

Report Title:	Constitutional Amendments
Contains Confidential or Exempt Information?	No - Part I
Member reporting:	Councillor Targowska – Principal Member for Legal, HR & IT and Chair of the Constitution Sub Committee.
Meeting and Date:	Council 25 July 2017
Responsible Officer(s):	Mary Kilner, Head of Law and Governance and Monitoring Officer
Wards affected:	All

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## REPORT SUMMARY

1. This report sets out proposed changes to the Constitution. The proposals have been brought forward to ensure that the Constitution is up to date, fit for purpose and supports and enables the Council to conduct its business in a transparent and compliant manner.
2. It is recommended that Council adopts the amendments set out in Paragraphs 2.5 to 2.7 and Appendix 1.

## 1 DETAILS OF RECOMMENDATION(S)

**RECOMMENDATION:** That Full Council notes the report and:

- i) Considers and approves the amendments to the Constitution set out paragraphs 2.5 to 2.7, see Appendix 1 for full details.
- ii) Requests the Constitution Sub Committee:
  - a. Consider options to include guidance on the use of social media within the Councillors' Code of Conduct, and to report back to Full Council with recommendations to amend the Code of Conduct within the constitution.
  - b. Review the current social media policy and develop a dedicated policy for Councillors.

## 2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 The Constitution of the Council is the single point of reference containing the principal operating structures and procedures of the authority. It sets out how the Council operates, how decisions are made and the procedures to be followed to ensure that these are efficient, transparent and accountable to local people.
- 2.2 The current Borough's Constitution was largely agreed in 2011, when new model constitutions were introduced linked with the changes arising from the requirements under the Localism Act. A number of relatively small amendments from this wholesale revision have been implemented over time and a new version is published each time changes are made. The changes made since that date fall into three categories:

- Changes agreed by Full Council.
  - Changes agreed by the Constitution Sub Committee when specifically delegated by Full Council to consider and make amendments.
  - Changes of a minor nature made by the Monitoring Officer in agreement with the Chair of the Constitution Sub Committee under the delegation set out in Article 14.2.
- 2.3 Version control has been included in the published document since September 2015 and changes made are shown in the table at the very end of the document. This version control shows under which authority amendments have been made as well as a summary of the changes. Version Control numbers relate to the year of change and the edition of changes made that year: e.g. Ver 17.3 refers to the third version published in 2017.
- 2.4 The changes proposed to this Full Council are set out in paragraphs 2.5 to 2.7 and Appendix 1.
- 2.5 **Part 6 F1 Access Advisory Forum amendment to the Terms of Reference**  
The Access Advisory Forum agreed at the meeting of the Forum held on 27 March 2017 to request minor amendments to the membership details in the terms of reference. A revised paragraph F1 is shown in Appendix 1.
- 2.6 **Part 6 F22 Standing Advisory Council on Religious Education (SACRE) amendment to the Terms of Reference**  
SACRE agreed at the meeting held on 12 June 2017 to request amendments to the membership details in the terms of reference. Amendments are required as two of the teaching unions are due to merge. In addition, it has often proved difficult to recruit representatives via the teaching unions and it is felt that Key Stage representatives would likely reduce the number of vacancies. A revised paragraph F22 is shown in Appendix 1.
- 2.7 **Part 6 E6 Achieving for Children Joint Committee**  
The council is forming partnerships with the London Borough of Richmond upon Thames and the Royal Borough of Kingston upon Thames to deliver children's services through Achieving for Children, a community interest company. The council will become a joint partner from 1 August 2017. Each authority is required to approve the terms of reference for the new Joint Committee, which requires a new section, see section E6 in Appendix 1.
- 2.8 Councillors are increasingly using social media to interact with residents, the local media and other organisations. A number of councils have policies in place to guide councillors in their use of social media, particularly in relation to the principles of public life detailed in the Councillor's' Code of Conduct. It is proposed that a dedicated councillors policy is developed.

**Table 1: Options**

Option	Comments
Approve the changes and the request to the Constitution Sub Committee <b>The recommended option</b>	The updated Constitution will promote best practice and confidence in decision making.

