

6. REVIEW OF THE CONSTITUTION

Report By: County Secretary and Solicitor

Wards Affected

County Wide

Purpose

1. To recommend to Cabinet and onwards to Council a number of amendments to the Constitution arising from the review of Cabinet and Scrutiny responsibilities at the May Council.

Considerations

2. A working draft of the Constitution showing the amendments recommended as a consequence of the changes agreed by Council to the Cabinet and Scrutiny Committees of the Council is enclosed separately for Members of the Committee and available to the public on request. This also sets out a number of minor textual corrections or updates which have been made. The main changes are summarised below.

Foreword

3. This has been updated.

Part 1 – Aims and Principles

4. No changes necessary.

Part 2 – Councillors

5. This needs to be revised to delete reference to Programme Panels.

Part 3 – Chairman and Vice-Chairman of the Council

6. No changes necessary.

Part 4 – The Council Meeting

7. The following changes need to be made.
 - Housing Stock Transfer – Following the successful transfer in 2002, the Constitution does not need to make reference to housing stock transfer.
 - Reference to Programme Panels needs to be removed.
 - The new arrangements approved by Council authorising the Leader to appoint a Deputy Executive Leader need to be made.

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

- The Herefordshire Commercial Services Board no longer needs to meet as a member working group.

Motions

8. It is suggested that the Constitution be revised to make it clear that the Chairman, in consultation with the County Secretary and Solicitor, has a discretion not to accept a Notice of Motion on the grounds that it is not relevant to the Council's powers or duties (Standing Order 4.21).

Questions

9. It is suggested that new Standing Order 4.24.16 and 4.25.9 be added to the Constitution to make it clear that by convention questions will not be accepted at the first meeting following elections as office holders will only be appointed at that meeting.

Part 5 – Orders Applying to Committees and Other Council Bodies

10. Changes need to be made to reflect the abolition of the Programme Panels and rights of members to attend meetings.

Part 6 – The Executive

11. The Council has agreed to a Cabinet comprising the following ten portfolios:
 - Corporate Strategy and Finance (Leader)
 - Audit and Performance Management
 - Community and Social Development
 - Economic Development, Markets and Property
 - Education
 - Environment
 - Highways and Transportation
 - Human Resources and Corporate Support Services
 - Rural Regeneration and Smallholdings
 - Social Care and Strategic Housing
12. A set of responsibilities for each of the ten portfolios was agreed by the Council on 23 May. These are as set out in Part 6 of the working draft of the Constitution. The following additional changes are also recommended.
 - The Highways and Transportation portfolio should be extended to include responsibility for all of the Council's engineering functions including, in particular, land drainage because of the implications for highways, safety of large reservoirs, disused mines and quarry tips and also public sewerage functions where agency agreements exist with the water companies. Aside from the synergy in relation to these matters, they also fall within the scope of services for which the Head of Engineering and Transportation is responsible.

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

- It is recommended that the Customer Services function be included as part of the Human Resources and Corporate Support Service responsibilities, particularly in relation to the links with information technology and e-government.
- It is recommended that the Rural Regeneration and Smallholdings portfolio be extended to also include responsibility for market towns. It is also recommended that consideration be given to reviewing the composition and role of the Smallholdings Selection Panel to comprise the Cabinet Member plus two non-executive members with an advisory role on smallholding tenant appointments.

Cabinet Procedure Rules

13. Rule 6 currently provides:

“If either Cabinet or a Cabinet Member proposes to take a decision which affects individual wards they shall consult the relevant ward members and those members may be invited to attend and speak at any meeting which considers the matter.”

14. At the Council meeting on 25 April 2003, it was noted that this only gave permissive rights to ward members. It was suggested in the debate that this should be revised to create a right for ward members to be able to attend and speak at Cabinet when decisions were taken affecting individual wards. It has been suggested that Rule 6 should be revised to make it clear that Members “will” be invited to attend and speak on matters affecting their wards.
15. It is considered that extending the Rule in this way will cause procedural and legal risks for the Cabinet. Some issues will have an effect across all wards creating the potential for all Councillors to have the right to speak at the Cabinet meeting. In order to manage these risks, it would be necessary to contain the right by a requirement to give notice and to limit the amount of speaking time. Against that background, it is recommended that the current rule remain leaving the discretion to the Leader of the Council as Chairman of Cabinet to call ward members to contribute.

Public Speaking at Cabinet

16. Members also need to consider the Notice of Motion moved at the Council meeting in April 2003 by former Councillor G.H.M. Woodford recommending that the public be given an opportunity to attend and participate at Cabinet meetings. Similar practical and legal considerations apply to this proposal as outlined in relation to ward members. It is considered that the current arrangement whereby the relevant ward member has a right within the Constitution to be consulted direct and for those members to be invited to attend and speak as appropriate provides a more relevant means of alerting Cabinet to local considerations. Cabinet continues to meet in public and reports are available subject to the statutory rules on confidentiality. Plans are also well advanced to improve public access to Cabinet reports and decisions via the Council’s website.

Part 7 – Overview and Scrutiny Arrangements

17. At its meeting on 23 May 2003, the Council resolved to continue the four Scrutiny Committees covering Education, Environment, Social and Economic Development and Social Care and Housing. In addition, the Council has resolved to set up a

separate Scrutiny Committee to undertake the Council's statutory overview and scrutiny role in relation to Health Services in the County.

18. Following the changes to the Cabinet portfolios outlined above, it is proposed that the following overview and scrutiny arrangements will apply to each individual Cabinet Member portfolio, reserving to Strategic Monitoring Committee the overview and scrutiny of strategic county-wide issues which may arise in each portfolio from time to time.

