

REVIEW OF THE CONSTITUTION

PROGRAMME AREA OF RESPONSIBILITY: CORPORATE STRATEGY AND FINANCE

CABINET

26TH JANUARY, 2006

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 considers the recommendations set out below and recommends their approval to the Council.

- That
- (a) the duties previously assigned to the County Treasurer (including Section 151 Officer) be re-assigned to the Director of Resources;
 - (b) the duties previously assigned to the County Secretary and Solicitor (including Monitoring Officer) be re-assigned to the Head of Legal and Democratic Services;
 - (c) Cabinet Member portfolios be revised as set out in paragraphs 7 and 9 of the report;
 - (d) the Children's Services portfolio be renamed Children and Young People to reflect its enhanced role;
 - (e) in the case of unexpected vacancies arising in Cabinet the Leader be authorised to re-assign responsibilities within the Cabinet, until such time as the Council has an opportunity to review the situation or to appoint a Cabinet Member to the vacant post;
 - (f) SO 6.2.2.1 - Terms of Reference for Cabinet be amended to include responsibility for Risk Management;
 - (g) the following words be added to S.O. 2.11 of the Constitution "There are additional rights of access to documents for Members of overview and scrutiny committees as set out in Regulation 18 of the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000."
 - (h) Councillors' rights to inspect documents and proposals set out at paragraph 16 and 17 of the report be endorsed;

Further information on the subject of this report is available from
Christine Dyer, Members Services Manager and Executive Officer on (01432) 2602222

- (i) the rules relating to the co-ordinating role of the Strategic Monitoring Committee be revised as set out at paragraph 20 of the report;
- (j) the Independent Remuneration Panel at its next scheduled meeting in September 2006 considers whether the post of Chairman of the Audit Committee should be entitled to a Special Responsibility Allowance;
- (k) Appendix 4 - Financial Regulations, paragraph 6.2 be amended to include "Where the signature is printed on the cheque by a Council system, the signature will be that of the Director of Resources.";
- (l) Appendix 23 - Allocation of Miscellaneous Functions be revised to correct a number of anomalies and reflect recent changes in legislation;
- (m) a revised Appendix 6 Appointment and Discipline of Employees (attached) be approved; and
- (n) the Political Group Leaders be asked to consider what changes they might wish to make to the membership of the Constitutional Review Working Group to ensure that political proportionality across the Council is more closely reflected, and subject thereto, the Chief Executive be authorised to implement the appointments notified by the four Political Group Leaders.

Reasons

To ensure the Constitution meets all legal and operational requirements.

Considerations

Membership of the Constitutional Review Working Group

1. The current membership of the Constitutional Review Working Group includes the Leader and Deputy Leader of the Council, the Leaders of the other political groups, the Chairman and Vice-Chairman of the Strategic Monitoring Committee and the Chairman of the Council. Because of recent changes this means that currently the membership based on political groups is as follows:

Group	Number of Members in Political Group	Number of Members in Working Group	Postholders
Conservatives	21	1	Leader of the Council and Group Leader
Liberal Democrats	17	2	Group Leader and Chairman of Strategic Monitoring Committee Vice-Chairman of Strategic Monitoring Committee
Independents	16	3	Deputy Leader of the Council Group Leader Chairman of the Council
Labour	4	1	Group Leader

2. Clearly this means that the current Working Group is not politically proportionate. Political Group Leaders will be asked to advise Council what changes would be acceptable to ensure a closer reflection of the Council's political proportionality within the membership of the Working Group.

Review of the Constitution

3. The Constitution will need to be revised in the light of the recommendations of the Corporate Assessment and the Council's improvement plan. It is intended that those changes will be submitted to the Annual Meeting of Council in May for approval. In the meantime a number of other revisions need to be implemented and these were considered by the Constitutional Review Working Group at its meeting on 12th January, 2006. The key issues to be addressed are:
 - To update the Constitution to reflect recent changes to the senior management structure.
 - To consider arrangements for filling unavoidable vacancies in Cabinet Member posts.
 - To consider Members' access to information and availability of reports.
 - To consider a revision to the Scrutiny Rules concerning the process for calling in key decisions.
 - To review the Members' Allowances Scheme.
 - To review Appendix 6 of the Constitution - the Appointment and Discipline of Staff.

