

REVIEW OF THE CONSTITUTION

PROGRAMME AREA OF RESPONSIBILITY: CORPORATE STRATEGY AND FINANCE

CABINET

28TH APRIL, 2005

Wards Affected

County-wide

Purpose

To update the Constitution to reflect changing legislative and Council requirements.

Key Decision

This is not a Key Decision.

Recommendation

THAT Cabinet consider the amendments set out in Appendices 1 - 3 and recommends their approval to the Council.

Reasons

To ensure the Constitution meets all legal and operational requirements.

Considerations

Background

1. Since the Constitution was last reviewed, there have been a number of significant legislative changes coming into force, including:
 - Children Act 2004
 - Licensing Act 2003
 - Anti-Social Behaviour Act 2003
 - Planning and Compulsory Purchase Act 2004
2. These major changes have been reflected in a series of amending Regulations to the Local Government Act 2000. This Act sets out a clear division of responsibility between the Council and the Cabinet for certain functions. The basic approach is for:
 - determination of the Council's policy framework, budget and other constitutional and quasi-legislative functions to be the responsibility of the full council;
 - functions which involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a

Further information on the subject of this report is available from
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person together with any related enforcement actions (including prosecution) not to be the responsibility of the Cabinet;

- all other functions to be the responsibility of the Cabinet; and
 - some functions known as “Local Choice Functions” can be the responsibility of either the Cabinet, officers or Council Committees. These are set out at Appendix 22 to the Constitution
3. Whilst Standing Order 1.4.4 provides that any reference in the Constitution to an Act of Parliament will also include any subsequent re-enactment or amendment of such Act or Regulations made thereunder, it is important to note any change as it comes into force and in relation to Local Choice Functions to determine the Cabinet’s role.
 4. The Constitutional Review Working Group (CRWG) met on 23 February 2005 and 21 April 2005 to consider a number of revisions 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.

Cabinet Portfolios - Current Position

5. The 10 current Cabinet portfolios were established in June 2003 with some minor amendments during 2004/05. They currently comprise:
 - Audit and Performance Management
 - Children's Services
 - Community and Social Development
 - Corporate Strategy and Finance
 - Economic Development, Markets and Property
 - Environment
 - Highways and Transportation
 - Human Resources and Corporate Support Services
 - Rural Regeneration and Smallholdings
 - Social Care and Strategic Housing
6. The challenge involved in any review given the current Cabinet membership of 10 is to construct portfolios which are as near as possible evenly balanced which also reflect the priorities of the Council as reflected in the Corporate Plan and Medium Term Financial Strategy. The proposals now put forward also reflect the changes proposed in the review of the senior management structure which were recently presented to Cabinet. Those arguments are not re-presented in this Report. Given the prominence given to the Children’s Agenda in the Children Act that is the one portfolio which it is difficult to retain at an even size with the remaining portfolios and separate proposals are made for the appointment of support Members with this area particularly but not exclusively in mind. There is evidence that a number of authorities have adopted this practice.

Proposed Cabinet 2005/06

7. The **Leader** of the Council - covering the same role as at present. One minor amendment will be to reflect the arrangements for answering questions on the discharge of police functions which now sits with the Council’s representative on the West Mercia Police Authority.

8. **Deputy Leader** - formally recognising the role of the Deputy Leader to deputise for the Leader in the management of the administration but in addition to that responsibility to carry the Cabinet responsibility for Economic Development (including the Edgar Street Grid project) and Hereford City Markets and associated business.
9. It is also recommended that the Leader and in his absence the Deputy Leader be given authority to make decisions in relation to any of the Cabinet portfolio areas in the absence or otherwise of any individual Cabinet Member.
10. **Children's Services** - this would cover the statutory role as at present and is significantly larger than the majority of the other Cabinet roles.
11. **Social Care Adults and Health** - this new Cabinet portfolio would extend to Adult Social Care (including Supporting People and Learning Disabilities), Strategic Housing and Public Health.
12. **Community Services** – This new portfolio for Community Services will include all those that are covered in the present Community and Social Development portfolio plus Youth Services and Community Safety. These other services are as follows:
 - Lifelong Learning
 - Archives
 - Parks and Countryside
 - Voluntary Sector Grants
 - Leisure
 - Library Services
 - Heritage Services
 - Cultural Services
 - Tourism
13. **Highways and Transportation** – covering the same role as at present:
 - Highways and transport matters save for those reserved to the Regulatory Committee.
 - Land Drainage
 - Safety of large reservoirs, disused mines and quarry tips.
 - Public sewerage functions where agency agreements exist with the water companies.
14. **Environment** – covering the same role as at present:
 - Environmental promotion and protection issues.
 - Planning and land use including historic buildings, conservation and archaeology and the approval of supplementary planning guidance, excluding development control and other applications reserved to the Planning Committee.
 - Waste Management.
 - Regulatory matters excluding quasi-judicial and other matters reserved to the Regulatory Committee but including Animal Health and Welfare, Environmental Health and Trading Standards.
 - Cemeteries, crematoria and disused burial grounds.
 - Public conveniences.
 - Travellers.

