

**REVIEW OF COUNCIL CONSTITUTION
(Report by the Head of Administration)**

1. INTRODUCTION

- 1.1 At their meeting in April 2002 and in acknowledging that the then new constitutional arrangements introduced using the Cabinet/Leader system would continue to evolve, the Council requested the Standards Committee to undertake an annual review of the Constitution. Under its terms of reference, oversight of the Constitutional arrangements of the Council is the responsibility of the Standards Committee. This report introduces the review commissioned during the current year.
- 1.2 Adopting the same approach undertaken during the review in 2003, the Cabinet and all Panels have been offered the opportunity to comment collectively on those aspects of the Constitution which affect their terms of reference during the January/February meeting cycles. Members also had been invited to submit comments individually by the end of January. Chief Officers and Heads of Service also have been similarly requested to highlight issues which have arisen based on practical experience of the operation of the Constitution since its implementation in May 2002 and subsequent review in May 2003.
- 1.3 To identify the changes proposed, Members will need to refer to the Constitution circulated to them in May 2003. Alternatively a copy is available electronically on both the Council's web site and intranet. Members are requested to bring their copy with them to the meeting for reference.

2. GENERAL CHANGES

- 2.1 The Council may amend their constitution at any time, subject to regard being paid to formal guidance issued by the Secretary of State. Any change will require reference to the Secretary of State only if the Council propose to change significantly the present form of Executive and Scrutiny arrangements.
- 2.2 The Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols. A series of changes are required to Articles 1 – 16 to correct minor typographical errors and to update the text to reflect:-
- ◆ new legislation;
 - ◆ alterations to –
 - table 2 – appointments to outside organisations (to reflect the addition/variation of appointments);

table 4 – scheme of delegation (to incorporate subsequent amendments to the scheme).

3. DECISION-TAKING BY EXECUTIVE COUNCILLORS

(p23 Article 7 The Cabinet

p71 Table 3 - Responsibility for Executive Functions

p75 Scheme of Delegations)

- 3.1 The Local Government Act 2000 introduced the concept of decision taking by individual Councillors who are Members of the Cabinet. This is not reflected specifically in Article 7 relating to the Cabinet and Table 3 which lists who is responsibility for executive functions. The following changes are therefore proposed.
- 3.2 On page 23 and paragraph 1, the description of the Cabinet should be expanded by the addition of the sentence – “The Cabinet will undertake those functions either collectively or by delegation to a panel of the Cabinet or to individual executive councillors as specified in Tables 3 and 4 of Part 3 of this Constitution.”
- 3.3 Table 3 of Part 3 then requires a further box to be added to reflect the responsibility of Executive Councillors for decision-making delegated to them by the Cabinet.
- 3.4 The introduction to Table 4 (second paragraph) refers only to the delegation of decision making to individuals under the Local Government Act 1972 which is restricted to non-executive decision making only. Executive decision-making is delegated under Section 15 of the Local Government Act 2000. It is proposed that the appropriate changes be made.

4. ARTICLE 9 – STANDARDS COMMITTEE (p27)

- 4.1 Part III of the Local Government Act 2000 provided for the establishment of a new framework to maintain high standards of conduct in local authorities. The main component of this ethical framework included the establishment by every authority of a Standards Committee. The first meeting of the Standards Committee in Huntingdonshire took place in July 2000. Since its inception, the Committee has been chaired by a member of the majority party group. Since May 2003 the Committee has comprised three independent members. These appointments have overcome difficulties in the consistency of attendance experienced in the past.
- 4.2 It is the view of the Standards Board that independent Members bring a fresh perspective to the work of Standards Committees and by extension, to the authorities themselves. Appointing independent members to Standards Committees is a way of involving citizens with a commitment to public service in the promotion of high standards of conduct among elected representatives. Appointing an independent member as Chairman of the Committee would send a strong message to the public that the District Council values impartiality and fairness.