Option	Comments
Modify the changes proposed and approve modified changes	Members may wish to propose and consider minor amendments to the recommended changes.
Do not approve the changes and keep the current constitution	The Constitution will not promote best practice. The Council will not have complied with relevant legislation as a number of changes are required.

### 3 KEY IMPLICATIONS

#### 3.1

**Table 2: Key implications**

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Consider the proposals and, where agreed, amend the Constitution by the date agreed.	Do not amend the Constitution by the date set out.	Amend by the date set out.	n/a	n/a	July 2017

### 4 FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There are no direct financial implications arising from the proposed constitutional changes.

### 5 LEGAL IMPLICATIONS

- 5.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007, Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and any other relevant statutory acts or guidance.

### 6 RISK MANAGEMENT

The Council must have a current and accurate Constitution to provide a clear and unambiguous framework under which the Council can conduct business

**Table 3: Impact of risk and mitigation**

Risks	Uncontrolled Risk	Controls	Controlled Risk
There is a risk of challenge if the Constitution is not	Constitution is not updated.	Constitution is regularly reviewed and	Revised Constitution available on

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
legally updated.		updated.	website and is not open to challenge.

## **7 POTENTIAL IMPACTS**

- 7.1 If decisions are not taken in accordance with the adopted framework they are potentially open to challenge which could be damaging to the Council's reputation and/or delay operational decisions, which may in turn result in additional costs being incurred. Costs may arise from having to repeat activities, defending decisions or compensating for unlawful decisions.

## **8 CONSULTATION**

- 8.1 Relevant Lead Members, Principal Members and Deputy Lead Members, Panels, Forums and Sub Committees of the Council have been involved in identifying or requesting the updates proposed, and have asked that the changes be brought Council for consideration in accordance with the approval process outlined in paragraph 2.2 of this report.

## **9 TIMETABLE FOR IMPLEMENTATION**

### **9.1**

**Table 4: Implementation timetable**

<b>Date</b>	<b>Details</b>
25 July 2017	Full Council confirms changes to the Constitution
28 July 2017	Updated and revised Constitution published

## **10 APPENDICES**

- 10.1 Appendix 1 – Table of revisions proposed.

## **11 BACKGROUND DOCUMENTS**

- 11.1 RBWM Constitution available on the RBWM Website:  
[https://www3.rbwm.gov.uk/info/200110/about\\_the\\_council/910/council\\_constitution](https://www3.rbwm.gov.uk/info/200110/about_the_council/910/council_constitution).

## **12 CONSULTATION (MANDATORY)**

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent</b>	<b>Commented &amp; returned</b>
Cllr Targowska	Principal Member HR, Legal & IT	13/7/17	17/7/17
Cllr Carroll	Principal Member Public	13/7/17	17/7/17

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent</b>	<b>Commented &amp; returned</b>
	Health and Communications		
Alison Alexander	Managing Director	11/7/17	13/7/17
Mary Kilner	Head of Law and Governance	5/7/17	11/7/17

## **REPORT HISTORY**

<b>Decision type:</b> Non-key decision	<b>Urgency item?</b> No.
Report Author: Karen Shepherd, Democratic Services Manager - 01628 796529	