Review of the Senior Management Team

5. In March 2005, Cabinet approved a restructuring of the Senior Management Team which established new or revised Directorates for: Adult and Community Services; Children's Services; Corporate and Customer Services; Environment and Resources. The Constitution was amended in May to reflect these changes. Since then Directors have been appointed to all the vacant posts and the posts of County Secretary and Solicitor and County Treasurer have been deleted.
6. It is necessary to amend the Constitution to remove any reference to the two deleted posts and it is proposed that the duties previously assigned to the County Treasurer (including Section 151 Officer) be re-assigned to the Director of Resources. Similarly it is proposed that the duties previously assigned to the County Secretary and Solicitor (including Monitoring Officer) be re-assigned to the new Head of Legal and Democratic Services who is due to take up the post in April 2006.

Cabinet Portfolios

7. There are a number of functions which need to be re-assigned as a result of the senior management restructure set out above. These include:

	FUNCTION	CURRENT PORTFOLIO	PROPOSED PORTFOLIO
1	Responsibility for Common Land (including Council-owned Commons and determination of any complaints about the management of the Council's Commons)	Rural Regeneration and Strategy	Adult and Community Services
2	Public Rights of Way	Highways and Transportation (but not currently specified in the Constitution)	Adult and Community Services
4	Youth Services	Community Services	Children (see para 8 below)
5	Housing Benefit	Not specified	Resources

8. Councillor D.W. Rule, MBE. Cabinet Member (Children Services), has proposed that the Children Services portfolio be renamed Children and Young People's Services to reflect its enhanced role. This was accepted by the Working Group.
9. Responsibility for markets has previously been shared between the Cabinet Member (Economic Development) and Cabinet Member (Rural Regeneration and Strategy). Because of the vacancy which has arisen in the post of Cabinet Member (Economic Development) it is proposed that the Cabinet Member (Rural Regeneration and Strategy) takes responsibility for all markets in the County including the Hereford City Markets and associated business (including the Hereford Livestock Market).
10. Council appoints Cabinet Members at its annual meeting. When unexpected vacancies arise in Cabinet the Leader has the right to make any decisions in relation to the relevant programme area. At present it is not possible for the Leader to delegate any functions to another member of the Cabinet other than to the Deputy Leader (in the Leader's absence). It is proposed that, in the case of unexpected vacancies arising in Cabinet the Leader be authorised to re-assign responsibilities within the Cabinet, until such time as the Council has an opportunity to review the situation or to appoint a Cabinet Member to the vacant post.

Cabinet Terms of Reference

11. Following an Inspection on the Use of Resources the Audit Commission has recommended that the terms of reference for Cabinet be amended to include responsibility for Risk Management.

Members' Access to Information

12. The Working Group discussed Members' access to information including availability of "exempt" reports. The Working Group was advised of the current arrangements in relation to Members' access to information, drawn from statute and common law

as set out in the Constitution and also to the distribution of Committee and Cabinet papers.

13. It is suggested that the following words should be added to S.O. 2.11 of the Constitution "There are additional rights of access to documents for Members of overview and scrutiny committees as set out in Regulation 18 of the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000."

14. Information is currently routinely communicated to Members as follows:

- Cabinet Papers are circulated to the Members of Cabinet, Members of the Strategic Monitoring Committee, Group Leaders, and Chairman of the Council, and those Members who have requested copies. Reports affecting particular wards are sent to the Local Ward Member(s).
- Cabinet papers are also available to all Members on the intranet and internet.
- The circulation of exempt Cabinet reports is restricted to Members of Cabinet Members of the Strategic Monitoring Committee, Group Leaders, and Chairman of the Council (both in hard copy and via the internet/intranet), but those reports are open to inspection by any Councillor (and will be sent to them on request) excepting where the business concerns a quasi-judicial matter or information relating to legal proceedings by or against the Council or information of a personal nature supplied in confidence, where a need to know must be demonstrated.
- The Cabinet bulletin giving notice of forthcoming items on Cabinet is sent to all Members.
- The Forward Plan listing Key Decisions that the Council believes are likely to be taken over a four-month period is sent to all Members.
- In the case of a report which contains a key decision a letter is sent to the Chairman of the relevant Scrutiny Committee advising that a key decision is to be taken and when. Once that decision is made a further letter is sent to the Chairman of the Scrutiny Committee notifying the decision and advising that the decision will take effect unless it is called in within 3 working days of the date of the decision.

