

**REVIEW OF COUNCIL CONSTITUTION  
(Report by the Head of Legal and Democratic Services)**

**1. INTRODUCTION**

- 1.1 Under the Local Government Act 2000, new arrangements for conducting Council business required local authorities to adopt written constitutions to regulate their systems of governance and proceedings. From then on, the Council continued to review its Constitution annually but during the 2005 exercise, the Corporate Governance Panel formed the view that the Constitution had bedded down sufficiently that it could be reviewed comprehensively at biennial intervals thereafter. The purpose of the review exercise is to identify changes required to the Constitution to reflect new legislation and working practices which have emerged during the preceding two years, to overcome any inconsistencies which may have arisen and to make positive adjustments to reflect changes in circumstances.
- 1.2 The latest biennial review was due to be undertaken in March. However Chief Officer's Management Team took the view that this should be delayed until such time as the impact of the envisaged Senior Management re-organisation could be incorporated in any changes required.
- 1.3 The terms of reference of the Corporate Governance Panel include responsibility for "oversight of the Council's constitutional arrangements and advising the Council on any changes that may be desirable". This report, therefore, introduces the review commissioned during the current year. As this report also features on the agenda for the Council meeting which follows, the Chairman of the Panel will report to the Council on any changes recommended for adoption.
- 1.4 Adopting the same approach as previously, Members, Chief Officers and Heads of Service have been requested to consider the content of the Constitution and to highlight any issues or areas which could be improved, clarified or revised based on practical experience over the past two years. In particular Heads of Service have been requested to examine Part 3 – Responsibility for Functions: Scheme of Delegations and given the new senior management structure, re-assign the delegations appropriately.
- 1.5 To identify the changes proposed, Members will need to refer to the Constitution available electronically on both the Council's website and intranet. A copy also is available to peruse in the Members' Room.

**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 proposes 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. From replies received thus far from Members/Officers there appears to be little desire 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 will require amendment in any event to reflect –
- ◆ new legislation;
  - ◆ alterations to –
    - the text generally to update job titles etc.
    - Table 2 – appointments to outside organisations
    - reflect the addition/variation of appointments; and
    - Table 4 – scheme of delegations to incorporate subsequent amendments to the scheme.
- 2.3 In terms of the Scheme of Delegation (Part 3), Table 4, pages 75 – 154), this requires comprehensive change due partly to the passage of time and principally because of major changes to the senior management structure which have resulted in the deletion of the posts of Chief Executive, Director of Central Services, Heads of Central and Democratic Services and of Policy, Performance and Partnerships. Remaining Heads of Service had been requested to examine the scheme of delegation in relation to their respective areas and where a former Director or Head of Service is referred to, consider to which new Managing Director (or Head of Service) the delegation should be assigned. Given other pressures on the organisation, this purely administrative exercise, being detailed and time consuming, will not be completed in time for the Panel meeting.
- 2.4 Members can be assured, however, that a local authority may not delegate any decision making functions without express or implied statutory authority and whilst an authority has wide powers under Section 101 of the Local Government Act 1972 to arrange for the discharge of any of its functions by Committee, Sub-Committee or by an Officer, that power has to be lawfully delegated based on proper interpretation of a resolution. Certain other principles also will be adopted – in that those delegations formally assigned to the Chief Executive will now fall to the Head of Paid Service, Managing Director (Communities, Partnerships and Projects) and those to the Returning Officer assigned to the Managing Director (Resources).
- 2.5 In view of the degree of changes required to the Scheme of Delegations and mindful that this is an administrative exercise within principles established by statute, it is

## **RECOMMENDED**

**that the Head of Legal and Democratic Services be authorised, after consultation with the Chairman of the Corporate Governance Panel, to make any necessary amendments to the Scheme of Delegations following the**

**current review of the Scheme by the Council's Heads of Service and, for expediency, to make any further adjustments when these are considered to be necessary in the future.**

**3. ARTICLE 6 – OVERVIEW AND SCRUTINY PANELS (pages 6-21)**

The decision to reduce the size of membership of the Cabinet and the way in which the Executive Councillors' responsibilities are organised has meant it has become necessary to review the terms of reference of the three Overview and Scrutiny Panels. The terms of reference of the Panels is contained in Article 6 of the Constitution. Proposed terms of reference have been considered by the Overview and Scrutiny Panels at their October meetings and these are reflected in Appendix A hereto. No objections to the proposed arrangements have been raised by the Panels. It also was the Panels view that their Chairman and Vice-Chairman should determine which Panel would deal with matters that were not specifically covered in the terms of reference according to the degree that they match the specific remits. This will largely apply to items which arise in connection with the Council's partnerships, joint working and matters affecting the wider community. Accordingly, it is

**RECOMMENDED**

**that the proposed terms of reference for the Overview and Scrutiny Panels as set out in Appendix A hereto be approved.**

**4. ARTICLE 8 – REGULATORY AND OTHER COMMITTEES AND PANELS (page 25)**

In view of the quasi judicial nature of the Development Management and Licensing and Protection Panel/Licensing Committee, the increasingly complex matters which the Panels/Committee have to determine and the potentially serious consequences of their decisions, it has been recommended by the cross party Members' Development Group that it be mandatory that only Members who have undertaken suitable training should be appointed to these Panels and that this requirement should formally become part of the Constitution. Therefore, it is