## Proposed revisions to the Constitution

Section of the Constitution Ref	Proposed Revision	Rationale
Part 6 F1.2	<p><b>F1 Access Advisory Forum</b></p> <p><b><u>F1.2 Membership</u></b></p> <p>The membership shall be comprised of the following groups:</p> <ul style="list-style-type: none"> <li>• Users of local services who themselves have a disability or represent a disabled person.</li> <li>• Representatives of voluntary groups, associations or Charities working with people with disabilities.</li> <li>• Appropriate Government and Health bodies concerned with people with disabilities.</li> <li>• Two Councillors from the Royal Borough of Windsor and Maidenhead.</li> <li>• <del>The Environment Access Officer.</del></li> <li>• <del>Appropriate</del> RBWM officers concerned with <u>enabling people with disabilities to access services.</u></li> <li>• The minimum number of members shall be 10 and the maximum number of members shall be 20.</li> <li>• The Forum Chairman and Vice Chairman shall be service users <u>or representatives</u>. They shall be independent from the Council and shall be elected from amongst the members of the Forum.</li> <li>• Appointments to the Forum, including the Chairman and Vice-Chairman, shall be two-year appointments.</li> <li>• Members of the Forum may resign by giving notice to the Chairman.</li> <li>• Members of the Forum may appoint substitute representatives to attend Forum meetings</li> </ul>	Minor updates to membership.
Part 6 F22.2	<p><b>F22 <u>SACRE (Standing Advisory Council on Religious Education)</u></b></p> <p><b><i>F22.2 Membership</i></b></p> <p>The members of SACRE (other than co-opted members) shall be appointed by the authority so that they shall represent the following groups:</p>	Request to update the membership required as two of the teaching unions are merging. Additionally it has

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	<p><u>Group A - Christian denominations and other religions</u></p> <p>The Free Churches - 3  The Roman Catholic Church - 1  Hinduism - 1  Islam - 1  Judaism - 1  Sikhism - 1  Buddhist – 1  Baha'i - 1</p> <p><u>Group B</u></p> <p><i>The Church of England – 3</i></p> <p><u>Group C - Teaching representatives</u></p> <p>NUT – 1 <u>Key Stage 1 - 1</u>  NAS/UWT - 1 <u>Key Stage 2 - 1</u>  NAHT – 1 <u>Key Stage 3 - 1</u>  SHA – 1 <u>Key Stage 4 - 1</u>  ATL - 1 <u>Headteacher representative - 1</u>  PAT – 1 <u>Academy representative - 1</u></p> <p><u>Group D</u></p> <p>The local authority - 3</p>	<p>often proved difficult to recruit new Members via the unions therefore Key stage based representatives would likely reduce the number of vacancies.</p>
<p>Part 6 – new section E6</p>	<p><b><u>E6 Achieving for Children Joint Committee</u></b></p> <p><b>E6.1 Purpose</b></p> <p>The London Borough of Richmond upon Thames, Royal Borough of Kingston upon Thames and The Royal Borough of Windsor and Maidenhead have established the Joint Committee pursuant to powers under the Local Government Acts 1972 and 2000. The Joint Committee shall be known as “The Achieving for Children Joint Committee”.</p> <p>The Joint Committee will discharge functions on behalf of all three boroughs insofar as they relate to the ownership of jointly owned local authority company “Achieving for Children”.</p> <p>The Joint Committee is not a self-standing legal entity</p>	<p>The council will become a joint partner of Achieving for Children from 1 August 2017. Each authority is therefore required to approve the terms of reference for the new Joint Committee</p>

Section of the Constitution Ref	Proposed Revision	Rationale
	<p>but part of its constituent authorities. Any legal commitment entered into pursuant of a decision of the Joint Committee must be made by either or all of the authorities which will be indemnified appropriately.</p> <p>These Terms of Reference govern the conduct of meetings of the Joint Committee and except, where expressly stated otherwise, take precedence over each Borough’s relevant Constitutional provisions. The Joint Committee may vary the Terms of Reference rules as it considers appropriate.</p> <p><b>E6.2 Definitions</b> Any reference to Access to Information legislation shall mean Part VA of the Local Government Act 1972 (as amended) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (as amended).”</p> <p><b>E6.3 Functions</b> The Joint Committee will discharge on behalf of all three boroughs the functions listed below insofar as they relate to the ownership of local authority company “Achieving for Children”. The Joint Committee will decide on behalf of each Council to:</p> <ul style="list-style-type: none"> <li>• Enter into any arrangement, contract or transaction resulting in expenditure either with a capital value greater than £10,000 or revenue value greater than £10 million. Any expenditure of such revenue by the Company being less than £10 million shall be subject to the Company’s own financial regulations and shall be subject to prior approval within the Business Plan and operating revenue budget, which shall be approved by the Members in accordance with the Reserved Matters.</li> <li>• Enter into any arrangement, contract or transaction where the Company is providing services to third parties without following the Trading Opportunity Evaluation Process as produced by the Members. Such arrangements, contracts or transactions shall also be subject to prior approval within the Business Plan, which</li> </ul>	



