

MEETING:	COUNCIL
DATE:	13 NOVEMBER 2009
TITLE OF REPORT:	NEW COUNCIL CONSTITUTION
REPORT BY:	ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To seek approval of the Council's new Constitution

Key Decision

This is not a Key Decision.

Recommendation(s)

THAT Council

- a) **Adopts its new Constitution to take effect on 1 January 2010**
- b) **Confirms the composition and members of the Planning Committee**
- c) **Designates its Community Services Scrutiny Committee as its Crime and Disorder Committee**
- d) **Instructs the Chief Executive to prepare and adopt scheme of delegation in accordance with the new Constitution by no later than 1 January 2010**
- e) **Instructs the Monitoring Officer to:**
 - i. **complete Parts 6 and 7 of the Constitution before 1 January 2010**
 - ii. **complete Part 8 of the Constitution as soon as possible after 1 January 2010**
 - iii. **incorporate any amendments agreed by Council into the new Constitution**
 - iv. **correct any typographical or other errors**
 - v. **deliver training as appropriate on the new Constitution.**
- f) **Agrees that the Monitoring Officer be authorised to finalise the Constitution in consultation with the Chairman of the Council.**
- g) **Recommends that the Monitoring Officer undertake the following:**
 - i. **to complete the web-enabling of the Constitution,**

- ii. to review the deferred matters referred to in this report
- iii. to consult with the Standards Committee about whether the new Constitution promotes high standards of conduct within the Council
- iv. to consult and seek our partners and the public on the new Constitution; and
- v. present further report as necessary reflecting that further work; and
- vi. carry out this work with the Constitutional Review Working Group

h) Agrees that the Constitutional Review Working Group be retained to assist with such further work as it determines

Key Points Summary

- 1 On 24 July 2009 the Council agreed to review its Constitution and that the Monitoring Officer report at this meeting on the review with her proposals for a new Constitution.
- 2 The review process and the matters discussed by the Constitutional Review Working Group are set out in this report. The report also explains other steps taken to engage Councillors in the review process.
- 3 The report contains an explanation of the format and content of the new Constitution.
- 4 Further work is needed to implement the new Constitution and the Council is asked to agree that it take effect on 1 January 2010.
- 5 There were some matters not dealt with as part of this review and the Monitoring Officer recommends further review work is undertaken in those areas.

Alternative Options

- 6 The alternative options in each of the areas of the Constitution were discussed at the Constitutional Review Working Group.
- 7 The Council now has the following options:
 - a. To accept the Constitution as drafted
 - b. To accept the Constitution as drafted with amendments
 - c. To reject the new Constitution and retain its existing Constitution.

Reasons for Recommendations

- 8 The new Constitution reflects the principles and details agreed informally by the Constitutional Review Working Group and views of some members more generally gathered at the member seminar.
- 9 The new Constitution is presented in a simpler and more accessible format and explains more easily how the Council operates. The Council's current Constitution is in a more complicated format and is more difficult to follow and understand. It also contains some inconsistencies and areas of duplication.
- 10 The new Constitution reflects the relevant law and ensures compliance with all legal requirements. It is also in the recognised and recommended statutory modular format.

Introduction and Background

- 11 At its meeting on 24 July 2010 the Council agreed that:
 - a. The Monitoring Officer in consultation with the Constitutional Review Working Group develops a new Constitution for Herefordshire Council in accordance with an agreed brief, process and timetable outlined in a report to that meeting
 - b. The Monitoring Officer and the Constitutional Review Working Group consider the constitutional areas and have regard to the impact of the work set out in the report to that meeting and any imminent or pending legislative or other changes;
 - c. The Monitoring Officer present a report and new Constitution for consideration and agreement by the Council at its next meeting
- 12 The report explains the purpose and brief for the review and the constitutional areas and other work referred to above.
- 13 The Monitoring officer has worked with the Constitutional Review Working Group and the report reflects those highlighting the new format and principle changes that the Group agreed the Monitoring Officer should include within the new Constitution.
- 14 It also highlights a range of other matters raised by Councillors during the review process.
- 15 It is proposed that the Constitution be implemented on 1 January 2010 and the Council is also asked to consider the steps needed to achieve that.

