

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

1. INTRODUCTION

- 1.1 The Local Government Act 2000 changed fundamentally the way in which the District Council and local authorities generally had conducted their business for generations. It transformed the traditional “Committee System of decision making” throughout local government and replaced it with a limited choice of executive/scrutiny models, supported by a range of “non-executive” Panels. The District Council along with the majority of the local authorities then chose to implement the Leader/Cabinet model.
- 1.2 The complexity of the new arrangements required local authorities to adopt written constitutions to regulate their systems of governance and proceedings etc. The requirements of the Local Government Act 2000 were implemented fully in the District Council’s Constitution as from the Annual Meeting in May 2002. Since then and up to 2005, the Standards Committee and more recently the Corporate Governance Panel has undertaken an annual review of the Constitution in the light of the experience of individual Councillors, Cabinet, Panels, Chief Officers and Heads of Service over the preceding year. During the 2005 review, the Panel formed the view that the Constitution should be reviewed comprehensively at biennial intervals thereafter.
- 1.3 The Corporate Governance Panel was established by the Council in July 2004 to deal principally with those aspects of audit, governance and finance which are non-executive. The Panel’s terms of reference include responsibility for “oversight of the Council’s constitutional arrangements and advising the Council on any changes that may be desirable”. This report introduces the review commissioned during the current year. Any changes recommended for adoption to the Council will take effect from the next Annual Meeting which is to be held on 16th May 2007.
- 1.4 Adopting the same approach as was undertaken in 2005, 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. Members were invited to submit comments individually and Chief Officers and Heads of Services similarly were requested to highlight issues which had arisen based on practical experience of the operation of the Constitution.
- 1.5 To identify the changes proposed, Members will need to refer to the Constitution circulated to them in October 2006. Alternatively a copy is available electronically on both the Council’s website 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 its 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. With the Constitution having operated satisfactorily for a number of years there appears little need for major change. However, the Constitution continues to evolve and requires regular adjustment to take account of updates in legislation and practice and for these reasons the text has been amended since 2005 to reflect –

- ◆ new legislation;
- ◆ alterations to -
 - table 2 – Appointments to Outside Organisations -
 - to reflect the addition/variation of appointments; and
 - table 4 – scheme of delegations (to incorporate subsequent amendments to the scheme)

3. ARTICLE 8 – REGULATORY AND OTHER COMMITTEES AND PANELS (PAGES 25/26)

3.1 The Gambling Act 2005 has now come into effect. Similar to the Licensing Act 2003, the Gambling Act specifies how the new powers and responsibilities should be undertaken by the Council. Three powers are specifically reserved to full Council, one of which may be delegated to the Licensing Committee created under the Licensing Act. All other powers must be administered by the Licensing Committee but can be delegated to Licensing Sub Committee's or (in certain circumstances) Officers.

3.2 This will necessitate the following changes to the Constitution –

- (a) In Article 4 – The Full Council, the following words should be added to Section 1 (a) – Policy Framework –

“◆ Gambling Act – Statement of Principles”

In order to differentiate with the Statement of Licensing Policy, it would also be preferable if the latter was reworded in Section 1 (a) as –

“◆ Licensing Act – Statement of Licensing Policy”

- (b) In Article 4 – The Full Council, the following words should be added to Section 2 –

“(j) passing a resolution not to issue casino premises licences.”

The existing paragraphs (j) to (l) will then need to be renumbered accordingly.

A further power is reserved to Council; ie. the setting of fees but this may be delegated. A separate report is being submitted to Council recommending that this be delegated to the Licensing Committee.

- (c) Table 2 of the Constitution will require amendment in relation to the functions of the Licensing Committee. It is proposed that the functions column relating to the Committee be amended as follows –

“To discharge the functions of the Council as Licensing Authority under the Licensing Act 2003 and the Gambling Act 2005 (with the exception of those functions which are reserved to Council as defined in Article 4).”

