

<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>19 NOVEMBER 2010</b>
<b>TITLE OF REPORT:</b>	<b>COUNCIL CONSTITUTION</b>
<b>REPORT BY:</b>	<b>CABINET MEMBER FOR CORPORATE AND CUSTOMER SERVICES AND HUMAN RESOURCES</b>

**CLASSIFICATION:** Open

### **Purpose**

To seek approval for and present matters relating to the Council Constitution.

### **Recommendation(s)**

**THAT Council :**

**a) Approves the following changes to the Constitution:**

- i. That the Financial Procedure Rules be revised**
- ii. That the Regulatory Committee role and functions be revised;**
- iii. That the Regulatory Sub-Committee role and functions be revised;**
- iv. That the regulatory role and functions of the Cabinet or Cabinet Member be noted;**
- v. That the Chief Executive has responsibility for the discharge of all regulatory functions not specifically reserved to the Regulatory Committee, Regulatory Sub-Committee, Cabinet or Cabinet member;**
- vi. That the Chief Executive may delegate the discharge of those functions to a Director who in turn may delegate to another officer; and**
- vii. That the Chief Executive establishes an officer review panel to review regulatory decisions by officers.**

**b. Instructs the Council's Monitoring Officer to make the amendments to the Constitution to give effect to the above decisions as set out in Appendix 1 (The Financial Procedure Rules) and Appendix 2 (The Regulatory Committee and consequent changes) of this report.**

**c. That the decisions recommended in (a) (i) be implemented with effect from 1 December 2010 and those in (a) (ii) to (vii) be implemented with effect from 1 February 2011.**

- d. **Encourages the Regulatory Committee to delegate responsibility for hearing appeals and revocation of licences to the Regulatory Sub-Committee and to consult with its stakeholders before doing so.**
- e. **Instructs the Regulatory Committee to review its procedures and present to Council at a future meeting Regulatory Procedure Rules for incorporating into Part 4 of the Council's Constitution.**
- f. **Notes the work undertaken by the Constitutional Review Working Group which will continue to assist with such further constitutional review work as it determines.**

## **Key Points Summary**

- Council at its meeting on 13 November 2009 agreed to adopt a new Constitution to take effect on 1 January 2010. This completed Phase 1 of the constitutional review.
- Council at its meeting on 28 May 2010 agreed to make further changes to the Constitution and approved a revised new written Constitution at its meeting in July 2010, including the revised contracts procedure rules thereby completing Phase 2 of the constitutional review.
- Members of the Constitutional Review Working Group have been progressing Phase 3 of the constitutional and governance review and now make recommendations to Council on a revised set of Financial Procedure Rules as outlined in this report (Part A) (attached as Appendix 1) and on regulatory functions as outlined in this report (Part B) (attached as Appendix 2. Further copies of Appendices 1 and 2 showing the tracked changes are available in the Members' rooms and can be made available publicly on request.
- It is proposed that the changes recommended in Part A of this the key considerations section of this report become operational on 1 December 2010 and those in Part B of the same section become operational on 1 February 2011.

## **Alternative Options**

- 1 The alternative options have been discussed at either the Constitutional Review Working Group (CRWG) or other bodies where applicable.
- 2 Council now has the following options:
  - a. To accept the revised Financial Procedure Rules
  - b. To reject the revised Financial Procedure Rules
  - c. To accept the changes to the Regulatory functions
  - d. To reject the changes to the Regulatory functions

## **Reasons for Recommendations**

- 3 The Council is being asked to adopt new Financial Procedure Rules and to make changes to the arrangements for the discharge of Regulatory functions as endorsed by the CRWG. The revised Financial Procedure Rules are considered to be more accessible whilst providing appropriate assurance about the use of council assets and resources. The new arrangements for the discharge of Regulatory functions ensure that all appropriate regulatory functions the responsibility of the Cabinet or Cabinet member are within the remit of the Regulatory Committee, that the delegations authorising officers to discharge those functions

are clear and that there are safeguards providing for review and appeal. The CRWG agree these changes are necessary for the clarity and proper functioning of the constitution and to ensure that the arrangements for the discharge of regulatory functions are consistent with the rest of the Functions Scheme.

## **Introduction and Background**

- 4 The Council has been undertaking a process of Constitutional Review since June 2009. This work has been done under the guidance and direction of the cross party CRWG. It was agreed that Phase 3 of that process would include a review of the Financial Procedure Rules and of the constitutional arrangements for discharge of Regulatory functions. This report seeks approval of the changes recommended by the CRWG.

