



**Report to:** Council

**Date of Meeting:** 25 May 2006

**Report from:** Legal and Democratic Services  
Manager

**Title of Report:** Review of the Council's Constitution

**Agenda Item Number:** **11**

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## **1. PURPOSE AND SUMMARY**

- 1.1 The purpose of this Report is to review the Council's Constitution as part of the Council's commitment to continuous improvement and to ensure that such constitutional arrangements are and continue to be 'fit for purpose'.
- 1.2 The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose and its choice is as set out in the current Constitution.
- 1.2 On 26 May 2005 the Council revised its Constitution in order to achieve greater flexibility in the way in which the bodies of the Council operate and so create greater responsiveness to the needs of the people which the Council exists to lead and serve.
- 1.3 Regular reviews are built into the process as the Constitution is very much a 'living document' and, as such by its very nature, is liable to change.
- 1.4 The Council is recommended to agree the changes set out in Appendices attached to this report be incorporated into the revised Constitution

## **2. CONSULTATION**

- 2.1 Members and Chief Officers and Service Team Managers and other staff have been consulted on the manner in which the Constitution has operated since its revision in May 2005 and subsequently on an on-going basis.

- 2.2 All have been encouraged to put forward constructive comments and suggestions for improvements, on a proactive and reactive manner, in pursuance of the Council's open learning culture.

### **3. CORPORATE PLAN AND PRIORITIES**

- 3.1 The Council's Constitution is the internal governance document which assists in the delivery of the Council's organisational goals as expressed from time to time in the Council's Corporate Plan.

### **4. IMPLICATIONS**

#### **4.1 Financial**

- 4.1.1 Staff resources will be needed, either by redeployment of existing resources or by additional resources being made available, in order to implement and embed any changes that are agreed. This will include Member and Officer training.

- 4.1.2 The supply of replacement sections to reflect agreed amendments will have to be paid for but it is believed that this can be done within existing budgets.

#### **4.2 Legal**

- 4.2.1 The Council has a statutory obligation under section 37 of the Local Government Act 2000 to 'prepare and keep up to date' the Constitution.

- 4.2.2 In so doing the Council must have regard under section 38 of the Local Government Act 2000 to any current guidance issued by the Secretary of State for such purposes.

#### **4.3 Personnel**

- 4.3.1 Staff resources will need to be made available from the Legal & Democratic Services Team which is currently under pressure due to staff shortage.

#### **4.4 Other Services**

- 4.4.1 Relevant officers from other Service Teams will need to make themselves available for training on the Constitution.

#### **4.5 Diversity**

- 4.5.1 The Constitution will continue to be made available in various formats in order to seek to ensure that all sections of the Community are genuinely included and that no-one is excluded from being able to access the Constitution in a manner which is meaningful to them.

4.5.2 The straplines will therefore be updated in order to reflect changes which have occurred (such as the availability of 'ReadSpeaker' [Trade Mark] on the Council's website on the Intranet).

#### 4.6 Risk

4.6.1 The risk to the Council is that the Constitution, if not kept current, will be in breach of its statutory duty.

4.6.2 The risk to the Community is that confidence in democracy will be eroded if there is a lack of efficiency, transparency and accountability arising from a Constitution which has been superceded by events.

#### 4.7 Crime and Disorder

4.7.1 In order to prevent or reduce crime and disorder, the Council needs a Constitution which is responsive to the needs of the Community.

#### 4.8 Other Implications

4.8.1 None

### **5. BACKGROUND, POSITION STATEMENT AND OPTION APPRAISAL**

5.1 The Council has committed itself to continuous improvement and this includes its corporate governance arrangements.

5.2 A review of the arrangements is due, especially because of changes within local government and in the light of the natural learning curve since a new Constitution was adopted in May 2006.

5.3 The changes fall into two broad categories – those which arise from national changes and those which are recommended to improve the operation of the Constitution locally.

#### 5.4 National changes

5.4.1 It is not proposed to set out these in full within the body of the Report itself as the Council has no discretion but to implement legislative changes.

