

Item 4

REPORT TO STANDARDS COMMITTEE

6TH APRIL 2006

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, and following meetings of the Constitutional Review Group, reflect those areas where it is considered appropriate to make some further changes, viz:
 - (a) On advice of the Council's Monitoring Officer, to amend Part 4 - Rules of Procedure. B. Access to Information Procedure Rules, to take account of the changes coming into effect from the 1st March 2006 under the Local Government (Access to Information) (Variation) Order 2006 and related regulations (**see Appendix 1**).
 - (b) Officer delegations amendment: from the Director of Neighbourhood Services/Inspection and Licensing Services Manager.: update to authorised officers NS 64

2. RECOMMENDATIONS

- 2.1 That the 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 these changes shall have immediate effect.
- 4.2 The principal changes are referred to in paragraph 1.3 above.

5. CONSULTATIONS

- 5.1 Standards Committee will be/were consulted on this report on 6th April and their views taken into consideration.
- 5.2 All Departments of the Council have been consulted with regard to the amendments suggested in this report. Management Team considered the report on 20th March 2006.

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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
- Council - 25th February 2005
- Standards Committee - 3rd November 2005
- Council - 25th November 2005
- Standards Committee - 9th February 2006
- Council - 24th February 2006

Regulations/Legislation:

Local Government (Access to Information) (Variation) Order 2006
The Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006
The Relevant Authorities (Standards Committee) (Amendment) Regulations 2006

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>

PART 4 – RULES OF PROCEDURE**B. Access to Information Procedure Rules**

1. SCOPE

These Rules apply to all meetings of the Council, the Cabinet, Overview and Scrutiny Committees, Area Forums, the Standards Committee and Regulatory Committees.

2. ADDITIONAL RIGHTS TO INFORMATION

These Rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. RIGHTS TO ATTEND MEETINGS

Members of the public may attend all meetings subject only to the exceptions in these Rules.

4. NOTICES OF MEETING

Notice will be given of any meeting of the Council, Cabinet or Committees, Panels etc. by posting details of the meeting at the Council Offices, Spennymoor. The notice will be posted at least five clear days* before the meeting is to be held.

* 'Clear days' are defined as working days and do not include the day the notice is posted or the day of the meeting.

Meetings will also be advertised on the Council's Website www.sedgefield.gov.uk and in Inform, the Council's community newspaper.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports (except those containing confidential or exempt information as defined in Rule 10) available for inspection at the Council Offices, Spennymoor at least five clear days* before the meeting is to be held.

* 'Clear days' are defined as working days and do not include the day the agenda becomes available or the day of the meeting.

If an item is added to the agenda later, the revised agenda, together with any additional reports (except those containing confidential or exempt information as defined in Rule 10), will be open to inspection for the time the item was added to the agenda.

6. SUPPLY OF COPIES

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;

- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Chief Executive Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item.

to any person on payment of a charge for postage and any other costs.

7. ACCESS TO MINUTES ETC. AFTER THE MEETING

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting;
- (b) the agenda for the meeting; and
- (c) reports relating to items when the meeting was open to the public.

8. BACKGROUND PAPERS

8.1 List of background papers

The Chief Executive Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

8.2 Public inspection of background papers

The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

9. SUMMARY OF PUBLIC'S RIGHTS

These Rules represent a written summary of the public's rights to attend meetings and to inspect and copy documents and a copy will be kept and made available to the public at the Council Offices, Spennymoor.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential information – requirement to exclude public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

10.2 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 (Right to a Fair Trial) establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6 of the Act.

10.3 Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.

10.4 Meaning of exempt information

Subject to any subsequent amending provisions 'Exempt Information' means information falling within at least one of the following 7 categories (subject to any qualification); separate rules apply to meetings of Standards Committee:

SCHEDULE 12A

ACCESS TO INFORMATION: EXEMPT INFORMATION

PART 1

DESCRIPTIONS OF EXEMPT INFORMATION: ENGLAND

- (1)** Information relating to any individual.
- (2)** Information which is likely to reveal the identity of an individual.
- (3)** Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- (4)** Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- (5)** Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (6)** Information which reveals that the authority proposes—

- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
- (7) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

PART 2

QUALIFICATIONS: ENGLAND

- (8) Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under—
- (a) the Companies Act 1985;
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1993.
- (9) Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
- (10) Information which—
- (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if, and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If Chief Executive Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication but subject to the requirements of the Freedom of Information Act 2000 or any other legislation that may require disclosure" together with the category of information likely to be disclosed.

12. APPLICATION OF RULES TO THE CABINET

The following Rules apply to the Cabinet. If the Cabinet meets to take a Key Decision then it must also comply with Rules 1 – 11 above, unless Rule 15 (general exception) or Rule 16 (special urgency) apply.

A Key Decision is defined as:

- (i) any executive decision which is likely:-
 - to result in the local authority incurring expenditure, or making savings above £100,000
 - to have a significant impact on two or more wards.
- (ii) any decision made by the Cabinet in the course of developing proposals to the full Council to amend the policy framework.

13. PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a Key Decision may not be taken unless:

- (a) a notice (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

14. THE FORWARD PLAN

14.1 Period of Forward Plan

Forward plans will be prepared by the Leader to cover a period of four months and will be updated monthly.