## **Key Considerations**

### **PART A**

#### **Financial Procedure Rules**

- 5 As part of the work of the CRWG to review and update the constitution, a project team was set up to review and propose amendments to the Council's Financial Procedure Rules. The team included members from the Resources Directorate, Legal Services and the Sustainable Communities Directorate, with Councillor JG Jarvis as the Lead Member on behalf of the CRWG.
- 6 The Project Team considered the Rules in depth and consulted Audit and Governance Committee informally, the Joint Management Team and CRWG.
- 7 The main areas of key changes or adjustments are as follows:
- (a) There is a clearer process for the approval of capital acquisitions and improvements.
  - (b) Details of responsibilities under the Financial Procedure Rules, which are repeated in various sections of the current rules, have now been collated into a single place as an appendix to the Rules. This brings greater clarity to the document and ensures consistent wording is used.
  - (c) The section on procedures for payments has been updated to accommodate electronic procurement systems that will be in place after the implementation of Agresso, thereby ensuring that the Rules have been future proofed as far as possible.
  - (d) Specific arrangements for schools have been included where appropriate e.g authorised signatories and credit card payments.
  - (e) New sections have been added relating to Income Charging and Spend to Save funding.
  - (f) Virement limits have been updated.
  - (g) Job titles have been updated.
  - (h) Plain English has been used to improve the accessibility of the document.
  - (i) A glossary of terms has been added.

- 8 These changes are reflected in the revised Financial Procedure Rules which it is proposed should replace the existing Financial Procedure Rules in Part 4 of the Council's Constitution. If agreed, Officers will be notified of the changes and will be asked to operate to the new Rules with effect from 1 December 2010.

## **PART B**

### **Regulatory Functions**

#### The current arrangements

- 9 The Council's Constitution currently provides for the Regulatory Committee to carry out the functions of the Council relating to trading standards, consumer protection, animal health, environmental protection, food safety, some highway functions and the consideration of appeals against the refusal of some licences. Its functions are set out in a list in paragraph 3.6.2.2 of the Constitution. It also provides for the Regulatory Sub-Committee (comprising any three members of the Regulatory Committee) which is responsible for determining individual applications for licensable activities under the Licensing Act 2003 and the Gambling Act 2005.
- 10 These provisions in the Constitution were not changed when the Constitution was amended in November 2009 (Phase 1) or July 2010 (Phase 2).
- 11 The current arrangements as set out in the Constitution give rise to the following problems:
- (a) The Functions Scheme agreed by Council in November 2009 delegated all Council functions not specifically reserved to Council, the Cabinet or another body to the Chief Executive who in turn can delegate to Directors. The constitutional provisions relating to Regulatory Committee do not accord with that principle agreed by Council and do not set out clearly those specific matters that are not in the remit of the Chief Executive and other officers to whom he may delegate.
  - (b) It is not clear what specific types of licences are the subject of a right of appeal to the Regulatory Committee and which are the subject of some other process.
  - (c) The statutory framework that sets out what Council functions may be fulfilled by which body say that certain functions cannot be executive (Cabinet) functions and some are "local choice functions" (i.e. the Council can decide whether the Cabinet or some other body carries out those functions). All other functions are executive functions. The Constitution does not clearly specify which non-executive functions the Regulatory Committee is responsible for and which "local choice functions" are vested in the Regulatory Committee and which rest elsewhere.
  - (d) The reality is that the Council's officers fulfil a number of the Council's regulatory "powers and duties" and it is not clear that what happens in practice is fully reflected in the Constitution. So whilst the Regulatory Committee may be responsible for overseeing the Council's regulatory functions on behalf of the Council and for actually fulfilling and carrying out some "powers and duties" itself, some regulatory activity is not being done by the Committee.

- (e) The Regulatory Committee has adopted its own procedure for the hearing of appeals. It is bound by the Council procedure rules in the conduct of its business. The rules of natural justice apply to appeal proceedings. Some licensing matters must be dealt with in accordance with statutory procedures. The Regulatory sub-committee has its own procedure rules for dealing with licensing applications that are subject to statutory provisions. Whilst these arrangements are legally sound and have been the subject of regular review and updating with the Committee Solicitor's input, they are not reflected in the Constitution in the same way as similar proceedings in other committees e.g. the Planning Committee.
- (f) The Constitution currently does not deal effectively with and is not explicit in allocating responsibility for the following regulatory related functions:
  - i. Responsibility for oversight, development and direction of the carrying out of regulatory functions.
  - ii. Responsibility for the development, review and refresh of comprehensive regulatory policies.
  - iii. Monitoring performance of regulatory services.
- (g) The Constitution reserves some but not all appeals to the Regulatory Committee and states that the Regulatory sub-committee is responsible for hearing applications. The Regulatory sub-committee hears some appeals.
- (h) The Director of Children's Services and the Director of Adult Social Care have statutory responsibility for ensuring that the Council discharges its functions so as to safeguard vulnerable children, young people and adults. There are regulatory functions that could have an impact on the safeguarding and there is a need to ensure that both safeguarding and regulatory functions are discharged consistently. Following the change proposed in this report there will be 3 ways in which that consistency will be achieved:
  - i. Officers discharging regulatory functions will have regard to the Council's safeguarding functions.
  - ii. An officer review panel comprising officers from both regulatory and safeguarding will review officer decisions where that is requested or where cross cutting considerations make that appropriate.
  - iii. Safeguarding officers with expertise in that field will provide expert evidence and advice to the Regulatory Committee and/or Regulatory Sub-Committee at hearings.

