

# Item 8

## REPORT TO STANDARDS COMMITTEE

10TH FEBRUARY 2005

## REPORT OF CHIEF EXECUTIVE OFFICER

### ARRANGEMENTS FOR REVIEW OF THE CONSTITUTION

#### 1. SUMMARY

- 1.1 The Council's Constitution was adopted on the 24th May 2002 as part of the Council's approach to implementing the Local Government Act 2000. A number of reviews have taken place.
- 1.2 The Constitution itself must necessarily be kept under regular review so as to ensure that it reflects existing law and its operation continues to provide an efficient and effective framework for delivering the Council's aims and objectives. This report is a further review for the purposes of Article 15 of the Constitution.
- 1.3 The recommendations in this report, based on advice from the Council's Monitoring Officer, reflect those areas where it is considered appropriate to make some immediate changes, viz:
  - (1) changes arising from new primary and secondary legislation.
  - (2) significant changes to the Ethical Standards arrangements.
  - (3) a number of changes to update the Constitution in the light of previous regulations and other updates:
    - the Council's powers to designate public places under Section 13 of the Criminal Justice and Police Act 2001.
    - the introduction of an updated Members' Allowance Scheme approved by Council on 26th November 2004.
    - amendments to incorporate Part VA of the Local Government Act 1972 (Access to Meetings and Documents) to apply to meetings of Standards Committee.
    - the function of formulating a plan or strategy for the control of a Local Authority's investments which will be a non-executive function.

## **2. RECOMMENDATIONS**

2.1 That the Standards Committee recommend that Council approves the amendments set out in the Appendix and directs the Council's Monitoring Officer:

- (a) to amend the Constitution accordingly and make all necessary and consequential amendments; and
- (b) to publish an amended version on the Council's website.

## **3. BACKGROUND**

3.1 Work has already begun in reviewing the Constitution. A number of officers have formed a Constitutional Review Group, headed by the Monitoring Officer, and its purpose is to consider proposals for change with a view to reflecting the law and improving the efficiency of decision-taking within the authority.

3.2 Previous reviews are identified in the list of background papers accompanying this Report.

## **4. LEGAL IMPLICATIONS**

4.1 It is intended that the changes shown in Appendix 1 shall have immediate effect.

4.2 The principal changes are as follows :-

- (1) changes arising from amendments to the Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004 and amendment nos. (2) and (3) of 2004, all of which were reported to Cabinet on the 9th December 2004.
- (2) changes to the Ethical Standards arrangements under the Local Government Act 2000, the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, and the Standards Board for England (Functions) Order 2004, reported to Cabinet on the 9th December 2004.
- (3) a number of changes to update the Constitution, including a number in the light of previous regulations:
  - Council's powers to designate public places under Section 13 of the Criminal Justice and Police Act 2001.
  - the introduction of an updated Members' Allowance Scheme, approved by Council on 26th November 2004.
  - amendments to incorporate Part VA of the Local Government Act 1972 (Access to Meetings and Documents) to apply to meetings of Standards Committee.

- change to Council functions: Regulation 2 of the 2004/1158 Regulations includes the function of formulating a plan or strategy for the control of a Local Authority's investments which will be a non-executive function.

4.3 Planned areas for future change include the following:-

- (1) the Government intends to further amend Schedule 12A of the Local Government Act 1972 (Access to Information) during January to achieve clarity in the context of Freedom of Information and the Data Protection Acts: further amendments are anticipated..
- (2) further changes are expected in a number of areas including the role and remit of the Development Control Committee and Officer Delegation to take account of the Planning and Compulsory Purchase Act 2004 : further reports will follow; some changes may follow relating to new licensing provisions.

## 5. CONSULTATIONS

- 5.1 The Cabinet and the Standards Committee will be/have been consulted on this report and their views have been taken into consideration.
- 5.2 All Departments of the Council have been consulted with regard to the amendments suggested in this report.
- 5.3 All approved changes will be forwarded to the Standards Committee and any comments received will be reflected in future constitutional reviews.

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**Ward(s)**

**Key Decision Validation**

## **Background Papers**

### Reports:

- Council - 16th May 2003
- Council - 26th June 2003
- Standards Committee - 4th November 2003
- Council - 26th November 2003
- Council - 21st May 2004
- Cabinet - 25th November 2004

### Regulations/Legislation:

Section 36 – Freedom of Information Act 2000 (ODPM letter dated 15th December 2004)

The Standards Board for England (Functions) Order 2004

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (No. 3) (England) Regulations 2004

