutiny structure from May 2019. Section 3 of the protocol sets out the relationship between Cabinet and Scrutiny. In light of the new statutory guidance and the CfPS's Good Scrutiny Guide, the Commission are particularly asked to consider the content of this section in terms of how overview and

scrutiny build an effective relationship with the executive that it is scrutinising and recommending changes to. Annex 1 of the Guidance document is particularly relevant when reviewing this section of the existing protocol.

### Appendices

Appendix A - Statutory Guidance published by the Ministry of Housing, Communities and Local Government on Overview

Appendix B - Scrutiny Protocol