5.4.2 By way of illustration, however, there have been amendments to The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which necessitate alterations to Part 3 'Responsibility for Functions' of the Constitution, namely those made as from 21 April 2006 by The Local Authorities (Functions and Responsibilities)(Amendment)(England) Regulations 2006 SI 2006 No.886 which make it clear, for instance, that it is not a function of the Executive to resolve not to issue a casino premises licence and makes amendments to functions which are not to be the sole responsibility of an authority's executive.

- 5.4.3 The Gambling Act 2005 has resulted in a number of statutory delegations to the Council's Licensing Committee and Part 3D 'Scheme of Delegation to Other Committees' needs to be updated as a result.
- 5.4.4 Changes to the descriptions of "exempt information" in Schedule 12A to the Local Government Act 1972 made as from 1 March 2006 will be reflected in the proposals to review the Constitution at Part 4E ('The Access to Information Procedure Rules').
- 5.4.5 Consequential changes are needed to Part 4G ('Contract Standing Orders') to reflect changes arising from the Public Contracts Regulations 2006 SI 2006/5 which came into force as from 31 January 2006 and which replace the earlier Supply, Service and Works Regulations. In addition, new EC Procurement Threshold limits have come into force as from that date.
- 5.4.6 Details of the proposed alterations are listed in **Appendix 1, Appendix 2 and Appendix 3** hereto.

## 5.5 Local Changes

- 5.5.1 Restructure Changes - Following a number of restructures as regards officers, consequential amendments have to be made in the Constitution. Examples are the new posts of Head of Planning and Environmental Health and the Head of Regeneration. For instance, changes are need in Part 3G 'Proper Officer and Designated Officer Appointments' and Part 7 ('Management Structure'). The full recommendations appear in **Appendix 4** hereto.
- 5.5.2 Covert Surveillance - In March 2006 the Office of the Surveillance Commissioner recommended the removal of reference to the Regulation of Investigatory Powers Act 2000 in Part 3G ('Proper Officer and Designated Officer Appointments') and the appointments which appear at 2.33 in that Part. The reason for this is that authority derives from statute and it is thought unnecessary to seek to impose further restrictions as it might hamper operational effectiveness. The recommended changes appear in **Appendix 5** hereto.
- 5.5.3 Scheme of Delegation - The Council and the Executive are obliged under the Constitution to 'review from time to time as may be necessary the general operation of the approved delegation arrangement...' (Part 3H at para. 12). Attention is specifically drawn to Part 4B ('Executive Procedure Rules') where under paragraph 1.2 the Leader presents to the Annual Meeting of the Council written recommendations for changing the Scheme of Delegation. In order to ensure that there is sufficient flexibility in operational matters, and to increase officer capacity by freeing up time, it is felt that the list of officers which appears in paragraph 2 in Part 3H ('Scheme of Delegation of Functions to Officers')

should be expanded to include not just Chief Officers but also Assistant Chief Officers (i.e. Service Team Managers). It is also recommended that Part 3H ('Scheme of Delegation of Functions to Officers') should be amended at Paragraph 3.1 to add after the words '...in that Officer's absence' the words 'or where that Officer's post is vacant'. The recommendations are listed in **Appendix 6** hereto.

