

REVIEW OF THE CONSTITUTION

Report By: County Secretary and Solicitor

Wards Affected

County Wide

Purpose

1. To consult the Committee on proposals to update the Constitution to reflect changing legislation and Council requirements.

Background

2. The Constitution was originally adopted by the Council in 1999 and combines all the required governance provisions for a local authority, together with the more traditional standing orders to regulate public meetings and decision making. The Constitution is divided into 14 Parts, each of which sets out a particular aspect of the Council's operation. More detailed procedures are set out in separate Rules and Protocols appended to the Constitution.
3. The County Secretary and Solicitor is responsible under Standing Order 1.4.5 for monitoring and evaluating the operation of the Constitution and making recommendations for improvement as necessary.
4. The Constitutional Review Working Group (CRWG) met on 30 June 2004 and 7 September 2004 to consider a number of recommended revisions from the County Secretary and Solicitor required either to reflect legislative requirements or to meet changing Council needs. The CRWG recommendations are set out in detail in the Recommendations annexed to this Report and summarised below.

Planning Committee Matters

5. There has been a review of arrangements for determining planning matters. Changes are recommended in the following areas:

5.1 Head of Planning Services' Powers of Referral

It is considered that the Head of Planning Services' power to refer applications which have been considered by the relevant Area Planning Sub-Committee to the main Planning Committee is too narrow. Currently as drafted, the referral power can only be exercised if:

- A crucial policy is at stake or;
- the sub-committee's view might not be defensible if challenged.

The recent Asda application has also indicated the need for the Head of Planning Services to decide not to make a referral if the application is likely to be the subject of a call-in to the Secretary of State for determination outside the authority. Having to

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refer such cases through main Planning Committee having been determined at the Area Sub-Committee does cause unnecessary delay and uncertainty not only for applicants but also for persons affected by the development.

It is therefore proposed that the referral power be redrafted to allow the Head of Planning Services:

to refer

- applications which have been considered by the relevant Area Planning Sub-Committee where that Area Planning Sub-Committee is minded to make a decision which is contrary to the officer recommendation and which, in the opinion of the Head of Planning Services, should be considered at a strategic county-wide level; and

not refer:

- applications which have been considered by the relevant Area Planning Sub-Committee where that Area Planning Sub-Committee are minded to make a decision which is contrary to officer recommendation and which are likely to be the subject of a call-in for the Secretary of State.

5.2 Concerns have been expressed that the current referral procedure is not fully explained nor is it sufficiently independent of the Council's Planning Service. The current procedure was agreed by the Council at its meeting on 27 October 2000 and a procedure for referral was put into force. However, the referral procedure itself does not currently form part of the Constitution nor is it explained in the Officer Scheme of Delegation for Planning Matters. It is recommended that the procedure formally comprise part of the Officer Scheme of Delegation at Appendix 18 of the Constitution so that all members and applicants are aware of the details of the procedure and the timescales within which it should work.

5.3 Council Schemes

The procedure for determining applications for planning permission in relation to the Council's own developments has been considered. It is recommended that responsibility for determining planning applications submitted by the Council for its own schemes should be determined by the main Planning Committee to ensure consistency of treatment across the County. Local Members would be able to attend and speak at the Committee to represent local views as necessary.

5.4 Members' Planning Applications

As reported to Council in March by the Standards Committee, the Court of Appeal case (Richardson and Orme -v- North Yorkshire County Council) (recently upheld by the House of Lords) requires the Council to reconsider certain sections of the Planning Code of Conduct as currently drawn. In particular, the section dealing with **Applications in which a Member of the Council has an interest**. The House of Lords has since confirmed the Judgement that Councillors are required to be properly excluded from meetings where they have a prejudicial interest under agency laws. Whilst whatever a person has power to do himself he may do by means of an agent, the converse position similarly holds good that what a person cannot do himself he cannot do by means of an agent. Paragraph 39 of the Planning Code of

Conduct which allows councillors to appoint an agent who can speak on their behalf in relation to individual applications therefore needs to be redrafted as follows:

“39. **You must take no part in the determination of the application. You must declare a prejudicial interest and leave the meeting and not seek to influence any decision made.** ~~You may, however, appoint an agent who can speak subject to Standing Order 5.11 (Public Speaking at Meetings of Planning Committee and Area Planning Sub-Committees) on your behalf.~~”

There are also some consequential tidying up amendments required to paragraphs 25, 26, 36 and 37 of the Planning Code of Conduct as shown in Recommendation 5 of the Annex.

5.5 Supplementary Planning Guidance

There is no statutory basis for adoption of Supplementary Planning Guidance (SPG). SPG is widely used in planning practice as another material consideration in development control. The only legal requirements for SPG are:

- It must be supplementary to UDP Policy and not contrary to it.
- It must have been the subject of public consultation.
- It must be formally adopted by the Council.

Current practice is for the Planning Committee to consider any SPG following public consultation and then refer the matter to the Cabinet Member for formal approval. It is recommended that this approval process be confirmed in the Constitution by addition to both the Planning Committee and Cabinet Member (Environment) Terms of Reference.

