

## **Cabinet**

**5 March 2009**

## **New Constitution**



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### **Report of Lesley Davies, Acting Director of Corporate Services [Cabinet Portfolio Member for Corporate Services, Councillor Michele Hodgson]**

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#### **Background**

As a result of the transfer of functions and responsibilities from the District Councils to the unitary County Council under the current LGR process, it has been necessary to revise the Council's Constitution in order to ensure that its governance arrangements are fit for purpose by vesting day, 1 April 2009.

Members will recall that this was identified as a must have within the Legal and Democracy Workstream.

The all-party Constitution Working Group has been meeting since September 2008 to consider particular aspects of the Constitution and to provide guidance on the governance arrangements as they were developed. The document attached to this report as Appendix 2 (which still contains some gaps), reflects the deliberations (largely consensual) within the Group. In the case of the Planning governance arrangements these have already been approved by full Council on 17 December 2008.

#### **Areas of Substantive Change**

Several areas of the Constitution will continue to be applicable in their current form, with simple drafting changes or changes in terminology, to the Council post 1 April 2009. In the following areas substantive changes are required:

##### **1. Article 4 - Policy Framework**

The purpose of the Policy Framework is to set out the key strategies, policies and plans that are adopted by full Council and which the Executive is charged with delivering.

There is also provision for the Council to determine that any other plan or strategy should be adopted or approved by them.

2. **Article 6 – Overview and Scrutiny Committees**

This Article has undergone a major revision to align the terms of reference of Overview and Scrutiny Management Board and the Scrutiny Committees with the LAA/SCS themes with the inclusion of a Scrutiny Committee for Corporate Issues.

3. **Article 7 – The Executive**

This section has been revised to incorporate the changes necessary to meet the requirements of the Local Government and Public Involvement in Health Act 2007 dealing with new executive arrangements which were approved by the County Council on 1 October 2008. It provides for the Leader to be appointed for a period of 4 years, subject to earlier removal by the full Council. Provision is also made for the Leader to appoint the other Executive Members (between 2 and 9), including one Member to be designated the Deputy Leader. The 2007 Act also provided for executive functions to be vested in the Leader with provision for delegation to the Executive, individual Members of the Executive and officers. This has been reflected in Article 7, in Part 3, Section B, and in the Executive Procedure Rules.

4. **Article 9 – The Standards Committee**

Provision has been made to incorporate the Committee's responsibilities for parish and town councils and the inclusion of a Parish Council Sub-Committee.

5. **Article 11 - Officers**

This Article has been revised to reflect the new senior management structure and shows the broad functionality of each Service Grouping, together with the statutory officer roles responsibilities.

6. **Part 3 – Responsibility for functions**

This part of the Constitution contains four sections –

A. **Responsibility for non-executive and Council functions.**

This section sets out the non-executive and regulatory functions of the Council (other than those delegated to officers) and assigns these functions either to the full Council or a committee or sub-committee. The largest new areas of responsibility are within the Planning and Licensing Committees.

Changes have also been made to the ongoing functions of a number of other Committees as discussed in the Working Group.

B. Responsibility for Executive functions.

(Under the 2007 Act, the arrangements for the discharge of executive functions are to be determined by the Leader. Accordingly, the proposals in Sections B and C, where they relate to executive functions, will be subject to ratification by the Leader following his/her election).

Changes have been made to this section to revise the 'local choice' functions which may be considered to be appropriate to be discharged as executive functions.

The details of the allocated Cabinet Portfolios will be inserted when these have been determined by the Leader following the Annual Meeting.

C. Scheme of Officer Delegations.

The new Scheme reflects both the new organisational structures and the transfer of functions and responsibilities from District Councils.

In the main officer delegations distinguish between executive and non-executive delegations. In some cases the non-executive delegations are necessarily detailed and specific, particularly around enforcement functions.

D. Joint Arrangements.

The only changes here have been the deletion of the Joint Committee for the County Durham E-Government Partnership (which is a partnership between the County Council and current District Councils) and the addition of two Joint Committees responsible for the Mountsett Crematorium in Gateshead and the Central Durham Crematorium respectively.

7. **Part 4 – Rules of Procedure**

- (i) The Council Procedure Rules have been revised to reflect the new executive arrangements and framework for removal of the Leader.

Provision for notice of questions from Members has been brought into line with public questions.

- (ii) The Overview and Scrutiny Procedure Rules have been revised to provide a new framework for the calling-in of executive decisions and a procedure for dealing with call-in requests by the Overview and Scrutiny Management Board.

- (iii) The Contract Procedure Rules have been revised and endorsed by the Working Group.

8. **Part 5 – Codes and Protocols**

- (i) The Planning Code of Practice has been revised and updated.
- (ii) The Protocol on Member/Officer relations has been revised in the light of best practice elsewhere and a number of revisions made.

9. **Part 9 - Member Role Descriptions**

Member role descriptions have now been included for Executive Support Members, Deputy Leader, Vice-Chairmen of the Council and Opposition Group Leader.

In addition, a brief description of the role of the various non-elected members on Council bodies has been included.

**Further Proposals**

The outstanding sections of the Constitution are the Code of Corporate Governance and the Financial Procedure Rules. These documents are to be considered by the Constitution Working Group on 6 March and incorporated into the document before it is submitted for full Council approval.

The Constitution Working Group is to consider further proposals at its meeting on 6 March 2009 aimed at improving the effectiveness of meetings of the full Council and further changes to the Constitution may be proposed as a result. Other modifications may be needed e.g. to correct anomalies or to clarify service responsibilities in the Officer Delegation Scheme.

**Members' Seminar**

A Seminar for Members has been arranged for 9 March in the Council Chamber (12.30 p.m. and 6.30 p.m.) to enable Members to become better acquainted with the new governance arrangements prior to vesting day.

**Recommendations**

1. That, subject to recommendation 2 below, Cabinet approves the draft Constitution attached as Appendix 2 to this report.
2. That Cabinet authorises me, in consultation with the Leader and Deputy Leader, to complete and make further changes to the draft Constitution before the final draft is presented to full Council on 17 March for adoption.

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## **Appendix 1: Implications**

### **Local Government Reorganisation**

**(Does the decision impact upon a future Unitary Council?)**

The Constitution sets out the comprehensive governance arrangements for the Unitary Council.

### **Finance**

None

### **Staffing**

### **Equality and Diversity**

### **Accommodation**

### **Crime and disorder**

### **Sustainability**

### **Human rights**

### **Localities and Rurality**

### **Young people**

### **Consultation**

All substantive changes have been subject to detailed consideration by the Constitution Working Group.

### **Health**