- 5.5.4 Public Speaking - It is also opportune to look at public speaking arrangements set out in Part 4A ('Rules of Procedure'). There needs to be clarity in the understanding of the Constitution about the rights of the public. It is considered that the public ought to have the rights to speak at meetings on agenda items. It is also felt that the public should have the rights to ask questions. It was intended at the time of the first Review in May last year that there would only be rights to speak but not ask questions. Asking of questions was to be the subject of a further review. The Constitution wording as it currently stands allows both public speaking and the asking of questions by the public. It is felt that this ought to remain the case. To facilitate the asking of questions, it is felt that there should be public speaking rights as duly qualified but that the timescale for giving notice of questions at paragraph 9.3 of the Constitution ('Notice of questions') as it is currently written is too tight and causes administrative difficulties, given present and anticipated staffing levels. It is therefore believed that the timescale in paragraph 9.3 ('Notice of questions') for notice should be increased to require notice to be given no later than 12 noon on the third working day before the date of the meeting (excluding the date of the meeting itself). The timescales for advance notification in paragraph 1.3 ('Notice of questions') of Part 4I ('Public Speaking At Meetings') should likewise be increased in the same manner. In addition, to ensure consistency, it is recommended that paragraph 2.6 ('Other Rules') in Part 4B ('Executive Procedure Rules') be amended to include 9.3 of Part 4A ('Rules of Procedure') so that notice of questions is required. After paragraph 3.2 in Part 4I ('Public Speaking at Meetings') it is recommended that a new paragraph 3.2A be added to include the wording as proposed to be amended at paragraph 1.3 in Part 4I ('Notice of questions'). For the sake of clarity, no changes to paragraph 9.11 ('Public Speaking on Specific items') in Part 4A ('Rules of Procedure') and paragraph 1.11 (Public Speaking on Specific Items') in Part 4I ('Public Speaking at Meetings') is recommended as this has been working adequately. It is also recommended that the words 'Council Procedure Rules' in paragraph 2.6 of Part 4B be replaced by the words 'Rules of Procedure'. The recommendations are set out in **Appendix 7** hereto.
- 5.5.5 In addition, for the same reasons as set out in 5.5.4 above, it is thought that a Member should give notice of a non-urgent question (see Part 4A 10.3 (a)) no later than 12 noon on the third working day before the date of the meeting (excluding the meeting itself). The recommendations are set out in **Appendix 7** hereto.

- 5.5.6 Overview and Scrutiny - With regard to the number of Overview and Scrutiny Committees (see Part 4C at paragraph 1), this issue is to be the subject of a separate review of the overview and scrutiny function which is anticipated will involve input from all Members. This can encompass matters such as the procedure (including timescale) for call-in and the timescale for reports of Overview and Scrutiny to be considered by the Executive and Council. Part 4C ('Overview and Scrutiny Procedure Rules') require at paragraph 10.3 for such a report to be considered within eight weeks of submission to the Chief Executive.
- 5.5.7 Financial Regulations - Following careful consideration of the operation of Financial Regulations (Part 4F), no changes have been put forward as being desirable, but the matter is being kept under review.
- 5.5.8 Contract Standing Orders - In order to reflect changes in the value of money, it is thought that Part 4G ('Contract Standing Orders') should be amended so that the threshold below which open competitive tenders are not triggered should be raised from an estimated contract value not exceeding £25,000 to an estimated contract value not exceeding £35,000. Consequential amendments are needed in Contract Standing Orders 2.4.2 and 4.1. In addition, there is a need to give greater flexibility as regards the means of advertising tenders. It is recommended that Contract Standing Order 5.1 be amended by deleting the words 'in at least one local newspaper, one trade journal and/or' and replacing those words with 'in one local newspaper and/or one trade journal and/or on an' [approved website]. It is further recommended that Contract Standing Order 7.2.1 be amended by deleting the words 'in at least one local newspaper, one trade journal and/or' and by replacing those words with 'in local newspaper and/or one trade journal and/or on an' [approved website]. The recommendations are set out in **Appendix 8** hereto.
- 5.5.9 Members Code of Conduct - Part 5A ('Members' Code of Conduct') is likely to require amendment later this year in the light of the Government's proposals for reviewing the Code. In the meantime, it is believed that it should be left as it is until the new changes are known.
- 5.5.10 Complaints - Part 5F ('Council's Corporate Commendation, Comments and Complaints Scheme') can be incorporated following its adoption last year. This recommendation appears in **Appendix 9** hereto.
- 5.5.11 Management Structure - Part 7 ('Management Structure') is in need of a revamp to record the various restructures including a new 'family tree'. The recommendations appear in **Appendix 10** hereto and the family tree in **Appendix 11** hereto.

**6. RECOMMENDATIONS**

6.1 That the Council is recommended to agree the changes set out in Appendices attached to this Report be incorporated into the revised Constitution

**7. BACKGROUND PAPERS / DOCUMENTS REFERRED TO**

7.1 DETR Guidance New Council Constitutions: Guidance for English Authorities (see <http://www.odpm.gov.uk/index.asp?id=1133835>)

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