- (d) The Licensing Act and Gambling Act have repealed the previous legislation for the licensing of entertainment and betting, gaming and lotteries which were administered by the Licensing and Protection Panel. The words “gaming, entertainment” should therefore be deleted from the functions column of Table 2 in relation to the Licensing and Protection Panel.
- (e) A report is being submitted to the Licensing Committee on the delegations required to implement the Gambling Act. This will involve changes to Table 4 – the Scheme of Delegations by the addition of delegations to Officers. Certain delegations to Officers by the Licensing and Protection Panel will have been superseded by the changes to the legislation and will require rescission by that Panel. Those changes will be made to Table 4 after approval by the Licensing Committee and Licensing and Protection Panel respectively.

The Panel are recommended to approve the above changes.

4. PART 3: TABLE 5: RESPONSIBILITY FOR FUNCTIONS (PAGES 51 AND 151/1 AND 154/2)

- 4.1 There has been a growing tendency in local government to appoint Champions in recent years encouraged by the Audit Commission, Local Government Association and Others. Table 5 in the Constitution draws together the appointments that have been made by the Cabinet and other Panels. Although not formally required to be part of the Constitution, the inclusion of the table at this point is helpful to maintain a record of these appointments and for reference and access purposes. The Constitution would seem a suitable place to locate them. However, any changes do not require Council or Corporate Governance Panel consideration but it would be preferable to make this qualification clear on page 51 of the Constitution and in Table 5 itself.

4.2 **The Panel is therefore requested to note the addition of the following text on Page 51 and as a preamble to Table 5, pages 154/1 and 154/2 –**

“A number of “Member Champions” have been appointed by the Council. These are listed in Table 5. The Champions do not have executive or decision making responsibilities and as such Table 5 does not form part of the Council’s formal Constitution. However, the Champions are listed here for convenience and to highlight the role of each appointment”.

5. **PART 4: COUNCIL PROCEDURE RULES (STANDING ORDERS) (PAGES 157 – 174)**

5.1 **General Principles**

All local authorities have statutory powers to make discretionary Standing Orders under the Local Government Act 1972 –

- ◆ for the regulation of Council proceedings and business; and
- ◆ regarding the quorum, proceedings and place of meeting of their Panels, Committees etc.

A review of Standing Orders enables any practical procedural difficulties that have arisen over the operating period to be amended or modified. The following issues have arisen in this respect –

(a) **Time and Place of Meetings (p159)**

Rule 4 prescribes that meetings of the Council normally shall be convened at 2.30 pm. In special circumstances, the Chief Executive may fix some other hour for commencement. Councillor Downes has proposed that Council meetings should commence at 5.00 pm instead of 2.30 pm to encourage increased public interest in attendance and to facilitate the ability of working councillors to attend.

The Panel is invited to consider the suggestion.

(b) **To amend a Motion (p162)**

Currently, Rule 10 provides for a series of Motions to be moved without notice. This includes where a Member might wish to amend a recommendation (Motion) which forms part of the Council Agenda. In practice, a suggested form of wording for an amendment to a Motion is prepared and circulated to the Council to afford better understanding and clarity of what is being proposed. However, this practice is not formalised in the Council Procedure Rules. It is suggested that where a Member wishes to move an amendment that the wording of that amendment be made available in sufficient time for copies to be circulated prior to the commencement of a Council meeting. It is proposed that Rule 10 (h) be varied to read “**(h) to amend a motion; (the text of the proposed amendment to be**

forwarded to the Chief Executive, or in his absence, the Director of Central Services prior to the commencement of the meeting of the Council)."

The Panel is invited to consider this suggestion.

(c) Facilities for Broadcasts or Tape Recordings

There is increasing scope for innovation in enhancing access to members of the public who are not able to attend meetings, especially on those occasions when the Council may be considering business of particular public interest. Currently the Council Procedure Rules do not provide any guidance in the event that a request is received by the Council asking for a meeting to be broadcast or recorded. It is expressly provided in Section 100A (7) of the Local Government Act (Access to Information) Act 1985 that:

"nothing.....shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place."