Key Considerations

- 16 The purpose of the new Constitution agreed by Council on 24 July 2009 was
 - a. To ensure that Councillors, Council staff and partners know how the Council functions
 - b. To ensure that the people of Herefordshire know how the Council functions
 - c. To ensure that the Council adheres to the principles of good governance
 - d. To ensure that the Council delivers on its promises in its Code of corporate governance
 - e. To ensure that the Council has in place the necessary rules and protocols to
 - f. ensure that it can conduct its affairs effectively and efficiently and with probity
 - g. To ensure that it is compliant in all respects with the legislative framework and statutory guidance
 - h. To ensure that it is accessible and easily understood
- 17 The brief for the Monitoring Officer was:
 - a. To keep it simple and produce a constitution that is tidy concise and easy to follow
 - b. To ensure that the development of the constitution takes into account governance best practice and reflects advice and guidance available
 - c. To ensure that the Constitution reflects and balances all the different roles of Councillors

- d. To ensure that the Constitution provides a framework for partnership working, community participation and that it helps the Council focus on achieving outcomes
 - e. That it reduces bureaucracy and streamlines the constitutional systems and processes
 - f. That it provides flexibility for the Council to develop its governance arrangements
 - g. to meet future changes and is a blueprint for new ways of working Herefordshire that are developing
- 18 On 24 July, the Council also agreed that the constitutional arrangements in the following areas should be considered as part of the review:
- a. The arrangements for Cabinet meetings
 - b. Scrutiny arrangements
 - c. Planning Committee arrangements –reflecting the decisions of Council on 24 July 2009
 - d. The Full Council meeting
 - e. The role and functions of Chairman and Vice Chairman of Committee
 - f. Forward planning, agenda management and key decisions
 - g. Delegations to officers
 - h. The Policy framework and policy hierarchy
 - i. Joint working and partnership arrangements – flexibility for the future
 - j. Councillor call for action and petitions
- 19 A cross party Constitutional Review Working Group has met every week during September and October 2009. That Group considered the purpose and the brief and during its meetings considered a range of matters as follows
- 20 The following principles were agreed and have been reflected in the new Constitution.

Format of the Constitution

- 21 The new Constitution is in plainer English and is in a simple format. The new Constitution is in 8 parts.
- 22 The Council is asked to approve the first 5 parts which have been provided in full as follows:
- a. Part 1 – contains a list of the contents of the Constitution, an introduction to the Council and to its Constitution. This part is intended to provide an overview and should be easily understood by the public who want to know in summary how the Council operates. This is new and is not covered in the current Constitution.
 - b. Part 2 – contains a contents list which shows each of the areas covered by 13 Articles. The Articles gives a concise explanation of each element of the constitutional arrangements. Most of this information is available in the current constitution but is not easily found. There is more information than in the current constitution about Councillors, the rights and responsibilities of citizens, working with partners including reference to the partnership with the PCT and a new section on access to information.
 - c. Part 3 – contains the Functions Scheme and details who is responsible for what functions. This contains the information that has traditionally been referred to as the Scheme of Delegation. This content of the Functions Scheme is explained in more detail in the section on decision making below.

- d. Part 4 – sets out the procedure rules for the conduct of Council business and is set out in sections relating to the bodies carrying out council functions and about specific activities. The Council Rules in Section 1 deal with the Council meeting but also apply to the rest of the Council's activities except where the other rules in Part 4 override them.
 - e. Part 5 – contains the Codes that must be observed by Councillors and Council staff in the conduct of Council business and detail the way in which certain specific matters are dealt with. The codes dealing with the role of the Chairmen of Committees have been updated and the codes on Councillor Call for Action, Petitions and Audit and Governance Codes (to reflect CIPFA best practice) are new Codes. Some of the Codes and Protocols in the current Constitution have been removed because they duplicated other provisions elsewhere in the Constitution.
- 23 The Council is asked to agree that Parts 6-8 should be completed by the Monitoring Officer before the Constitution is implemented. Having this information in the last 3 sections of the Constitution enables amendments to be made more easily when changes are made. These parts are as follows:
- 24 Part 6 – will contain the Members Allowances scheme that is approved by Council from time to time on recommendation of its independent remuneration panel. It is a legal requirement that this information is set out in the Council's Constitution
- 25 Part 7 – will contain:
- a. The details of the number of Cabinet members and the portfolio of each as decided from time to time by the Leader of the Council. The law requires that this information is included within the Constitution and it is clearer and more easily found if this is included in Part 7 rather than in the detailed provisions found in Part 3. The Leader is not intending to make any changes to these arrangements at this time but if any changes are made they can be easily made by simply replacing the relevant section of Part 7.
 - b. The 5 Scrutiny Committees current areas of responsibility. The only change is that the Council is required to nominate one of these Committees as its Crime and Disorder Scrutiny Committee and it is intended that the Communities Scrutiny Committee should be so designated. The Council determines the remit of its Scrutiny Committees at its Annual meeting.
 - c. The Management structure is the responsibility of the Chief Executive in consultation and within the overall establishment budget agreed by Council. The law requires that this be included in the Council's Constitution. If this is in Part 7 the Constitution can be more easily changed if the Chief Executive makes changes to the management structure.
- 26 The Monitoring Officer is authorised by the Constitution to make changes to Parts 6 and 7 to reflect any changes decided by the Council, the Leader and the Chief Executive to those arrangements.
- 27 Part 8 is a glossary of terms used in the Constitution which will be maintained by the Monitoring Officer.