The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2001

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2000

**PROPOSED CHANGES FOR COUNCIL APPROVAL – 25TH FEBRUARY 2005**

Page Reference and Proposed Amendment	Basis for Change
<p><b>Page 8</b> Article 4.01: Meanings</p> <p>To add to Policy Framework:</p> <ul style="list-style-type: none"> <li>• Corporate Plan</li> <li>• Medium Term Financial Plan</li> </ul> <p>Article 4.02: Functions of the Full Council</p> <p>To add to Policy Framework, paragraph (b) after the words, the budget ...:</p> <p>“, the establishment of any reserves ...”</p>	<p>Recently approved corporate documents.</p> <p>In accordance with Local Authority Accounting Panel Bulletin 55.</p>
<p><b>Page 14</b> Article 8.01: to delete reference to Welfare Working Party.</p>	<p>No longer meets.</p>
<p><b>Page 16</b> Paragraph 9.03: Role and Function to add:-</p> <p>(j) to deal with cases referred to the Standards Committee by the Council’s Monitoring Officer and to conduct a hearing in accordance with the model hearing procedure in Part 4L, as amended, or substitute, where necessary, for that purpose.</p> <p>To add a new paragraph:</p> <p>“Access to Information</p> <p>The provisions of Part 5A of the Local Government Act 1972 (Access to Meetings and Documents) shall apply to Standards Committee meetings when considering a report to it, either:</p> <p>(a) by an Ethical Standards Officer of the Standards Board for England, or</p> <p>(b) the Council’s Monitoring Officer.”</p>	<p>To implement the Standards Board for England (Functions) Order 2004 and the Local Authorities (Code of Conduct) (Local Determinations) (Amendment) Regulations 2004.</p> <p>See above.</p>

<b>Page Reference and Proposed Amendment</b>	<b>Basis for Change</b>
<p><b>Page 21</b> Paragraph 12.01(b) -</p> <p>Chief Executive (and Head of Paid Service) functions and areas of responsibility.</p> <p>To add:</p> <p>“To act as a qualified person for the purposes of Section 36 of the Freedom of Information Act 2000 (exemptions from disclosure provisions) in the absence of the Council’s Monitoring Officer, who is the primary qualified person for these purposes.”.</p> <p>Director of Resources</p> <p>To add:</p> <p>“To advise the Council in formulating a plan or strategy for the control of borrowing, investments or capital expenditure.”</p>	<p>Direction of ODPM (see below).</p> <p>To take into account the introduction of SI2004/1158, the Local Authorities (Responsibilities for Functions) Regulations 2004</p>
<p><b>Page 24</b> Paragraph 12.04 –</p> <p>Functions of the Chief Finance Officer.</p> <p>To add:</p> <p>“(j) To act as primary qualified person for the purposes of Section 36 of the Freedom of Information Act 2000 (exempt from disclosure provisions).</p> <p>(k) To conduct investigations in accordance with the Local Government Act 2000 (Part III) and any subordinate legislation made thereunder.”</p>	<p>See Section 36 of the Freedom of Information Act 2000, authorisation of a qualified person.</p> <p>Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 and Part III of the Local Government Act 2000.</p>
<p><b>Page 25</b> Paragraph 12.04 –</p> <p>Functions of the Chief Finance Officer.</p> <p>To add in paragraph (d), third line, after the words “and policy framework”:</p> <p>“including the adequacy of reserves and provisions”</p>	<p>In accordance with Local Authority Accounting Panel Bulletin 55.</p>

Page Reference and Proposed Amendment	Basis for Change
<p><b>Page 32</b> To add a new paragraph as follows:</p> <p>“Where one or more officer who is, or whose post is identified in the succeeding schedules for the purposes of delegations, then the authority is vested in each officer whose post is so identified, unless otherwise provided.”</p>	<p>Consequential/clarification.</p>
<p><b>Page 35</b> To add new Council functions to Part IIIA as follows:</p> <p>“31. Power to make orders under Section 13 of the Criminal Justice and Police Act 2001.</p> <p>32. Duty to provide staff to a person nominated as Monitoring Officer.</p> <p>33. Responsible for formulating a plan or strategy for the control of the Council’s borrowing, investments or capital expenditure.”</p>	<p>The Local Authorities (Alcohol Consumption in Designated Places) Regulations 2001.</p> <p>Section 82A(4) and (5) of the Local Government Act 2000 in relation to matters referred to him under Sections 60(2), 64(2), 70(4) or 71(2) of that Act.</p> <p>To take into account the introduction of SI2004/1158, the Local Authorities (Responsibilities for Functions) Regulations 2004.</p>
<p><b>Pages 36 to 38</b> <i>Development Control Committee</i></p> <p><i>To be deleted in due course and replaced by new provisions reflecting the Planning and Compulsory Purchase Act 2004.</i></p>	<p><i>Schedule 1 amendments as set out in the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004.</i></p>
<p><b>Page 41</b> Licensing Committee 1</p> <p>29 – to add reference to new officer delegation ref “NS111”.</p>	<p>Request from Neighbourhood Services Department, Head of Environmental Services.</p>
<p><b>Page 46</b> <i>Personnel Appeals Panel</i></p> <p><i>To review current remit.</i></p>	<p><i>Request from Resources Department, Human Resources.</i></p>