14.2 Contents of Forward Plan

The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet or officers, in the course of the discharge of a Cabinet function during the period covered by the plan. It will describe the following particulars insofar as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;

- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

The Forward Plan will be published at least 14 days before the start of the period covered. The Chief Executive Officer will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that Key Decisions are to be taken on behalf of the Council;
- (b) that a Forward Plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the Plan will contain details of the Key Decisions to be made for the four month period following its publication;
- (d) that each Plan will be available for inspection at reasonable hours free of charge at the Council's offices and on the Council's website www.sedgefield.gov.uk;
- (e) that each Plan will contain a list of the documents submitted to the decision takers for consideration in relation to the Key Decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available;
- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a Forward Plan and confidential information cannot be included.

15. GENERAL EXCEPTION

If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
- (b) the Chief Executive Officer has informed the chair of a relevant Overview and Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter to which the decision is to be made;
- (c) the Chief Executive Officer has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the Chief Executive Officer complied with (a) and (b).

All decisions taken under this Rule will be taken in public, except Rule 10 applies.

16. SPECIAL URGENCY

If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the chair of the relevant Overview and Scrutiny Committee agrees that taking the decision cannot be reasonably deferred. If there is no chair of the relevant Overview and Scrutiny Committee, or if the chair of the relevant Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor, will suffice.

17. REPORT TO COUNCIL

17.1 When an Overview and Scrutiny Committee can require a report

If an Overview and Scrutiny Committee thinks that a Key Decision has been taken which was not:

- (a) included in the Forward Plan; or
- (b) the subject of the General Exception Procedure; or
- (c) the subject the Special Urgency Procedure;

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Chief Executive Officer, who shall require such a report on behalf of the Committee when so requested by at least 7 Members of a relevant Overview and Scrutiny Committee. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Overview and Scrutiny Committee.

17.2 Cabinet's report to Council

Upon request, the Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and, if the Leader is of the opinion that it was not a Key Decision, the reasons for that opinion.

17.3 Quarterly reports on special urgency decisions

In any event the Leader will submit quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

18. RECORD OF DECISIONS

After every meeting of the Cabinet the Chief Executive Officer will produce a record of every decision taken at that meeting, normally within 2 working days of the meeting. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

In addition, where an Officer has taken a 'key decision' using authority delegated by Cabinet that officer will produce a record of the decision taken within 2 working days. The record will include a statement of the reasons for each decision and any alternative options considered and rejected by the Officer.

19. OVERVIEW AND SCRUTINY COMMITTEES ACCESS TO DOCUMENTS

19.1 Rights to copies

Subject to Rule 19.2 below, members of an Overview and Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to any business transacted at a meeting of the Cabinet.

19.2 Limit on rights

Members of an Overview and Scrutiny Committee will not be entitled to any document that is in draft form.

20. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

20.1 Material relating to previous business

All Members of the Council will be entitled to inspect any report, including those containing confidential or exempt information, together with background papers used in its preparation, relating to any business previously transacted at a Cabinet meeting.

20.2 Material relating to Key Decisions

All Members of the Council will be entitled to inspect any report, including those containing confidential or exempt information, together with background papers used in its preparation, which relates to any Key Decision.

20.3 Nature of rights

These rights of a Member are additional to any other right he/she may have.

20.4 Further Provisions

(1) In Parts 1 and 2 of Schedule 12A as amended —

"employee" means a person employed under a contract of service;
"financial or business affairs" includes contemplated, as well as past or current, activities;
"labour relations matter" means—

- (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or
- (b) any dispute about a matter falling within paragraph (a) above;

and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;

"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;

"registered" in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).

(2) Any reference in Parts 1 and 2 and this part of Schedule 12A as amended, to "the authority" is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined and includes a reference—

- (a) in the case of a principal council, to any committee or sub-committee of the council; and
- (b) in the case of a committee, to—

- (i) any constituent principal council;
 - (ii) any other principal council by which appointments are made to the committee or whose functions the committee discharges; and
 - (iii) any other committee or sub-committee of a principal council falling within sub-paragraph (i) or (ii) above; and
- (c) in the case of a sub-committee, to—
- (i) the committee, or any of the committees, of which it is a sub-committee; and
 - (ii) any principal council which falls within paragraph (b) above in relation to that committee.
- (3) These rights do not require a document to be available for inspection if it appears to disclose exempt information falling within Part 1 of Schedule 12A (see Rule 10.4 above) although if information falls within paragraph 3 (except to the extent the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract) or paragraph 6 of Schedule 12A, it shall be available for inspection.

**21. STANDARDS COMMITTEE : ACCESS TO DOCUMENTS :
ADDITIONAL PROVISIONS**

Where a meeting of a standards committee, or a sub-committee of a standards committee, is convened to consider a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Act, the provisions of Parts 1 to 3 of Schedule 12A to the 1972 Act shall apply as if, after paragraph 7 of that Schedule, the following descriptions of exempt information were inserted —

- 7A.** Information which is subject to any obligation of confidentiality.
- 7B.** Information which relates in any way to matters concerning national security.
- 7C.** The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

PROPOSED CHANGES FOR COUNCIL APPROVAL – 21ST APRIL 2006

Page Reference and Proposed Amendment	Basis for Change
<u>Page 80</u> NS64:– inclusion of the name Victoria Jackson-Hopps and a change of name from Meryl Gregg to Meryl Graham	Change in personnel and change of name

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