Decision taking

- 28 The Functions Scheme at Part 3 is greatly simplified and is based on the following principles.
- 29 By law, the Cabinet fulfils all functions that are not either defined by law as Council functions (set out in Part 3 – Section 2) or have been allocated to the Council or some other body in its Constitution (known as Local Choice Functions – and allocated in Part 3 Section 4). Those Council and Local Choice functions can in turn be delegated to an officer to carry them out on behalf of the Council.
- 30 Cabinet functions must be carried out by either the Cabinet collectively, a Cabinet committee or an individual Cabinet Member. Those functions can also be delegated to an officer. In Part 3 Section 3 there is an explanation of the criteria for deciding what functions must be carried out by the Cabinet collectively and those which may be carried out by individual Cabinet members. There are no formal Cabinet committees. Where a matter requires a decision of more than one Cabinet member those decisions are taken by the individual Cabinet Members (usually at the same or about the same time). All Cabinet functions that are not within the criteria set out in that section, are carried out by an officer.
- 31 All key decisions must be taken by Cabinet or a Cabinet Member. The definition of key decision is found in Part 4 – Section 2 – the Access to Information Rules and has been changed. The financial level is now stated as £1m but the definition makes it clear that is not the only criteria by which a key decision is defined.
- 32 Scrutiny functions are described in Part 3 – Section 5 and other functions such as planning and regulatory functions are allocated to the relevant Committees or other bodies at Part 3 – Section 6.
- 33 The informal arrangements that also operate to support the formal decision making are set out at Part 3 – Section 7. The role of Group Leaders is a new addition not currently in the Council's Constitution. Similarly the role of the Ward Councillor is reflected in this part.
- 34 In Part 3 – Section 8 all functions to be carried out by an officer are allocated to the Chief Executive. In the current Constitution, functions are delegated to a variety of officer posts.
- 35 This is a different approach to the current Constitution and has the benefit of clarity and avoids the need to change the Constitution if the management structure changes.
- 36 Having a Functions Scheme that provides for the Chief Executive to fulfil all functions not specifically allocated to the Council, the Cabinet, individual Cabinet Members or another Council body has the benefit of certainty and is comprehensive. This avoids any possible risk that a decision cannot be taken because there is no constitutional provision for a specific function. It is also simpler to understand. The current Constitution contains various lists of specific functions allocated to specific Council bodies or officers and there is a risk that if those lists are inconsistent or not comprehensive, a decision may be taken without due authority.
- 37 Some legal powers require the Council to designate one of its officers as the proper officer for that function. At Part 3 – Section 9 the Council designates the Chief Executive as its proper officer for all such purposes.
- 38 However, as it is impractical for all decisions to be taken personally by the Chief Executive, an officer scheme of delegation (referred to as the Chief Executive's Scheme

of Delegation) is needed. Work is underway to complete this before the new Constitution is implemented on 1 January 2010 and this information will be provided to all Councillors and made publicly available.

Scrutiny arrangements

- 39 The Scrutiny arrangements at Part 3 – Section 5 reflect the decisions taken by members during the review of scrutiny work facilitated by the Leadership Centre and Cllr John Lamb.
- 40 The call-in procedures in the Scrutiny Rules (Part 4 – Section 5) have been developed so that they more accurately reflect the legal framework and purpose of the call-in procedure.