- 4.3 The CPA Peer Challenge Team in their report of November 2003 reflecting on the Council's Constitutional arrangements, commented –
- “that it was inappropriate that the Council's Standards Committee should be chaired by a Councillor rather than an Independent Member and, with the changes to the independent membership, the Council might usefully revisit this issue”.
- 4.4 The Committee may recall that it has already resolved that in the event of cases being referred for determination locally, an independent Member shall chair the hearings.
- 4.5 The role of independent members has developed since the inception of Standards Committees and networks have been set up nationwide to support Members in terms of shared experiences, common issues, and training etc. The Standards Board for England also has supported the groups established. In addition to guidance offered by the Monitoring Officer, external training is also now available to help independent members keep abreast of new and emerging issues and broaden understanding of the role and responsibilities of Standards Committees. A survey of some 24 authorities classified as ‘excellent’ or ‘good’ in CPA Inspections to date has shown that the majority of Standards Committees are chaired by an independent member.
- 4.6 In view of the conclusions of the CPA Peer Review it may be timely and appropriate to consider incorporating a similar requirement within the Constitution. While legislation and regulations do not specify a term of office for independent members, the Standards Board recommend that authorities set a term of office similar to that of other members of the authority. Evidence suggests that most authorities appoint independent members for a period of 2 – 4 years.
- 4.7 Currently the Chairman has the task of presenting the report of the meeting(s) of the Committee to the Council. Although the Committee meets quarterly and therefore reports to Council on only 4 occasions during the Municipal Year, there is an expectation that the Chairman should attend all ordinary Council meetings (5) in the event that questions are asked of him/her. Should the Committee be minded to recommend the appointment of an independent member to act as Chairman, consideration also would need to be given to whether the Constitution requires amendment to reflect that the Chairman of the Committee irrespective of whether that person is an elected Member should assume responsibility for the presentation of reports to Council meetings.
- 4.8 The Local Government Act 2000 and the Relevant Authorities (Standards Committee) Regulations 2001 set out a range of functions for Standards Committees. These functions are only a minimum requirement, however, and do not exclude other functions which an authority feels are proper for its Standards Committee to undertake.
- 4.9 The Committee will be aware that their workload potentially may increase shortly which suggests that some of the “other functions” within their terms of reference on page 29 of the Constitution may be inappropriate located within the Committee's remit. This, together

with the need to determine the location of certain governance and financial responsibilities is the subject of a separate exercise which will be reported to Members shortly.

4.10 A copy of the Committee's revised terms of reference would require to be submitted to the Standards Board for England.

4.11 **The Committee are invited to consider whether to appoint an Independent Member to act as Chairman with effect from the commencement of the municipal year 2004/5 and to note the possibility that their terms of reference may vary following further review.**

5. ARTICLE 12 – OFFICERS (p33)

5.1 At their meeting on 16th March, 2004 the Employment Panel considered a report by the Chief Executive proposing a revision to the structure of the Management Team to meet the Council's current needs. Since the Council's establishment was last restructured in 1996 there has been a series of changes to the organisation in management terms prompted initially by the transfer of the Council's housing stock to Huntingdonshire Housing Partnership, the creation of separate divisions for community services and operations and transferring the economic development function to the Policy Division of the Central Services Directorate.

5.2 The designations of the Directors have largely evolved in view of circumstances at the time of the original restructure and subsequent recruitment. The Management Team currently comprises the Chief Executive and three Directors namely –

- Director of Operational Services
- Corporate Director, Commerce and Technology
- Executive Director of Central Services.

5.3 However, in order to bring consistency to the organisation and to respond positively to the conclusions of the CPA Peer Reviewers the Chief Executive has proposed that each post should be entitled "Director".

5.4 Subject to the decision of the Employment Panel, Article 12 of the Constitution and all other references made to the Management Team in the Constitution will require to be adjusted to reflect the following designations –

- Director of Operational Services
- Director of Commerce and Technology
- Director of Central Services.

5.5 The report to the Employment Panel on the designation of Chief Officers and the role of the Director of Central Services has highlighted an inconsistency in the description of the Chief Executive's responsibilities in Article 12 on page 33 compared with that described in the Management Structure on page 295. In paragraph 2 (b) of Article 12, the Chief Executive's functions and

areas of responsibility are described as “overall corporate management and operational responsibility.....”. With the changes approved by the Employment Panel, the word “operational” should be replaced with the word “strategic” which is consistent with the description in the Management Structure later in the Constitution.

6. COUNCIL PROCEDURE RULES (STANDING ORDERS) (p155-171)

Section 10A – Petitions (p162)

6.1 Since the introduction of the procedure for petitions to be submitted at meetings of the Council, questions have arisen in respect of the interpretations of Rule 10A.5 on page 162 of the constitution. The rule prevents a Member of the Council from speaking to the petition under the procedure but then refers later to a debate or discussion on the item. It also refers to the Council deciding upon whether the contents of the petition should be referred to Cabinet, etc which would be precluded by the inability of Members to speak other than to ask questions.