Section of the Constitution Ref	Proposed Revision	Rationale
	<p>shall be approved by the Members in accordance with the Reserved Matters.</p> <ul style="list-style-type: none"> <li>• Enter into any borrowing, credit facility or investment arrangement (other than trade credit in the ordinary course of business) that has not been approved by the Members under the Financial Plan.</li> <li>• Appoint or remove any auditor of the Company.</li> <li>• Adopt or amend the Business Plan in respect of each financial year, which for the avoidance of doubt shall include the adoption and amendment of an operating revenue budget for the financial year to which it relates.</li> <li>• Adopt or amend the Financial Plan.</li> <li>• Enter into any arrangement, contract or transaction within, ancillary or incidental to the ordinary course of the Company's business or is otherwise than on arm's length terms. <ul style="list-style-type: none"> <li>• Deal with any surpluses of the Company.</li> <li>• Appoint or remove any Company Directors (from the Achieving for Children Board).</li> <li>• Agree any terms for any Directors (but for the avoidance of doubt this does not include the terms and conditions of employment of Executive Directors as defined in the Articles of Association of the Company).</li> <li>• Agreeing changes in employment terms and conditions which would be inconsistent with the National Joint Council National Agreement on Pay and Conditions of Service and any changes to the pay and grading structure of the chief executive post of the Company.</li> </ul> </li> </ul> <p>The Joint Committee will be responsible for setting out the expectations and ambitions of the three Council's as owners of "Achieving for children".</p> <p><b>E6.4 Membership</b> There will be nine elected members of the Joint</p>	

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	<p>Committee, three appointed from each Borough. Appointments will be made in line with each Authority’s governance arrangements.</p> <p>The appointments should include the Leader of each Council and a Member whose portfolio areas include responsibility for Children’s Services.</p> <p>Appointments will be made for a maximum period not extending beyond each Member’s remaining term of office as a Councillor.</p> <p>As nominees of their respective Councils, members of the Joint Committee are governed by the provisions of their own Council’s Codes and Protocols including the Code of Conduct for Members and the rules on Disclosable Pecuniary Interests.</p> <p>Each authority will utilise existing mechanisms for substitution as laid down in their own Standing Orders.</p> <p><b>E6.5 Chair</b> Each Council will appoint one Member as a Co-Chair each of whom, in rotation, preside over meetings of the Joint Committee.</p> <p>Meeting venues shall rotate between the Council’s main offices with the Co-Chair from the authority which is hosting the meeting presiding over the meeting. Where the host Co-Chair is not present, the Joint Committee shall appoint an alternate Co-Chair from amongst its number to preside over the meeting.</p> <p><b>E6.6 Sub-Committees</b> The Joint Committee may establish sub-committees to undertake elements of its work if required and subject to the approval of each of the constituent authorities.</p> <p><b>E6.7 Delegation to Officers</b> The Joint Committee may delegate specific functions to officers of any of the Boroughs.</p> <p>Any such delegation may be subject to the requirement for the officer to consult with or obtain the prior agreement of an officer (or officers) of the other</p>	

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	<p>boroughs.</p> <p>It may also be subject to the requirement for the officer with delegated authority to consult with the Co-Chairs of the Joint Committee before exercising their delegated authority.</p> <p><b>E6.8 Administration</b> Organisational and clerking support for the Joint Committee will be provided on a rotational basis by the host authority on an annual basis or longer if agreed by all three Councils.</p> <p><b>E6.9 Budget</b> The Joint Committee will not have an allocated budget.</p> <p><b>E6.10 Agenda Management</b> All prospective items of business for the Joint Committee shall be agreed by the Chief Executives of all three Councils or their representatives, following consultation with the AfC Management Team.</p> <p>Where a decision of the Joint Committee does not apply to all three Boroughs, the delegation of functions to the Joint Committee is limited to the Borough to which the decision applies.</p> <p>To comply with Access to Information legislation in the publication of agendas including Forward Plan requirements, those functions delegated to the Joint Committee for determination and defined as key-decisions on behalf of Richmond and Windsor and Maidenhead must be included in the Forward Plan.</p> <p>Although not legally required for Kingston under the Committee System Governance Arrangements, a Forward Plan has been maintained and notice will be given therein.</p> <p><b>E6.11 Meetings</b> The Joint Committee will meet as required to fulfil its functions and will determine a programme of meetings before the start of each Municipal Year to be included in the Calendar of Meetings for all three Authorities.</p>	