12 In order to address these issues, it is recommended:

- i. That Part 2 and Part 3 of the Constitution relating to the Regulatory Committee and its functions be amended to ensure that the regulatory functions carried out by the committee and its sub-committee are clearly distinguished from those that can be carried out by the Chief Executive or other officers.

- ii. That the Constitution be amended to make it clear which regulatory functions are the responsibility of the Cabinet or Cabinet member(s) and which are responsibility of the Regulatory Committee.
  - iii. The Constitution is amended (in line with the principle agreed in November 2009) and specifies those functions that are reserved to the Regulatory Committee and Regulatory Sub-Committee and all other regulatory functions should be discharged by the Chief Executive.
  - iv. That the body or office holder responsible for carrying out the full range of regulatory functions are clearly stated and set out in a clear framework.
- 13 The recommended changes preserve the right of appeal to Committee and provide that only the Committee may revoke licences. The Regulatory Committee can delegate the hearing of appeals and the revocation of licences to the Regulatory sub-committee. The changes simplify arrangements.
- 14 It is important that regulatory functions are discharged in a way that enables the Council to meet its safeguarding duties. It is important that there is a mechanism for ensuring that consistent decisions are taken by officers. Therefore, it is proposed that the Chief Executive establishes an officer panel which may conduct a preliminary review in such cases prior to an officer decision being taken under delegated authority. The panel may also review an officer decision prior to but not as an alternative or replacement for a full appeal if that is requested by an applicant.
- 15 However, it is important relevant stakeholders be consulted on the process for implementing these changes and their views sought on any changes to procedure and delegation. For that reason it is recommended that the changes be implemented on 1 February 2011 to allow time for such consultation.
- 16 The proposed amendments set out in Appendix 2 reflect these recommendations.
- 17 The Regulatory Committee procedure rules and the Regulatory Sub-Committee procedure rules should be set out in the Council's Constitution. To allow for flexibility should the law require a change to those procedure rules, the Council should delegate the authority to amend those Procedure rules to the Committee in consultation with the Monitoring Officer. It is proposed that the current procedure rules be reviewed by the Committee in the light of the Constitutional changes made in November 2010 and following review are incorporated into the Constitution. The Council is being asked to instruct the Regulatory Committee to review its procedure rules and to present those rules to a future meeting of Council for incorporation into Part 4 of the Council's Constitution

## **Community Impact**

- 18 These amendments to the Constitution seek to make the Financial Procedure Rules more accessible to Members, officers and the public.
- 19 These amendments to the Constitution seek to clarify the roles and responsibilities for the discharge of regulatory functions and to enable stakeholders and the public to understand the arrangements more clearly. By clarifying that officers have delegated authority to fulfil regulatory functions not reserved to Committee, the system is much simpler and the right of appeal to the Committee preserves the right for the Committee to be the arbiter on contentious matters. The Committee will continue to deal with revocation of licences. The Committee will set the detailed policy framework for the conduct of all regulatory functions and this will ensure that community interests are reflected in the regulatory policy and procedural

framework.

## **Financial Implications**

- 20 The revised Financial Procedure Rules will assist the Council to facilitate more effective approach to financial matters. The financial impact of reviewing the Financial Procedure Rules has been absorbed within existing budgets.
- 21 The changes to Regulatory functions largely reflect what currently happens in practice in any event and the changes have minimal financial impact. The financial impact will be absorbed within existing budgets.

## **Legal Implications**

- 22 The proposed amendments to the Constitution reflect all appropriate statutory requirements and guidance.

## **Risk Management**

- 23 There are no risk management issues other than the need to ensure legal compliance.

## **Consultees**

- 24 The CRWG has been consulted on the proposals. A project team of members and officers have considered the current Financial Procedure Rules, reviewed them in detail and formulated the recommendations in this report. A regulatory review working group considered and proposed the changes to the Regulatory functions.
- 25 The Regulatory Committee, the Audit and Governance Committee and Joint Management Team were consulted with informally as part of these processes.
- 26 All Councillors were invited to comment on the draft revised Financial Procedure Rules and on the Regulatory proposals.

## **Appendices**

Appendix 1 – Revised Financial Procedure Rules

Appendix 2 – Revisions to Parts 1, 2 and 3 of the Constitution to give effect to the changes to the Regulatory functions

## **Background Papers**

None