6.2 In practice, the procedure is intended to prevent any discussion on the petition at the time when it is presented, other than to discuss and decide upon whether the petition should be referred to the Cabinet, etc for debate. The petition could of course relate to an item which appears later on the Agenda for that Council meeting. In the latter case, Members may wish to discuss the content of the petition but only when the Agenda item itself is being debated.

6.3 **It is recommended that minor changes be made to Rule 10A.5 to clarify when Members may speak on petitions that are submitted.**

Section 11 – Rules of Debate (p164)

6.4 The mover of an amendment to a Motion has no right of reply to the debate on his or her amendment. Councillor Downes has requested that the rules relating to “right to reply” be amended to enable the mover of an amendment to have a right of reply at the conclusion of the debate on the amendment.

6.5 The Cabinet has indicated that it would not object in principle to an amendment to the rules which would give a right of reply to the mover of an amendment in debate.

6.6 **The Committee is invited to consider the issue.**

Section 12 – State of the District Debate (p166)

6.7 The Leader of the Council introduces a State of the District debate annually at the September meeting of the Council deciding the form of the debate with the aim of enabling the widest possible public involvement and publicity. Councillor Downes has proposed that further consideration be given to the intentions of the section of the Constitution relating to “publicity” in order to encourage increased public interest in the content of the debate.

6.8 In response, the Cabinet neither recognises the need for nor supports the suggestion in relation to the need for additional publicity for the annual debate on the state of the District.

6.9 **The Committee is invited to consider the issue.**

**7. ACCESS TO INFORMATION PROCEDURE AND RULES
(p177-187)**

7.1 Under the provisions of Part III of the Local Government Act 2003, Ethical Standards Officers appointed by the Standards Board for England may carry out investigations into allegations that a Member of an authority in England has failed to comply with an authority's code of conduct. An Ethical Standards Officer may choose to refer the matters under investigation and send the report on the outcome of his investigation to the Monitoring Officer of any authority concerned. The Local Authority (Code of Conduct) (Local Determination) Regulations 2003 make provision in respect of the way such matters referred to Monitoring Officers are to be dealt with. The 2003 Regulations modify that part of the Local Government Act 1972 which relates to access to meetings and documents of certain authorities, committees and sub-committees to meetings of Standards Committees.

7.2 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. The description of exempt information falls into fifteen categories. Where a Standards Committee is meeting to deal with an allegation relating to a breach of the code of conduct under these Regulations, the categories of exempt information have been further modified to comprise categories 16-19 as follows -

“16. information relating to the personal circumstances of any person;

17. information which is subject to any obligation or confidentiality;

18. information which relates in any way to matters concerning national security and;

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 under the provisions of Section 64(2) or 71(2) to the Local Government Act 2000.”

7.3 **It is recommended that paragraph 10.3 of the Access to Information Rules be varied to provide for the inclusion of additional categories of exempt information in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.**

**8. PART IV –
OVERVIEW AND SCRUTINY PROCEDURE RULES (p199-205)**

Creation of a Third Overview and Scrutiny Panel and Review of the Terms of Reference of the Overview and Scrutiny Panels

- 8.1 The operation of the Overview and Scrutiny Panels has prompted most comments during the review, primarily from the Panels themselves and from the Leader of the Opposition, Councillor Downes.
- 8.2 The Overview and Scrutiny Panels are responsible for setting their own programme and also have a critical role in relation to policy review and development. Although the Panels meet monthly, meetings often continue until after 10 pm. Studies commissioned by the Panels may involve presentations by Officers or external organisations and guest speakers are invited to attend meetings to widen the Panel's understanding of the subject matters under review. In addition, there may be policy items to scrutinise together with the items placed regularly on the Panel agenda to monitor the Forward Plan, Decision Digest and Best Value Reviews. Special meetings of both Panels occurred in the Autumn to consider the Council's budget to give Members the time to consider the issue in the depth required. Both Panels requested the establishment of a third Panel to assist with the workload which has developed and should this proposal be acceptable a corresponding review of the Terms of Reference of the existing Panels would be required.
- 8.3 Having considered the suggestions put forward by the Overview and Scrutiny Panels, the Cabinet neither recognised the need for nor support the creation of an additional Overview and Scrutiny Panel.
- 8.4 **The Committee is invited to consider the issue.**