As there is no express prohibition of photography or video recordings etc. some local authorities now allow, for example, TV cameras and radio reporters to be present at meetings on special occasions so long as there is no adverse effect on the conduct of the proceedings. In anticipation of a request of this nature, it is proposed that the following paragraph be inserted into the Council's Procedure Rules.

"17A Photography, Broadcasting and Recording of Meetings

Filming, videoing or audio recording of a meeting or photography at a Council meeting shall be permitted only with the consent of the Chairman of the meeting concerned. The necessary consent shall have been obtained and the Chief Executive, or in his absence, the Director of Central Services notified by no later than three working days before the meeting."

The Panel is invited to consider the suggestion.

(d) Quorum (p172)

Council Procedure Rule 7 provides that no business may be transacted at a meeting of the Council unless at least one quarter of the whole number of Members of the Council are present. No specific quorum is prescribed by statute for meetings of committees and sub-committees. In practice this has caused some uncertainty in relation to those meetings which consist of less than ten members. For clarity, it is suggested that the following text be added to Rule 22.

“Regarding Rule No. 7 – in no case should the quorum of sub-committees and sub-groups be less than three Members.”

The Panel is invited to consider the suggestion.

5.2 **Public Speaking at Development Control Panel (p173)**

On the recommendation of the Panel, the Council at its meeting held on 6th December 2006 approved the principle of public speaking at meetings of the Development Control Panel. Subsequently, public speaking was introduced at the Development Control Panel in January. The procedure now followed by the Panel obviates a requirement for Rule 27 and it is suggested that this be deleted in its entirety. The Council agreed that the necessary changes may be made to accommodate the new procedure in the Constitution and it is proposed that the following text be inserted as a new Rule 27

“Rule 27 - Public Speaking at Development Control Panel

Where a planning application falls to be determined by the Development Control Panel and where appropriate notice has been given, an elected Member of the relevant town and parish council/meeting, the District Ward Member, the objector(s), the applicant(s) or their representatives shall be permitted to address the Panel on the application under the direction of the Chairman having regard to the guidelines at Annex (iii).”

Annex (iii) contains the procedure recommended by the Panel at their meeting held on 29th November 2006.

It is proposed that the text of the Constitution be amended accordingly.

5.3 Under the Council's Policy and Strategic Framework, the adoption of the Council's Development Plan is reserved to full Council. Consequently any variations to the Plan can only be made by full Council including planning applications which represent a departure from the Plan. On those occasions, the Panel had agreed that the process for consideration of the application should follow the same format as the deliberations of the Development Control Panel and therefore it is suggested that the following text be inserted as **Rule 27(a)** -

“In those circumstances where a planning application is to be determined by full Council, the Council's Head of Planning Services or his representative and other relevant Officers shall be permitted to present reports to the Council and the public speaking process adopted by the Development Control Panel be applied.”

It is proposed that the text of the Constitution be amended accordingly.

It was envisaged that the Council would consider applications which represent a departure from the Council's Development Plan, as currently provided under the Council's Policy and Strategic

Framework, and where an application is of such major significance that it is to be determined by the Council.

In response to concern expressed by the Development Control Panel and in the absence of a precise definition as to when a planning proposal is of such significance that it should be referred to the Council, it is suggested that the text of the Constitution be amended as follows:-

“Rule 27 (b) – Consideration of Departures from the Development Plan. Planning applications considered to be a “significant” departure from the Development Plan shall, on the recommendation of the Development Control Panel, be considered by the Council having regard to advice received from the Heads of Planning Services and Legal and Estates Services and guidelines at Annex (iii). Applications considered to be “significant” are those specified under the Town and Country Planning (Development Plan and Consultation) (Departures) Directions 1999 and having also to be referred to the Secretary of State as follows –

- ◆ a development which consists of or includes the provision of –
 - (i) more than 150 houses or flats; or
 - (ii) more than 5,000 square metres of gross retail, leisure, office or mixed commercial floorspace;
- ◆ development of land belonging to a planning authority by that authority or any other party; or for the development of any land by such an authority, whether alone or jointly with any other person; or
- ◆ any other development which, by reason of its scale or nature or the location of the land, would significantly prejudice the implementation of the development plan’s policies and proposals.”