(It is accepted that this process does place the onus on the Committee Chairman to contact those Members of the Committee who have not requested copies of the Cabinet agenda.)

- Notification that an exempt key decision is to be taken is sent to the Chairman of the relevant Scrutiny Committee in the same way as an open report.
- The same process is followed for key decisions by individual Cabinet Members.
- Non-key decisions can be taken by Cabinet Members without giving advance notice. The policy is that non-key decisions by Cabinet Members should also normally be based on a written officer report. Because single non-key decisions can be taken immediately, reports relating to these will not be circulated in advance, unless the Cabinet Member has asked for this to happen. However, Councillors will be entitled to request a copy of any such report from the time that it is available.
- Any Councillor can ask to receive reports for particular Cabinet Members.

- A list of key decisions taken by Executive Members and officers and non-key decisions by Executive Members is sent on a weekly basis to the Cabinet Members and any other Member who requests it. A register is available for inspection in the Members' Room and the decision notices may also be viewed on the intranet and internet.
15. Clearly, there is a considerable amount of information distributed directly to Members and available to Members on request. In considering how to take this matter forward four assumptions are made:
- that it would be unrealistic and indeed unwelcome to Members to send every Member every agenda and report and, that being the case, the onus must be to an extent on Members themselves to request information;
 - that the Council must protect its position by restricting the circulation of exempt and confidential reports;
 - that there is no wish to change the definition of a key decision;
 - that there is no wish to extend the call-in powers to allow non-key as well as key decisions to be called-in.
16. On this basis the Working Group agreed the following proposals:
- The last survey by Members Services asking Members which agendas they wanted to be posted to them was carried out in May 2004. It is proposed that a written guide be produced explaining clearly what information is available.
 - In the case of a report which contains a key decision it is proposed that in addition to informing the Chairman of the relevant Scrutiny Committee that a key decision is to be taken and when, notification is also given to Members of the relevant Scrutiny Committee. Once that decision is made, in addition to sending a further letter to the Chairman of the Scrutiny Committee notifying the decision and advising that the decision will take effect unless it is called in within 3 working days of the date of the decision, a letter will be sent to each Member of the Scrutiny Committee. (This notification will be by e-mail).
 - At present if a Key Decision is **not** included in the Forward Plan and the decision is for Cabinet, a separate letter is sent to the Chairman of the relevant Scrutiny Committee along with the Cabinet agenda, to satisfy Section 15 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 which requires that: "that decision shall only be made where the proper officer has informed the Chairman of the relevant overview and scrutiny committee ... by notice in writing of the matter about which the decision is to be made". To streamline this process it is proposed that a notice be included on the front of the Cabinet agenda which will highlight any key decisions contained in the report, whether included in the Forward Plan or not. This could be along the lines of:
- HEREFORDSHIRE COUNCIL - NOTICE UNDER REGULATION 15 OF THE LOCAL AUTHORITIES - (EXECUTIVE ARRANGEMENTS) (ACCESS TO INFORMATION) REGULATIONS 2000 (AS AMENDED)***
- Notice is hereby given that the following reports contain key decisions. When a decision has been made the Chairman of the relevant Scrutiny Committee will be sent a copy of the decision notice and given the opportunity to call-in the decision.*

Item No	Title	Cabinet Portfolio	Scrutiny Committee	Included in Forward Plan Yes/No

- A similar notice could appear on the Cabinet Bulletin.

17. The Working Group agreed that the current arrangements appeared to work well and emphasised that, in the case of Cabinet reports, it was up to individual Members to request copies of Cabinet reports that were of interest to them. It was also agreed that the Chairman of the Scrutiny Committees had a responsibility to their Committee Members to alert them to any significant reports (especially exempt reports) which affected their particular programme area. It was also proposed that any exempt reports to Cabinet be highlighted in the Cabinet Bulletin so that members could spot them more easily.

Communication between Cabinet Members and other Councillors

18. A further aspect of communication is that between individual Cabinet Members and other Councillors. In the past Cabinet Members have set aside time to see other Members to discuss matters of mutual interest (eg budgets). It would be fair to say that there has been very little take up of these opportunities. One suggestion made in discussions earlier this year in developing an Improvement Plan for Scrutiny was that smaller briefing sessions might be preferable to large seminars. The Working Group endorsed this view. Group Leaders also agreed to brief their Members on how to make representations to Cabinet Members.