Policy Framework

- 8.5 The role of the Overview and Scrutiny Panels in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules. This provides for the publication, in advance, of a Forward Plan of Key Decisions which details a programme of policy, strategy or budget items to be considered by the Cabinet over a four-month period. It is open to the Overview and Scrutiny Panel to investigate, research or report on these issues in further detail by requesting the submission of items appearing on the Forward Plan to one of their meetings. Recommendations by the Panels are submitted to the Cabinet to consider together with the policy issue under discussion. The decisions of the Cabinet are required to be published and the relevant Overview and Scrutiny Panel is entitled to call-in a decision for scrutiny.
- 8.6 One of the Panels has commented that proposals for change to existing policy and new Council policy should be submitted to the relevant Overview and Scrutiny Panels as a matter of course and has

requested that on those occasions when the Overview and Scrutiny Panel make recommendations to the Cabinet on the conclusion of major studies which they have commissioned the Cabinet should formally respond with recommendations to the Overview and Scrutiny Panel.

8.7 Given the arrangements for the publication of the Forward Plan, the Cabinet does not recognise the need to make additional provision in the Constitution requiring all policy changes to be submitted to the Overview and Scrutiny Panels prior to their consideration by the Cabinet.

8.8 **The Committee is invited to consider the issue.**

Attendance by Others

8.9 Paragraph 13 of the Overview and Scrutiny Procedure Rules provides for the Panels to invite individuals other than Councillors or Members to address them. Councillor Downes, has requested that this rule be extended to enable the Chairman of a Panel to invite individuals in the public gallery to speak for up to two minutes where it is considered that the person might have a valuable contribution to make to the debate. These individuals would not have been formally invited to attend the meeting.

8.10 It is the view of the Cabinet that the facility for members of the public to be invited to speak at meetings of the Overview and Scrutiny Panels is covered adequately by paragraph 13 of the Constitution.

8.11 **The Committee is invited to consider the issue.**

Scheme of Substitution

8.12 A proposal to appoint substitute Members to Committees, Panels and Advisory Groups was considered but not supported by the Committee during the review of the Constitution in 2003. Both the Overview and Scrutiny Panel (Service Delivery and Resources) and Councillor Downes have raised the issue again. A copy of a potential scheme that was submitted to Members during the review in 2003 is reproduced at Appendix A. Should it be decided not to adopt a scheme for the appointment of substitute Members across all Panels and Groups, Councillor Downes has requested that consideration be given to the appointment of permanent and named substitutes to assist attendance at meetings of the Overview and Scrutiny Panels given the regularity of their meetings and the heavy workload which they entail.

8.13 Reviewing the question of substitution arrangements generally, the Cabinet has commented that if recommended, substitute Members should be named and nominated prior to the meeting, absences should continue to be recorded and a proportionate approach adopted.

8.14 **The Committee is invited to consider the issue.**

9. CODES OF FINANCIAL MANAGEMENT AND PROCUREMENT (p207-232)

9.1 Changes to the Codes of Financial Management and Procurement are proposed to reflect inflationary increases and the introduction of Prudential Indicators. Amended copies of both Codes are attached at Appendices B and C.

9.2 **The Committee is requested to recommend to Council the adoption of revised Codes of Financial Management and Procurement.**

10. OFFICER EMPLOYMENT PROCEDURE RULES (p233 – 236)

10.1 The Officer Employment Procedure Rules prescribe arrangements for appointments to the posts of the Head of the Paid Service, other Chief Officers and Heads of Service. Currently the rules provide for a Panel of the Council to appoint Chief Officers (other than the Head of the Paid Service) and Heads of Service or their equivalent. That Panel must include at least one Member of the Cabinet. It has been suggested that in practice it would be of greater benefit to the service and offer increased flexibility if the Procedure Rules were varied to allow the membership of the Panel, currently four Councillors, to specify the inclusion of the relevant Executive Councillor.

10.2 **It is recommended that paragraph 4 (b) of the Procedure Rules be amended to enable the Panel appointed by the Council to specify the inclusion of the relevant Executive Councillor as opposed to a Member of the Cabinet.**

11. CODES OF PROTOCOLS (p247)

11.1 Members are reminded that at their meeting held on 24th September 2003, on the recommendation of the Committee and the Employment Panel, the Council adopted for incorporation into the Constitution –

- ◆ the Planning Code of Good Practice;
- ◆ the Protocol of Member/Employee Relations
- ◆ the Protocol for Community leadership by Members; and
- ◆ the Employees Code of Conduct.