5.4 **Public Forum at Council Meetings**

Councillor Downes has submitted proposals on ways to broaden the role of full Council meetings by way of the introduction of a time limited session at the commencement of the Council in which Members of the public could be invited to put questions to the Leader of the Council, Cabinet Members and the Chairmen of the Overview and Scrutiny Panels. He considers that this initiative would further promote efficient, effective and accountable decision making and the active involvement of the public in Council meetings. A copy of a scheme that would enable citizens to participate in Council meetings has been submitted by Councillor Downes and this is reproduced as Annex A hereto.

The Panel is requested to consider the issue.

5.5 **State of the District Address (p168)**

The Panel, at its meeting held on 23rd March 2005 considered a proposal by Councillor P J Downes to change the nature of and arrangements for the State of the District Debate, in the light of the outcome of an investigation and Member consultation. At that time,

the Panel resolved that the Constitution should be amended to refer to an annual State of the District Address by the Leader, a response by the Leader(s) of the Opposition and a single oral contribution by other Members of the Council. Councillor Downes has re-submitted a modified version of his proposal for consideration. A suggested structure for a biennial state of the district half day conference is reproduced as Annex B.

The Panel is requested to reconsider the introduction of a biennial state of the district conference.

5.6 **General**

In the past, the Council has experimented by holding Council meetings, with mixed success, at venues other than Pathfinder House. To progress the new Headquarters and Office Accommodation Project, that part of Pathfinder House which accommodates the Council Chamber and Meeting Rooms will be out of action for a period up to a year or longer. Councillor Downes had suggested that during the re-building of Pathfinder House, Council meetings be held in venues in different parts of the District to relieve car parking pressure and to seek to encourage greater public participation and promote the Council's community leadership role.

It is probable that all meetings of the Council will require to be held at venues around the District and the Head of Administration has begun to undertake a project to identify those meeting spaces available, their capacities and associated facilities for this purpose. This exercise would present the opportunity for the Council to assess the extent of public interest in Council meetings. **The Panel is therefore requested to note this proposal.**

6. **ESTABLISHMENT OF DISTRICT YOUTH FORUM**

- 6.1 Councillor Downes has suggested that the Council establish a district youth forum bringing together representatives of youth councils and youth forums created locally by a number of town/parish councils. It is proposed that the youth forum could be invited to report quarterly to the Overview and Scrutiny Panel (Service Delivery) to give young people a voice within the Council and encourage an interest in local democracy. This proposal would build on work previously undertaken by the Panel on Services for Young People and the initiatives being pursued under the school citizenship programmes.

The views of the Panel are invited.

7. **MEMBERS' ALLOWANCES (PAGES 285-290)**

- 7.1 Following a review by the Independent Advisory Panel appointed to review the scheme of allowances payable to District Councillors, the Council approved at their meeting held on 21st February 2007 a revised scheme of Members allowances which provided for –

- ◆ increases in the level of basic allowance for all District Councillors and changes in the levels of special responsibility allowances;
- ◆ the continuation of the payment of travel and subsistence allowances in line with National Joint Council casual users mileage and subsistent rates for local government employees;
- ◆ the continuation of the use of the retail price index (RPI) as an automatic index mechanism to enable the Members allowances scheme to be adjusted, as necessary, to reflect inflation until 30th April 2011; and
- ◆ the adoption of a formula for calculating the standard and variable elements of the special responsibility allowance for the Leader of the Principal Opposition Group.

The revised Members' Allowances Scheme as approved by the Council will be incorporated into Section 6 of the Constitution.