Page Reference and Proposed Amendment	Basis for Change
<p><b>Page 53</b> Part 3B. Responsibility for Functions : B. Cabinet Functions.</p> <p>Add to paragraph 6:</p> <p>“, taking into account the adequacy of reserves and provisions.”</p> <p>Add to paragraph 10:</p> <p>“Save, where delegated to the Director of Resources.”</p>	<p>In accordance with Local Authority Accounting Panel Bulletin 55.</p> <p>Cabinet report dated 23rd December 2004 – consequential changes.</p>
<p><b>Page 59</b> Regulation of Investigatory Powers Act 2000</p> <p>To add to existing CE51 as follows:</p> <p>“; that the Solicitor to the Council only shall have authority to appoint designated persons for the purposes of Section 22 of the Act.”</p> <p>Freedom of Information Act.</p> <p>To add:</p> <p>“CE55 Authority to act as a primary qualified (new) person for the purposes of determining exemptions from disclosure under Section 36 of the Freedom of Information Act 2000 and the responsible officer is the Council’s Monitoring Officer.</p> <p>CE56 Authorisation to act as a qualified person (new) for the purposes of Section 36 of the Freedom of Information Act 2000 and the officer is the Chief Executive Officer.”</p>	<p>Cabinet report dated 25th November 2004.</p> <p>See above.</p> <p>See above.</p>
<p><b><u>Other Matters</u></b> Amend existing CE35 to CE56 (formerly CE55).</p>	<p>Consequential.</p>



Page Reference and Proposed Amendment	Basis for Change
<p><b>Page 66</b> Part 3 – Responsibility for Functions: C. Officer Delegations.</p> <p>To add:</p> <p>“R51: Director of Resources’ power in respect of land transactions. Power to agree the terms of disposals of land held jointly with any public body or authority where such disposals are to be at market value subject first to consultation with the Cabinet Member for Regeneration; the terms of any such disposal shall be subsequently reported to Cabinet for information.</p> <p>R52 Granting of Rate Relief from Business Rates.”</p>	<p>Cabinet – 23rd December 2004.</p> <p>Recommendation of Director of Resources.</p>
<p><b>Pages 67 to 71</b> <i>Town and Country Planning Act 1990 and related matters.</i></p> <p><i>To be amended in the light of above changes arising from the Planning and Compulsory Purchase Act 2004.</i></p>	<p><i>Schedule 1 amendments as set out in the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004.</i></p>
<p><b>Page 87</b> Part 3 – Responsibility for Functions: C. Officer Delegations.</p> <p>To add:</p> <p>“NS111 Authority to grant but not refuse licence applications under House to House Collections Act 1939 and House to House Collection Regulations 1947 to Director of Neighbourhood Services, Head of Environmental Services, Inspection and Licensing Manager, Principal Licensing Officer.”</p> <p>“NS112 That the Chief Executive and Director of Neighbourhood Services be authorised to give/withdraw necessary consents under Section 31(2) of the Anti-Social Behaviour Act 2004.”</p>	<p>Request from Neighbourhood Services Department, Head of Environmental Services.</p> <p>Management Team : 31st January 2005</p>

Page Reference and Proposed Amendment	Basis for Change
<p><b>Page 111</b> Part 4 – Rules of Procedure: B. Access to Information Procedure Rules.</p> <p>To add the following new paragraphs after paragraph 15:</p> <p>“16. Information relating to the personal circumstances of any person.</p> <p>17. Information which is subject to any obligation of confidentiality.</p> <p>18. Information which relates in any way to matters concerning national security.</p> <p>19. The deliberations of a Standards Committee or of a sub-committee of a Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred to under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.”</p>	<p>To take account of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.</p>
<p><b>Page 134</b> Part 4 Rules of Procedure</p> <p>Paragraph 2.6.3</p> <p>To add after * Treasury Management:</p> <ul style="list-style-type: none"> <li>• Advise the Council in formulating a plan or strategy for the control of borrowing, investment or capital expenditure.</li> </ul>	<p>To take into account the introduction of SI2004/1158, the Local Authorities (Responsibilities for Functions) Regulations 2004.</p>
<p><b>Page 138</b></p> <p>Paragraph 3.3.7</p> <p>Change heading to “Adequacy of Reserves and Provisions”</p> <p>Add to second line of paragraph after words “Council and Cabinet on”:</p> <p>“The adequacy of reserves and provisions of”</p>	<p>In accordance with Local Authority Accounting Panel Bulletin 55.</p>

Page Reference and Proposed Amendment	Basis for Change
<p><b>Part 6</b> Members' Allowance Scheme.</p> <p>To substitute with current scheme.</p>	<p>Update.</p>

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