Cabinet Member	Scrutiny Committee
Corporate Strategy & Finance (Leader)	Strategic Monitoring
Audit and Performance Management	Strategic Monitoring
Community and Social Development	Social and Economic Development
Economic Development, Markets and Property	Social and Economic Development
Education	Education
Environment	Environment
Highways and Transportation	Environment
Human Resources and Corporate Support Services	Strategic Monitoring
Rural Regeneration and Smallholdings	Social and Economic Development
Social Care and Strategic Housing	Social Care and Housing

19. It is recommended that the following additional terms of reference be added to Standing Order 7.3.2 to make explicit the Scrutiny Committee's powers:
- to allow additional co-opted members
 - to allow public participation in their meetings
 - to receive information, evidence and presentations from external experts and other witnesses

Scrutiny Committee Rules

20. At present, Rule 6 which deals with call-in requirements, requires matters that have been called in which the Scrutiny Committee wish to refer back to the decision maker, to be reconsidered by the decision making body. In the case of a Cabinet decision this currently means convening a meeting of Cabinet. This can sometimes cause practical difficulties particularly when time is of the essence. In order to protect the Council's interests, it is therefore suggested that:
- In the case of a Cabinet decision, the matter will be referred back to the Leader of the Council in the first instance who will decide whether to reconsider the matter on behalf of the Cabinet or to refer the matter back to a meeting of Cabinet.

Co-ordinating Role of the Strategic Monitoring Committee

21. Rule 17 of the Scrutiny Committee Rules will also benefit from clarification and it is suggested that these be revised as follows:

"In dealing with cases other than call-in, where a Scrutiny Committee has reached a view on a matter which it is scrutinising and wishes to make recommendations to the Council, its views will normally be submitted first to the Cabinet. The Strategic Monitoring Committee will be responsible for regulating the flow of reports to Cabinet."

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

Part 8 – The Standards Committee and Standards Commission

22. Initially, the Council set up an independent Standards Commission to guide the work of the Council in dealing with the introduction of a new statutory ethical framework. The Standards Commission have met on a very occasional basis to provide independent advice and support to the Standards Committee. The setting up of the Standards Board for England and the issue of statutory guidance and subsequent regulations now provide a rigid framework within which the Standards Committee has to work. Against that background, it is therefore recommended that the formal role of the Standards Commission in the Constitution be repealed.
23. The legislation requires the Standards Committee to comprise at least two councillors (who may not include the Leader of the Council) and at least one person who is a wholly independent member (that is not a member or an officer of the Council). Where the Committee comprises more than three members, at least 25% must be independent. Additionally, the Standards Committee must comprise at least one member of any of the town and parish councils which the Standards Committee exercises responsibility. That person must be present when matters relating to town and parish councils or their members are considered.
24. New Regulations recently issued provide for the Standards Committee to determine complaints referred to it by the Standards Board for England. These Regulations give the Standards Committee powers to impose a number of sanctions ranging from disqualification from office for a period of up to 3 months, to public censure. The Regulations require the Committee, or a sub-committee of it, to meet and determine such complaints within 30 days. It is further understood that the Standards Committee will, later this year, be required to conduct its own investigations in relation to complaints against town and parish councils and also assume responsibility in relation to referred complaints concerning Herefordshire Council Members.
25. Against that background and the need to meet the quorum requirements of the legislation and to determine matters within statutory deadlines, it is recommended that one further independent member be recruited to serve on the Standards Committee and that the Herefordshire Association of Local Councils be asked to nominate two further parish councillors representative of the town and parish councils to serve on a sub-committee of the Standards Committee to deal with its town and parish council responsibilities under Section 55 of the Local Government Act 2000.

Part 9 – Other Committees and Bodies

26. Because of the current plans to outsource the Council's contract work, it is proposed that the Herefordshire Commercial Services Board not be appointed. It is also proposed to clarify the arrangements for appointments to external bodies and the term of office of those appointments. A new Member body also needs to be set up to sign off the Council's accounts each year. It is recommended this be called the Statutory Accounts Committee and comprise the Leader and Deputy Leader of the Council, the Cabinet Member Audit and Performance Management and the Chairman and Vice-Chairman of the Strategic Monitoring Committee.

Planning Committee and Area Planning Sub-Committees

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

27. There need to be consequential changes to reflect the increase in size of the various planning committees.

Smallholdings Selection Panel

28. It is proposed this Panel be revised as set out above in paragraph 12.

Local Joint Consultative Committee

29. The Constitution needs to be clarified (Standing Orders 5.5 and 4.4.2) that Members of the Council do not generally have the right to attend these meetings.

Part 10 – Local Area Forums

30. A review is under way in relation to local area forums.

Part 11 – Joint Arrangements

31. No changes necessary.

Part 12 – Officer Responsibilities

32. No changes necessary.

Part 13 – Decision Making

33. No changes necessary.

Part 14 – The Public

34. No changes necessary.

Cabinet Procedure Rules

35. Please see details above in paragraphs 13 – 15.

Scrutiny Committee Rules

36. Please see details above in paragraphs 20 and 21.

Policy Framework and Budget Rules

37. No changes necessary.

Financial Procedure Rules and Financial Standing Orders

38. These need to be revised consequent on the other changes outlined in this Report.

Appendix 12 – Protocols on Member/Officer Working Relationships and Use of Facilities

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

39. A revised set of Protocols have been recommended by the Standards Committee but have not yet been adopted by Council pending further consultation.

RECOMMENDATION

THAT the changes summarised in the Report as detailed in the working draft of the Constitution be recommended to Cabinet and Council for approval.

BACKGROUND PAPERS

- None