Forward planning and agenda management

- 41 The greater scrutiny involvement in policy development and pre-decision scrutiny and the changes to the Functions Scheme requires a more effective forward planning and agenda management regime. This is not a matter for the Constitution but the Constitutional Review Working Group discussed how this could be achieved and how the informal arrangements need to be developed. The Group recognised that there was a need for greater member involvement in forward planning to enable items for pre-decision scrutiny to be identified earlier and built into work programmes and for key decisions and those meeting the criteria for Cabinet decision to be readily identified and agreed.

Partnership working

- 42 It is not appropriate for the Council Constitution to detail all the governance arrangements relating to its partnerships. Partnerships are constitutionally separate to the Council and should have their own joint governance arrangements agreed between the partners.
- 43 However, the new Constitution contains more details of the partnership arrangements at Article 9 in Part 2.
- 44 Some functions may be delegated to officers who work for both the Council and the PCT but are employees of the PCT. In order for those officers to carry out Council functions under the Chief Executive's Scheme of Delegation, the Council must designate those PCT employees as officers of the Council. This is provided for in Part 3 – Section 8.

Access to Information

- 45 Article 13 in Part 2 contains details of the information available to Councillors and to the public and explains the interaction between the different information regimes. This area is very complex and the Monitoring Officer will be providing additional guidance and training on these matters to supplement the information in the Constitution.

The Council meeting

- 46 The main changes to the rules relating to the Council meeting can be found in the Council Rules (Part 4 – Section 1). These are:
 - a. The rules relating to public questions have been tidied up; in particular, the criteria for questions being rejected are now clearer.

- b. There is a time limit for dealing with questions; half an hour maximum for public questions, the same for members' questions and an overall time limit for questions of 1 hour maximum.
- c. The time for submission of questions has been changed slightly to allow more time for answers to be produced.
- d. There is a time limit for motions for debate.
- e. The agenda for the ordinary meetings has been slightly changed to reflect the nature of reports and recommendations from the Cabinet
- f. The arrangements for setting the budget and policy framework have changed slightly to allow for the budget setting meeting in February and the setting of the Council tax at the March Council meeting. The law provides that a period for any objections raised by Council to the budget recommended to it by Cabinet which requires this slight change to the Council rules. The detailed rules for setting the budget and policy framework are set out in Part 4 – Section 3.
- g. The role of the Chairman in exercising discretion in the conduct of the meeting is restated in the Council Procedure Rules.

The Cabinet meeting

- 47 The Cabinet Procedure Rules at Part 4 – Section 3 explain the arrangements for decision making by Cabinet and the conduct of the Cabinet meeting. The role of non-Cabinet members is more clearly explained. The Constitutional Review Working Group has recommended that the layout of the meeting is changed to ensure that the role of those attending is clearer and more properly reflects the division of responsibility between Cabinet and non Cabinet members. These changes will be agreed with the Leader of the Council and explained to all regular member and officer attendees before they are implemented. The rules require that the Leader explains who is at the meeting at its start so that the public are clearer about the roles of each of those present.

Planning

- 48 The changes to the Planning arrangements agreed by Council on 24 July 2009 are reflected in the Functions Scheme (Part 3 – Section 6) “Planning Committee Functions”, in the Planning Rules (Part 4 – Section 8) and in a revised Planning Code (Part 5 – Section 14).
- 49 The Planning Committee of 19 members must be politically proportionate. It is not possible to have a constitutional requirement that members are drawn from across the County and are representative of both urban and rural wards. Such a requirement would contradict and could conflict with the statutory political balance rules. Instead, the Constitutional Review Working Group suggested that when making nominations Group Leaders should be asked to have regard to the need to reflect geographic diversity in the membership of the Committee.
- 50 The current Planning Committee complies with the composition and political balance requirements and the Council is asked to confirm membership of that Committee. Alternatively, the Council could choose to change the membership at this time.

Employment matters

- 51 The role of members in employment matters has been simplified and narrowed to reflect the legal requirements in that regard. The new arrangements can be found in Part 3 – Section 6 (the functions of the Employment Panel and the Employment Appeals Panel) and in the Employment Rules at Part 4 – Section 9.