Process for calling in key decisions

19. It is only when parts of the constitution are tested in practice that the need for refinement or fine tuning becomes apparent.
20. One such example relates to the Scrutiny Rules and the provisions for call-in as set out in appendix 2 to the Constitution. In the recent call-in of the Cabinet decision relating to the livestock market the matter was referred first to the Community Services Scrutiny Committee as the body responsible for that programme area. The Chairman of the Strategic Monitoring Committee took the view that the issue was of strategic importance and as such should be determined by the Strategic Monitoring Committee, exercising its co-ordinating role. The call-in was accordingly referred to that Committee based on rule 16. The rule, as drafted was not as clear as it might have been, The current rules on the co-ordinating role and a proposed revision is set out below:

"Co-ordinating Role of the Strategic Monitoring Committee

The Strategic Monitoring Committee will have powers of oversight in relation to the operation of the Scrutiny Committees and, in particular, in relation to the call-in procedure. The Chairman of the Committee will have power, ~~subject to Rule 16~~, to direct that any call-in by a Scrutiny Committee shall be ~~subject to approval by his/her Committee~~ considered instead by the Strategic Monitoring Committee. When this

happens a meeting of the Strategic Monitoring Committee shall be held to determine the matter within the time limits applying to consideration of the matter by the Scrutiny Committee. In addition, following consideration of a call-in by a Scrutiny Committee the Strategic Monitoring Committee may call a meeting to review that decision prior to a recommendation being made to Cabinet or a Cabinet Member. When this happens a meeting of the Strategic Monitoring Committee shall be held within 10 working days of consideration of the matter by the Scrutiny Committee or such longer period as may be agreed by the originating decision maker and/or the Leader on behalf of the Cabinet.

~~Where he/she directs a meeting of the Strategic Monitoring Committee shall be held to determine the matter within the time limits applying to consideration of the matter by the Scrutiny Committee.~~

In exercising its call-in powers a Scrutiny Committee shall only refer a matter to Council in those circumstances where either the original proposal or the alternative action contemplated by the Scrutiny Committee would require a decision by Council on the Policy Framework and Budget. All references to Council under the Scrutiny Committee's powers will need the approval of the Strategic Monitoring Committee.

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 recommendation to 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 and on to Council."

Councillors' Allowances Scheme

21. At its meeting on 29th July, 2005, Council approved the establishment of an Audit Committee to replace the Statutory Accounts Committee.
22. The current scheme prohibits any Member from receiving more than one SRA in addition to the Group Leader's Allowance. The current Chairman of the Committee is Councillor A.C.R. Chappell. As Councillor Chappell currently draws an SRA for holding the offices of Group Leader and Chairman of Community Services Scrutiny Committee, he would not be entitled to draw any additional allowance for chairing this Committee. However, it is important to establish whether the Chairman of this Committee (if entitled to claim SRA) would be paid for this appointment.
23. In order to decide on the appropriate level of SRA, the Council would need to have regard to the recommendations of the Independent Remuneration Panel which is due to meet in September 2006 to review the Councillors' Allowances Scheme prior to the elections in 2007. The Working Group recognised that it was important for the Chairman of the Audit Committee to be properly remunerated but considered, in the current circumstances, it would not be necessary for the Panel to meet before September.

Appendix 4 - Financial Regulations

24. The Working Group agreed to recommend that Appendix 4 - Financial Regulations - Banking Arrangements, paragraph 6.2 be amended to include: "Where the signature is printed on the cheque by a council system, the signature will be that of the Director of Resources."

Appendix 6 - Appointment and Discipline of Staff

25. The Working Group has recommended a revised Appendix 6 - Appointment and Discipline of Employees (attached) which reflects recent changes to the Senior Management Structure together with changes in employment law and Local Authority Regulations.

Appendix 23 - Allocation of Miscellaneous Functions

26. The Scheme of Delegations will need to be revised to correct a number of anomalies and reflect recent changes in legislation particularly in relation to public rights of way. It is intended to draft a revised appendix for the report to Council in February.

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.