8. CODES OF FINANCIAL MANAGEMENT AND PROCUREMENT (PAGES 209 – 234/4)

8.1 Changes to the Codes of Financial Management and Procurement are proposed. Amended copies of both Codes are attached as Annexes C and D. The changes to the Code of Procurement are relatively small and relate principally to the contracts register. The contracts register is a recently implemented database used to record key information about a purchase during its life cycle. The database will –

- ◆ create a single record of all contracts let by the Council with information on the types of contract, suppliers and values;
- ◆ support small businesses by providing current information on forthcoming opportunities;
- ◆ comply with FOIA best practice by publishing current contract information on the internet;
- ◆ automatically warn contract owners of contracts shortly due for renewal;
- ◆ meet EU requirements to advertise contracts and reduce the need to advertise elsewhere;
- ◆ reduce the time to run full EU competitions by up to ten days;
- ◆ support the management of single tenders by Central Services; and
- ◆ simplify reporting to the Department of Communities and Local Government and the Regional Centre of Excellence.

8.2 The success of the contracts register will depend on its wholesale adoption by Officers and the proposed changes create a measure of compunction previously missing. Other minor amendments have been made to the wording in relation to framework contracts following the publication of The Public Contracts Regulations, 2006 and others to improve clarity and accuracy. The proposed amendments are highlighted in blue text.

8.3 Reproduced at Annex D is a proposed Code of Financial Management. It incorporates a number of changes but many of them are quite minor. The significant ones involve

- ◆ formalising the financial monitoring process (para 3.1);
- ◆ setting rules for entering into commitments for future years (para 3.2);
- ◆ the introduction of a new process for additional spending with compensatory savings (para 3.5); and
- ◆ revising the section on Budget Transfers to provide the flexibility needed to meet the twin requirements of Growing Success and achieving the Council's savings targets (para 3.6).

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

9. OBSERVATIONS OF THE CABINET, PANELS AND COMMITTEE

- 9.1 The views of the Development Control Panel have been reflected elsewhere in this report. Although not raised during the course of this review, the Cabinet has expressed the view that substitution arrangements should not form part of the Constitution.
- 9.2 However, the Overview and Scrutiny Panel (Service Delivery) has made a recommendation in respect of the arrangements for compilation of the Forward Plan which are detailed in the Access to Information Rules (p183). The Forward Plan contains matters which the Leader has reason to believe will be subject to a key decision to be taken by the Cabinet. The Forward Plan also specifies the date on which the decision will be taken. The Panel has raised concern about those occasions when new items appear on the Plan to be considered by the Cabinet on a date which denies the opportunity for that business to be scrutinised by the Panel. In this light, the Panel has recommended that the Constitution be amended to require the Chairman, or in his absence, the Vice-Chairman of the relevant Overview and Scrutiny Panel to permit a decision to be taken on an item on a date earlier than that referred to in the Forward Plan.
- 9.3 Whilst, the concerns of the Overview and Scrutiny Panel (Service Delivery) are acknowledged, paragraph 15 of the Access to Information Procedure Rules (p185) allows, given certain circumstances, a key decision still to be taken even if that decision has not been included in the Forward Plan. Although the majority of business considered by the Cabinet can be programmed in advance, there will always be circumstances when items arise that are unforeseen but still require to be dealt within a prescribed timescale. The rules contained in paragraphs 15 and 16 are drafted to manage these circumstances. It would perhaps be unmanageable were the Chairman of a Scrutiny Panel to have the authority to veto, totally, consideration of Cabinet business which was entered late on the Forward Plan. It would also be unlikely that an author could risk their report being deferred by a Scrutiny Chairman by including that business, albeit late, on the Forward Plan when failure to place an item on the Forward Plan, under the terms of paragraph 15 would not prohibit it being considered by the Scrutiny Panel, in any event.

The Panel is requested to consider the issue.

10. RECOMMENDATION

- 10.1 The Panel is requested to consider the recommendations contained in the foregoing paragraphs and to recommend to full Council accordingly.

BACKGROUND PAPERS

HDC Constitution

Minutes of the meetings of the Cabinet, Overview and Scrutiny Panel (Service Delivery) and Development Control Panel.

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