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	<p>The quorum for a meeting of the Joint Committee shall be at least two members from each Borough.</p> <p>Access to meetings and papers of the Joint Committee by the Press and Public is subject to Part 2 of the Local Authorities (Executive Arrangements) (Meetings and Access to information) (England) Regulations 2012</p> <p><b>E6.12 Notice of Meetings</b>  The host authority clerk of the Joint Committee will give notice to the public of the time and place of any meeting in accordance with the Access to Information requirements.</p> <p>At least five clear working days in advance of a meeting the host authority clerk of the Joint Committee will publish the agenda via the website of the host authority and distribute a copy of the papers to all Members of the Committee. Five Clear Days does not include weekends or national holidays and excludes both the day of the meeting and the day on which the meeting is called.</p> <p><b>E6.13 Public Participation</b>  Unless considering information classified as “exempt” or “confidential” under Access to Information Legislation, all meetings of the Joint Committee shall be held in public.</p> <p>An agenda item to last no longer than 30 minutes will be included on each agenda to hear public representations and questions. Notification must be given in advance of the meeting indicating the matter to be raised, by 12 noon on the last working day before the meeting.</p> <p>Where the number of public representations exceed the time allowed, a written response will be provided or the matter will be deferred to the next meeting of the Joint Committee.</p> <p><b>E6.14 Member Participation</b>  Any member of each Council who is not a member of the Joint Committee may ask a question or address the Committee with the consent of the Co-Chair of the meeting at which they wish to speak.</p>	

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	<p><b>E6.15 Business to be Transacted</b>  Standing items for each meeting of the Joint Committee will include the following:</p> <ul style="list-style-type: none"> <li>• Public participation</li> <li>• Apologies for absence</li> <li>• Declarations of Interest</li> <li>• Minutes of the Last Meeting</li> <li>• Substantive items for consideration</li> </ul> <p>The Co-Chair may vary the order of business and take urgent items as specified in the Access to Information Requirements at his / her discretion.  An item of business may not be considered at a meeting unless:</p> <ul style="list-style-type: none"> <li>• A copy of the agenda included the item (or a copy of the item) is open to inspection by the public for at least five clear days before the meeting; or</li> <li>• Where the meeting is convened at shorter notice from the time the meeting is convened; or</li> <li>• By reason of special circumstances which shall be specified in the minutes the Co-Chair of the meeting (following consultation with the other Co-Chair) is of the opinion that the item should be considered at the meeting as a matter of urgency</li> </ul> <p>“Special Circumstances” justifying an item being considered as a matter of urgency will relate to both why the decision could not be made at a later meeting allowing the proper time for inspection of documents by the public as well as why the item or report could not have been available for inspection for five clear days before the meeting.</p> <p><b>E6.16. Extraordinary Meetings</b>  Arrangements may be made following consultation with all three Co-Chairs to call an extraordinary meeting of the Joint Committee.</p> <p>The business of an extraordinary meeting shall be only that specified on the agenda.</p> <p><b>E6.17 Cancellation of Meetings</b></p>	