Council Procedures

6. There has been a review of Council procedures and a number of changes are recommended:

6.1 Formal Questions at Council

Standing Order 4.25 allows Councillors to ask formal questions at Council meetings provided they deposit a copy of their question with the relevant Cabinet Member or Chairman and the County Secretary and Solicitor by no later than 10.30am on the last working day before the relevant Council meeting.

This can and does result in formal questions being asked about matters which appear as the subject of formal reports to Council later on in the Council Agenda. This has the potential to lead to duplication on discussion of items and is potentially confusing when items in reports are debated later on in the meeting.

To date, the Chairman has used his discretionary powers to regulate Council meetings to rule that formal questions relating to items which will be the subject of report be taken at that time in the meeting. It is recommended that this mechanism be written into the Standing Orders.

Also, Members have been making use of e-mail to ask questions and relying on officers to notify the relevant Cabinet Member or Committee Chairman. There is also the risk as demonstrated recently of questions not being passed promptly by officers to the County Secretary and Solicitor. It is recommended that revisions be made to Standing Order 4.25.1 to reflect these matters.

6.2 Current Delegations in Relation to Employee Matters

- 6.2.1 The Local Authority (Standing Orders) (England) Regulations 2001 issued under the Local Government Act 2000 make it clear that the function of recruitment, selection and dismissal of Council employees must be discharged by the Chief Executive (as Head of Paid Service) or his nominee and not elected Members.

It is recommended that a new Standing Order be added to Part 12 of the Constitution to clarify the role of members in these matters.

- 6.2.2 Changes are also required to Appendix 6 of the Constitution which deals with Appointment and Discipline of Staff to meet the requirements of the Local Authority (Standing Orders) (England) Regulations 2001 and the Employment Act (Dispute Resolutions) Regulations 2004.

The changes include the involvement of Cabinet Members in the appointment and employment matters concerning the Chief Executive, Directors, County Secretary and Solicitor, County Treasurer and Heads of Service.

- 6.2.3 Standing Order 2.5.12 prohibits Cabinet Members from serving on the Employee Appeals Panel. This needs to be revised to reflect the Cabinet and Cabinet Member (Human Resources and Corporate Support Services) responsibility in relation to these matters as permitted by the 2001 Regulations.

6.3 Arrangements for Local Area Forums (LAFs)

The current drafting of the Constitution describes the role and remit of each Forum by reference to a fixed geographical area defined by reference to a named group of wards and named councillors. There is a concern that this approach is too constrained as issues arise from time to time which cross ward and LAF boundaries. It is also hoped that the LAFs will be used by other organisations to consult local communities. It is therefore recommended that Part 10 of the Constitution be revised as set out in Appendix 2 to the Annex of this Report and that the reference to LAFs be deleted in Appendix 20 "Membership of Area Based Bodies".

6.4 The Independent Remuneration Panel

The Council is required to take into account the advice of its Independent Remuneration Panel (IRP) before considering any changes to the Members' Allowances Scheme. The current Scheme was originally introduced in March 2002 and revised by the Council in May 2003. It is recommended that the Council agree to review its current Members' Allowances Scheme during 2006/07 before the new Council is elected in May 2007.

This will require the IRP to be reconvened in early 2007. The current membership comprises two representatives from the business sector (Personnel Manager, Special Metals Wiggins Limited and HR Director, Sun Valley Foods Ltd); one representative from the voluntary sector (Hereford Volunteer Centre); two

representatives from the media (Editor, Hereford Times and Editor, Hereford Journal); and one representative from Unison was agreed by the Council in 2001.

It is recommended that this membership be continued for a further 3 year period and the relevant individuals or their nominees or successors be invited to serve at the appropriate time to ensure continuity and to reflect the requirements of the legislation.

6.5 Control of Borrowing, Investments or Capital Expenditure

Regulations coming into force on 19 May 2004 provide that the function of formulating a plan or strategy for the control of a local authority's investments is a function not reserved to the Cabinet (Local Government Authorities (Function and Responsibilities) (Amendment) (England) Regulations 2004).

It is therefore recommended that this function remain with the Council and the definition of the "Budget" in the Constitution at SO 4.1.3 be amended to include "Investments".

Regulation 13.2 of the Council's Financial Regulation will also require consequential amendment.

6.6 The Policy Framework

These are the plans and the strategies of the Council which the Local Government Act 2000 requires to be decided by full Council. In line with Government guidance, the Framework currently includes the current Housing Investment Programme Strategy (HIP). The Council can decide to delegate approval of this matter to the Cabinet if so recommended. It is recommended that following the transfer of the Council's housing stock to Herefordshire Housing Limited and the fact that there is no longer a need to produce an annual housing strategy, this be deleted from the Policy Framework. There is a requirement to have a Housing Investment Strategy that GOWM is satisfied is "fit for purpose". It is recommended this become part of the Cabinet Member's (Social Care and Strategic Housing) responsibility with an amendment to SO 6.14.1.