- Air Quality Management Strategy.
 - Contaminated land (where Council is the owner or otherwise responsible as the polluter)
 - The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area.
 - Any function under a Local Act as referred to in Appendix 22 of the Constitution.
15. **Corporate and Customer Services and Human Resources** - mapping the proposals to establish a Directorate of Corporate and Customer Services combining the support services of Legal and Democratic Services, ICT and Information Services, Customer Services, Emergency Planning, Service Improvement Programme and the wider policy support role within the Council.
 16. **Resources** – a new portfolio to support the Leader of the Council in the corporate finance area and the Strategic Property and Procurement functions.
 17. **Rural Regeneration and Strategy** covering the same role as at present and Smallholdings, Common Land (including determining complaints about the management of Council owned Commons) and Markets (outside of Hereford City).

Cabinet Support Members

18. A proposal is made to enable the appointment of Support Members who, individually, may be allocated long-term responsibility for a particular piece of work, may be allocated time limited pieces of work, might work jointly with a Cabinet Member in support of parts of their portfolios and/or take responsibility for cross-cutting issues. It is proposed to activate this year in relation to the Children's Services portfolio.
19. The Statutory Guidance on the role and responsibilities of the Director of Children's Services and the lead Member for Children's Services states as follows:

“The role and responsibilities of the Lead Member for Children's Services are broad. Consequently authorities may consider it appropriate for the Lead Member to be supported by one or more other elected members to assist in the exercise of his or her functions and duties. It is for the local authority to determine the remit of the support role, if any, and members' remits could be as wide or as limited as the authority wish and legislation permits. However, in framing the roles, the authority should be mindful of the need to ensure that the Lead Member maintains effective overview of children's services and has overall political accountability.”
20. Supporting members will be appointed by the Leader and once approved will not be eligible to serve on any overview and scrutiny bodies. They will not be members of the Cabinet or have decision making powers.

Review of Scrutiny - Current Arrangements in Herefordshire

21. The overview and scrutiny function operating in Herefordshire was agreed in 1999 to complement the early Cabinet portfolios. Its design comprising an overarching Strategic Monitoring Committee with 4 (and now 5 to reflect the Health Scrutiny function) scrutiny committees has proved durable and fit for purpose. There has been growing confidence in using the new powers available to scrutiny and a number of different approaches have been used to positive effect as detailed in the Scrutiny Annual Report 2003/04.

Proposed New Arrangements for Overview and Scrutiny

Strategic Monitoring Committee

22. Responsibility as now for co-ordinating the scrutiny function across the Council and the corporate strategic and finance programme area, the Corporate and Customer Services and Human Resources area and the Resources area including the Service Improvement Programme.

Children's Services Scrutiny

23. The children's function as defined by the Children's Act 2004.

Environment Scrutiny

24. The Environment Programme Area as now and the Highways and Transportation Programme Area.

Adult Social Care and Strategic Housing Scrutiny

25. The Council's statutory functions for adult social services including Learning Disabilities and the Strategic Housing function and Supporting People and the emerging Public Health Agenda.

Community Services Scrutiny

26. This would include the current remit of the Social and Economic development Scrutiny Committee comprising economic development, libraries, cultural services including heritage and tourism, leisure services, parks and countryside, plus youth services and community safety.

Health Scrutiny

27. No change recommended to the current responsibilities to review and scrutinise any matter relating to the planning provision and operation of health services affecting Herefordshire and health improvement matters and the power to scrutinise local services provided and commissioned by the NHS.

Substitution at Scrutiny Committee Meetings

28. Substitution is already not permitted on the Strategic Monitoring Committee. It is also specifically prohibited by law on the Cabinet, the Secretary of State believing that it would reduce transparency and blur accountability.
29. This issue has been recently drawn to the attention of a neighbouring authority by the Audit Commission in a report on that Council's arrangements for overview and scrutiny. The Commission advised that there was a risk that substitution could disrupt continuity when scrutiny were reviewing a particular matter and substitute members would not have had the benefit of being present at earlier meetings. This would be particularly true of scrutiny reviews where evidence is taken as part of the review process by scrutiny committee members.
30. The Commission's comments on scrutiny reviews have direct relevance for the Council's informal Review Groups. In practice in this Council, as informal bodies, the provision relating to substitution has not, in any event, been applied to these Groups. The reviews have been conducted by the appointed Review Groups who have then

reported their findings to formal meetings of the relevant Scrutiny Committees for approval. The Chairmen of the Review Groups have on occasion invited other Members to contribute to particular aspects of reviews where it has been considered that this would be beneficial. The CRWG recommended that no substitution be allowed on Review Groups.