- 52 Those rules will be applied in conjunction with the Council's recruitment policies and procedures.
- 53 It remains the intention that members will have an informal role in some other key appointments as is currently the case.

Deferred matters

- 54 The following matters have been deferred for further work:
- a. The functions and procedure rules for Regulatory Committee
 - b. The procedures for Standards Committee assessments, reviews and determination hearings which it was felt should be in the Constitution
 - c. A review of the Contractual and Financial Procedure Rules
- 55 The member seminar raised the following further issues for consideration:
- a. Use of plain English – securing the crystal mark for the Constitution
 - b. The production of a diagram that shows the Council's Functions Scheme
 - c. A review of representation on outside bodies and clearer guidance on conflicts of interest and other issues arising from such appointments
 - d. Public feedback on the new Constitution – is it more accessible?
 - e. Greater public involvement – the duty to involve community representatives in Council activities building on the PACT meetings and the recent Hearts of Herefordshire pilot activities

Implementation and further action

- 56 These deferred matters will be built into a continuing work programme and it is recommended that Council retains the Constitutional Review Working Group to continue this work with the Monitoring Officer.

Web-enabling and version control

- 57 The Constitutional Review Working Group agreed that the Constitution should be available on the Council's website. Initially it will be available in PDF format. However, to improve accessibility the aim is to make the document fully interactive and web-enabled so that it is possible to move between related parts of the Constitution more easily. The Constitutional Review Working Group received a demonstration of the way in which North East Derbyshire District Council has done this and would like a similar facility to be made available in Herefordshire Council.
- 58 The Monitoring Officer will introduce a system of version control so that any updates and amendments are incorporated into all hard copies of the Constitution and changed on the internet version as soon as agreed in future.

Implementation

- 59 In order to implement the Constitution on 1 January 2010, the Council is asked to instruct the Monitoring Officer to undertake the further work in Recommendation (f).

Community Impact

- 60 The new Constitution more clearly explains the Council's vision, aims and objectives for the County and its partnership arrangements. This should enable the public to

understand more clearly what the Council and its partners are trying to achieve and how they work together to do that.

- 61 The format and content of the new Constitution should make it simpler and more accessible to the public and should enable communities within the County to understand more clearly how the Council operates.
- 62 The rights and responsibilities of citizens and the arrangements for public involvement in Council business are more clearly set out in the new Constitution.
- 63 The rights of the public to Council information is summarised in the Constitution and the follow up guidance on rights to information which is planned should enable the public to gain easier access to information about the Council and its services.

Financial Implications

- 64 The changes to the Constitution will require some changes to the way the Council works. However, the aim has been to streamline governance arrangements and to avoid duplication and unhelpful or overly bureaucratic processes in the constitutional arrangements. The impact of these changes of the staffing resources both within Legal and Democratic Services and elsewhere within the Council have not been fully assessed but it is envisaged that these changes will not have an impact on the level of resources needed to properly support the Council's governance and financial arrangements.
- 65 There have been no substantive changes to the Council's current Financial or Contract Procedure Rules (Part 4 – Sections 7 and 8).

Legal Implications

- 66 The new Constitution reflects the statutory requirements and guidance and is in accordance with the modular format established as part of the guidance following the introduction of the changes in the Local Government Act 2000.

Risk Management

- 67 There are no risk management implications

Consultees

- 68 The Constitutional Review Working Group has been consulted on a weekly basis from 3 September to 30 October on the proposals in this report.
- 69 A seminar for all members of the Council took place on 27 October 2009 and the views from that seminar have been taken into account in the preparation of this report and in the Council's new Constitution.
- 70 This report proposes that the public and our partners are consulted on the new Constitution and their views reported to Council in due course.

Appendices

71 The new Constitution has been circulated separately and there are no other appendices to this report.

Background Papers

72 The following have been used in the preparation of this report and the new Council Constitution:

- a. The Local Government Act 2000 and regulations and guidance issued in relation thereto
- b. The Local Government (Public Involvement in Health) Act and regulations and guidance issued in relation thereto
- c. The New Council Constitutions Guidance Pack Volume 1 and 2
- d. The Council's current Constitution
- e. Constitutional Review Working Group reports and papers including action notes and schedule of "follow up" actions – these papers have been updated after each meeting and made available to all Councillors in the Group rooms within the Council offices