6.7 Regulatory Sub-Committee

The Council needs to agree the composition of the Sub-Committee which has been created from Regulatory Committee to determine individual applications for liquor licensing, gaming permits, public entertainment licenses and cinema licenses within Herefordshire. It is recommended that Standing Order 9.3.3 is revised to provide for a sub-committee of three councillors from the Regulatory Committee.

Programme Panels

7. The Constitutional Review Working Group (CRWG) have considered a proposal raised by Councillor Mrs M.D. Lloyd-Hayes at the Council meeting of 30 July 2004 that the Council agree to reinstate Programme Panels when it next considers amendments to the Constitution. In putting her case Councillor Mrs Lloyd-Hayes stated that Programme Panels had allowed all Members the opportunity to influence Cabinet Members on a variety of issues. She said she spoke for a number of the newer, less experienced Councillors who were either not aware that they could discuss ward issues directly with Cabinet Members or Scrutiny Chairmen, or were

reluctant to do so. The CRWG have reviewed the history of the introduction and operation of Programme Panels whose role was now undertaken by the Scrutiny Committees. There was a reluctance on the part of the CRWG to recommend the reintroduction of Programme Panels as this was seen as adding more bureaucracy to the decision making process. It is acknowledged that more work needs to be done to keep all Members informed, by offering more briefing seminars and raising awareness of the role of the Scrutiny Committees in holding the Executive to account and contributing to policy development and determining what issues they should consider. A review of scrutiny activity for the year 2003/04 has recently been undertaken which will report shortly providing an opportunity to review progress to date and scope for improvement.

Children's Bill and Review of Cabinet and Scrutiny Portfolios Generally

8. The Children's Bill 2003/4/5 is due to be enacted. It will require the Council to appoint a lead executive member for Children's Services in respect of the following functions:
 - Functions conferred on or exercisable by the Council as Local Education Authority.
 - Functions conferred on or exercisable by the Council and social services functions so far as those functions relate to children.
 - Functions conferred on the Council in relation to children formally in the Council's care.
 - The new functions of establishing new children's services.
 - Any functions exercisable by the Council on behalf of any NHS body so far as those functions relate to children.
9. In the light of these changing requirements, it is recommended that one Cabinet Member be identified to take lead responsibility for Children's Services pending the outcome of the operational review and the enactment of the Children's Bill and that the Strategic Monitoring Committee take responsibility for monitoring the Cabinet's response to the Children's Bill.
10. A number of minor modifications to the existing Cabinet portfolios are also recommended as shown at Recommendations 18 and 19 of the Annex.

11. Health Scrutiny Joint Committees

- 11.1 Under section 7 of the Health and Social Care Act 2001, NHS bodies are required to consult with the local authority overview and scrutiny committees on any proposal for "substantial variation" or "substantial development" of services. In cases where the NHS body needs to consult more than one local authority health scrutiny committee (because its proposals will affect the residents of more than one local authority area) those local authorities are **required** to form a joint committee.
- 11.2 The need for action at this time has been promoted by consideration being given to the provision of cancer services by the Cancer Network Board, responsible for overseeing the provision of cancer services across Gloucestershire, Herefordshire

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and South Worcestershire. If these discussions lead to proposals which would constitute substantial variations to services, although there is no definite indication at this stage that that will be the case, a Joint Committee will need to be established with the other two authorities with Health Scrutiny Responsibilities who are affected: Gloucestershire County Council and Worcestershire County Council. However, there are any number of situations which could arise requiring a Joint Committee to be established.

- 11.3 There is currently no provision for joint health scrutiny committees in the Constitution. The power to make such provision rests with the Council and the Council needs to authorise an amendment to the Constitution accordingly. It is therefore recommended that provision be made in the Constitution for the formation of health scrutiny joint committees to allow the Council to participate in joint committees with other local authorities when reviewing NHS services across a number of areas.
- 11.4 Constitutional issues which the Council needs to consider include appointment, membership, terms of reference and composition.
- 11.5 A complication arises in that the composition is not determined by local authorities themselves but by the patterns of service use of the health body that is proposing the changes to the service provision.
- 11.6 It appears that it would be feasible for a general set of rules governing the formation of any joint committee established in the area to be agreed. This will need time to prepare in consultation with other authorities. It is recommended, on the basis that the Council will approve these general principles, that arrangements for the establishment of specific joint committees including terms of reference be approved by the County Secretary and Solicitor after consultation with Group Leaders and the Chairman of the Health Scrutiny Committee.

Financial Regulations and Associated Amendments

12. The current financial regulations have been in force for a number of years and a revised version of financial regulations reflecting a number of practical issues is recommended for approval.

RECOMMENDATIONS

THAT the Strategic Monitoring Committee consider the proposed amendments to the Constitution set out in Annex 1 and the accompanying appendices and recommend their approval to Council.

BACKGROUND PAPERS

- None