31. The position on formal meetings of the Committees is slightly different. However, the arguments in favour of continuity and cohesiveness of approach still have substance although the Scrutiny Committees are influencing not decision making bodies. The Government's expectation is that Committees should operate in a non-partisan way reaching conclusions on the evidence before them. Any Member of the Council has the right to attend meetings of Scrutiny Committees and speak at the Chairman's discretion.
32. The CRWG were not convinced that the power to substitute at Scrutiny Committees should cease.

Planning Committee(s)

33. The Council's four planning committees/sub-committees continue to play a prominent role in the corporate life of the Council. The current arrangement inevitably restricts the representational and community leadership role of local members who are required to remain impartial in relation to local planning applications to secure their place at Committee.
34. This tension between the local member's representational role and the quasi judicial role of the planning committee member is regulated by the Statutory Code of Conduct with additional local guidance. It is considered that this arrangement also could inhibit the work of local members within their parish councils.
35. Additionally, the current system is resource intensive using up committee and other staff resources which could be released for other democratic support functions such as scrutiny. All members are also required to attend regular training and development sessions and to become familiar with planning policy, procedures and legislation.
36. A comparative study across England suggests the Council is out of step with practice elsewhere. The CRWG has considered the setting up of a county-wide Planning Committee.
37. Whilst it is recognised that this would allow local members to freely attend in a representational role, to campaign for or against local schemes and to act as community advocate, the CRWG do not recommend this change at this time.

Council Schemes

38. The CRWG recommends that consideration be given to the Planning Committee having the responsibility to determine planning applications submitted by the Council for its own schemes because of their county-wide and often strategic importance. At present, these applications are considered by the relevant Area Planning Sub-Committee as are all applications and subject to referral to main planning committee. If there was a referral this could be perceived by the public as the Council receiving preferential treatment. It is therefore recommended for these reasons that the Planning Committee's terms of reference include:
 - determine applications for planning permission in relation to decisions in respect

of any application relating to the Council's own development or to the development of land owned by the Council.

39. If this is agreed, this will necessitate deleting this function from the terms of reference of the Area Planning Sub-Committees as set out in Standing Order 9.2.2.1.

Question Time at Council

40. This has become a lively aspect of the Council meeting allowing individual members to raise formal questions of Cabinet Members and Committee Chairmen, provided they give 24 hours notice of their question. The Chairman of the Council has developed this aspect by allowing supplementary questions. The CRWG suggest that the practice of reading out questions from members of the public and Councillors cease.

Commons Management

41. Herefordshire Council owns several commons across the county. It is required to regulate and manage Bromyard Downs Common under the provisions of a statutory scheme. The Herefordshire Council's predecessor, the Malvern Hills District Council, arranged to delegate responsibility for the day to day management of the Common to the Brockhampton Group Parish Council. This provides for complaints about the management of the Common to be dealt with by a Member Committee.
42. It is recommended that this complaints procedure for management of the Council's Commons be brought within the Council's Constitutional arrangements and that this function fall within the proposed remit of the Cabinet Member Rural Regeneration and Strategy.

Capital Budget – New Definitions for Credit Approvals

43. The terms "Basic and Supplementary Credit Approvals" need updating and replacing with "Supported Capital Expenditure and Unsupported Prudential Borrowing".

Policy Framework

44. There is a need to add the Council's "Local Development Framework" to the list of policies requiring full Council approval. In time this will replace the Unitary Development Plan.
45. The Early Years Development Plan and the Annual Library Plan need to be deleted from the Policy Framework as they are no longer statutory requirements.
46. The Best Value Performance Plan now forms part of the Corporate Plan as a result of the Council's CPA rating in 2001 and this needs to be reflected in the Constitution.

Local Area Forums

47. Cabinet, at its meeting on 14 April 2005, recommended that the Local Area Forums be renamed Community Forums.

Voluntary Sector Grants Panel

48. The recent review of the Council's Voluntary Sector Strategy recommended the deletion of the Voluntary Sector Grants Panel. The recommendations were recently approved by Cabinet and Strategic Monitoring Committee and need to be codified in

the Constitution.

Homelessness Appeals

49. Currently, the Council operates two levels of officer appeal for homeless applicants seeking assistance from the Council. The second stage is cumbersome. In the light of the recent restructuring of the Senior Management structure, it is recommended that this provision be deleted from the Constitution.

Restructuring of Senior Management Team

50. The Constitution will need to be revised to substitute the new Director posts

Alternative Options

There are no alternative options recommended.

Risk Management

Ensuring that the Constitution remains up to date and relevant will avoid legal challenge and uncertainty.

Consultees

The Constitutional Review Working Group
Directors

Background Papers

None identified.