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	<p>Meetings of the Joint Committee may, after consultation with all three Co-Chairs, be cancelled if there is insufficient business to transact or some other appropriate reason warranting cancellation. The date of meetings may be varied after consultation with all Co-Chairs in the event that it is necessary for the efficient transaction of business.</p> <p><b>E6.18 Rules of Debate</b> The rules of debate in operation in the authority which is hosting the meeting shall apply.</p> <p><b>E6.19 Request for Determination of Business</b> Any member of the Joint Committee may request at any time that:</p> <ul style="list-style-type: none"> <li>• The Joint Committee move to vote upon the current item of consideration.</li> <li>• The item be deferred to the next meeting.</li> <li>• The item be referred back to the relevant Chief Executive for further consideration by the Council</li> <li>• The meeting be adjourned.</li> </ul> <p><b>E6.20 Urgency Procedure</b> Where all Co-Chairs of the Joint Committee are of the view that an urgent decision is required in respect of any matter within the Joint Committee’s Terms of Reference and that decision would not reasonably require the calling of an Extraordinary Meeting of the Joint Committee to consider it and it cannot wait until the next Ordinary Meeting of the Joint Committee, then they may authorise in writing the Chief Executive of Achieving for Children to take such a decision following consultation with the Co-Chairs. Decisions taken in these circumstances shall not be subject to any of the Council procedures.</p> <p><b>E6.21 Voting</b> Each elected member will be entitled to one vote.</p> <p>Where there is an equality of votes and the matter cannot be resolved, the conflict resolution mechanism will be implemented.</p> <p>The conflict resolution mechanism states that:</p>	

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	<ul style="list-style-type: none"> <li>• The matter will be referred back to the Chief Executives of all three Authorities for further consideration.</li> <li>• After further consideration has taken place, the matter will be placed on the agenda for the next available meeting of the Joint Committee for determination. If on this on this second occasion t there is still an equality of votes the Chair can exercise a casting vote to ensure that a decision is made.</li> </ul> <p><b>E6.22 Minutes</b>  At the next suitable meeting of the Joint Committee, the Co-Chair presiding will move a motion that the minutes of the previous meeting be agreed as a correct record. The meeting may only consider the accuracy of the minutes.</p> <p>Once agreed, the Co-Chair presiding at the meeting will sign the minutes.</p> <p><b>E6.23 Exclusion of Public and Press</b>  Members of the public and press may only be excluded from a meeting of the Joint Committee either in accordance with the Access to Information requirements or in the event of disturbance.</p> <p>A motion may be moved at any time for the exclusion of the public from the whole or any part of the proceedings. The motion shall specify by reference to Section 100(A) Local Government Act 1972 the reason for the exclusion in relation to each item of business for which it is proposed that the public be excluded. The public must be excluded from meetings whenever it is likely, in view of the nature of business to be transacted, or the nature of the proceedings that confidential information would be disclosed.</p> <p>If there is a general disturbance making orderly business impossible, the Co-Chair may adjourn the meeting for as long as he/she thinks is necessary.</p> <p>To comply with the Executive Arrangements (Access to Information) Regulations 2012 on Richmond's and Windsor and Maidenhead's behalf, all background papers will be published as part of the Joint</p>	

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	<p>Committee agenda and be made available to the public via the website of each authority.</p> <p><b>E6. 24 Overview and Scrutiny</b>  Decisions of the Joint Committee will be subject to scrutiny and Call -In.</p> <p>On the publication of the minutes of a meeting of the Joint Committee, 5 clear days must elapse (not including the date of publication and weekend days and bank holidays) before decisions can be implemented.</p> <p>Decisions of the Joint Committee will be subject to the existing “Call-In” arrangements operating in each of the Boroughs as outlined in their respective Constitutions.</p> <p>Where a decision is called in, arrangements will be made at the earliest opportunity within the Borough where the Call-In had taken place for it to be heard. The body hearing the Call-in would be able to take the following courses of action:</p> <ul style="list-style-type: none"> <li>• Take no further action (decision takes effect)</li> <li>• Refer back to the decision-maker (Joint Committee) for reconsideration</li> <li>• Refer to the Full Council meeting of the relevant authority (only if deemed to be contrary to the budget and / or policy framework of the relevant authority in line with the delegations to the Joint Committee.)</li> </ul> <p>Any decision called in for scrutiny before it has been implemented shall not be implemented until such time as the call in procedures of the Council concerned have been concluded.</p>	