12. MEMBERS' ALLOWANCES SCHEME (p283 – 292)

12.1 The Independent Advisory Panel was reconvened in the Autumn to review the scheme of allowances payable to District Councillors in the light of the Local Authorities (Members' Allowances) (England) (Amendment) Regulations 2003. Following consideration of the recommendations of the Panel, the Council approved a new scheme of allowances to take effect from 1st January 2004. In addition to basic and special responsibility allowances for District Councillors, the scheme provides for the payment of childcare and dependants' allowances and the use of the average Cambridgeshire salary as indicated within the "New Earnings Survey" published by the Office of National Statistics as an index mechanism to enable the scheme to

be adjusted to reflect future inflationary changes. That mechanism will apply until 31st December 2007.

- 12.2 For the first time, the scheme specifies Member entitlement to travel and subsistence allowances and the payment of a basic allowance to co-opted Members and Parish Council representatives who serve on the Standards Committee together with travel, subsistence and care allowances. The Standards Committee also was authorised to withhold allowances in the event of the partial or full suspension of a Member under Part III of the Local Government Act 2000.
- 12.3 The revised Members' Allowances Scheme as approved by the Council has been incorporated into Part 6 of the Constitution.

13. DEVELOPMENT OF JOB DESCRIPTIONS FOR MEMBERS

- 13.1 The Overview and Scrutiny Panel (Service Delivery and Resources) have requested that consideration be given to the introduction of job descriptions for Members who have been appointed to posts within the political management framework of the Council, ie Leader of the Council, Chairman of the Cabinet, Chairmen of Overview and Scrutiny Panels. Some work has been undertaken in this respect in the past and will be reviewed as part of the continuing development of support to Members.

14. PUBLIC FORUM AT COUNCIL MEETINGS

- 14.1 Both the Overview and Scrutiny Panel (Service Delivery and Resources) and Councillor Downes have commented on ways to broaden the role of the Council meeting by the introduction of a time-limited session at the commencement of the Council whereby members of the public could be invited to put questions to the Cabinet and Chairmen of Panels and Committees on the Council. It is considered that this initiative would further promote efficient, effective and accountable decision-making and the active involvement of the public in the Council meetings.
- 14.2 Locally, Cambridge City, East Cambridgeshire and South Cambridgeshire District Councils and Peterborough City Council have schemes which enable citizens to participate in Council meetings. With the exception of East Cambridgeshire, questions are required to be submitted in advance over various time periods. A potential scheme for a public question time in Huntingdonshire is enclosed at Appendix D.
- 14.3 In their consideration of this development, the Cabinet neither recognises the need for nor supports the proposals for a forum to enable members of the public to ask questions or to speak at Council meetings.
- 14.4 **The Committee is requested to consider the issue.**

15. DECLARATION OF INTERESTS

- 15.1 The introduction of a Code of Conduct under the new ethical framework requires Members to declare their personal and prejudicial interests at all meetings where the matters being discussed, or to be discussed, relate to issues in which the Member considers that they have an interest. Current practice provides for Members to declare their interests, whether personal or prejudicial, at the commencement of the business to be discussed and for that declaration to be recorded formally in the Minutes prior to the Minute of that item. An alternative approach to the declaration of interests was suggested at the meeting of the Development Control Panel.
- 15.2 It was proposed that a standard item be included on every Agenda which would allow all interests anticipated by Members in relation to the business to be transacted to be declared at one point during the meeting rather than in advance of individual items. This is the practice at some other local authorities.
- 15.3 In practice, it can be difficult for Democratic Services Officers to note interests declared if they are delivered in haste at the start of a meeting and to readily identify which Agenda items the interests might refer to. There may also be instances where discussion on an item takes a particular course which results in a Member present having to declare an interest which he/she may not have anticipated at the start of the meeting.
- 15.4 In Huntingdonshire and other than at meetings of the Development Control Panel, interests tend to be declared infrequently and their recording at the commencement of each new Agenda item is not considered to be a significant issue. However, the issue of whether or not to include an item for "Declaration of Interests" is not necessarily one which requires to be reflected in the Constitution. It could be considered to be an administrative measure which, if thought to be of benefit, could be introduced at some future date.
- 15.5 **The Committee is invited to consider the issue.**

16. RECOMMENDATION

- 16.1 The Committee is requested to consider the recommendations contained in the foregoing paragraphs and to recommend the Council accordingly.

BACKGROUND DOCUMENTS

HDC Constitution

Minutes of the meetings of the Cabinet and Overview and Scrutiny Panels

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