**RECOMMENDED**

**(a) that the following paragraph be inserted after paragraph 2 in Article 8 of the Constitution –**

**“3. No Member shall be eligible to serve on a regulatory committee – the Development Management and Licensing and Protection Panels and Licensing Committee unless or until they have undertaken relevant training. The Democratic Services Manager shall maintain a record of attendance at training events to ensure the requirement has been met”; and**

- (b) that the Members' Planning Code of Good Practice (pages 249-257) and Licensing Code of Good Practice (pages 282/1-282/8) be amended as follows –

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**In the Members' Planning Code of Good Practice – delete existing paragraph 11 and insert the following -**

**'11. Training on planning matters will be provided and updated as necessary. All Members of the Development Management Panel should endeavour to receive specialised training to enable them to carry out their role properly and effectively. Training is mandatory for Members who wish to serve on the Development Management Panel. A record of training undertaken by Members of the Panel will be maintained by the Democratic Services Manager'.**

**In the Licensing Code of Good Practice – delete existing paragraph 11 and insert the following -**

**'11. Training on licensing matters will be provided and updated as necessary. All Members of the Licensing and Protection Panel/Licensing Committee should endeavour to receive specialised training to enable them to carry out their role properly and effectively. Training is mandatory for Members who wish to serve on the Licensing and Protection Panel/Licensing Committee. A record of training undertaken by Members of the Panel/Committee will be maintained by the Democratic Services Manager'.**

**5. PART 3 TABLE 2 – RESPONSIBILITY FOR COUNCIL FUNCTIONS (page 69)**

- 5.1 The Corporate Governance Panel was established by the Council in July 2004 to deal principally with the non-executive issues of audit, governance and finance. The Panel's terms of reference include matters specified in the Accounts and Audit Regulations and in the Local Government Act 2003 in relation to the Council Tax Base. The terms of reference of the Panel were last reviewed under the Democratic Structure Review and changes to them approved by Council in April 2009.
- 5.2 The Panel has recently reviewed its own effectiveness and in doing so resolved that changes be made to its terms of reference by May 2012. Whilst the precise wording of the terms of reference can be determined by the Panel at their March 2012 meeting and recommended to Council thereafter, there is a more immediate concern in relation to 'approval of the Council Tax Base'. The Local Government Act 2003 enabled the Council to delegate the annual resolution to formally approve the Council Tax Base for the following year and consequently this function was delegated by Council to the

Corporate Governance Panel. The Panel has subsequently considered that this delegation be reconsidered particularly given the suggestion that the delegation may be made to an officer rather than to a Member group.

- 5.3 The Panel might wish to consider whether it is appropriate, in the interests of probity, openness and transparency, for part of the tax base determination function to be delegated to an officer given the absence of any formal record of the decision he/she might take on the matter.

**The Panel are invited to consider delegating approval of the Council Tax Base to the Chief Officers' Management Team.**

**6. COUNCIL PROCEDURE RULES (STANDING ORDERS) (pages 157 – 174)**

**Scheme of Substitution**

A proposal to appoint substitute Members to Panels, Committees and Advisory Groups has been re-submitted by Councillor P J Downes. This is considered by Councillor Downes to be particularly relevant currently given the fewer number of Members in the Liberal Democrat Group. A copy of a potential scheme is reproduced at Appendix B.

**The views of the Panel are invited.**

**7. CODES OF FINANCIAL MANAGEMENT AND PROCUREMENT – (pages 209 – 234)**

During the bi-ennial review exercise, the opportunity is always taken to propose changes to the Codes of Financial Management and Procurement. These are “live” documents that are required to adapt to the changing needs of the Council. As the review of the Constitution is normally undertaken in the Spring, the Head of Financial Services will report on any proposed modifications required to the Codes at the March 2012 meeting of the Panel.

**The Panel is requested to note this position.**

**8. RECOMMENDATION**

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

**BACKGROUND DOCUMENTS**

Huntingdonshire District Council Constitution.

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<p>ENVIRONMENTAL WELL BEING</p>	<p>Streetscene  Car Park management  Grounds maintenance / grass cutting  Parks and Countryside  Emergency Planning  Waste stream policy  Refuse collection  Recycling  Vehicle fleet management  Abandoned vehicles  Cleansing</p> <p>Environmental Strategy  Home energy conservation  Business energy conservation  Water strategy  Renewable energy  Building Control / Dangerous Structures / Access for disabled people  Residual Highways responsibilities / public utilities  Street naming and numbering  Land drainage</p> <p>Planning Policy / Development Plans  Planning studies / monitoring  Site and area planning briefs / Masterplans  Neighbourhood Plans  Development Management / Planning Enforcement  Conservation / Listed Buildings  Trees and footpaths  Transportation</p>	<p>Environment</p> <p>Environment</p> <p>Strategic Planning and Housing</p> <p><i>Supported by Development Management Chair</i></p>
<p>ECONOMIC WELL BEING</p>	<p>Website / intranet  Freedom of Information  ICT Network &amp; Systems  Local Land &amp; Property Gazetteer  Business Analysis / Improvement</p> <p>Financial forecasting  Budget preparation and monitoring  Final Accounts Financial advice  Payment of creditors</p>	<p>Customer and Shared Services Development</p> <p>Resources</p>

	<p>Audit  Risk management  Procurement  Treasury Management  (borrowing and  investments)  Debt Recovery</p> <p>Call Centre  Customer Service Centre  Information Centres  Local Taxation  Revenue collection  Benefits assessments /  payments / fraud  National Non Domestic  Rates</p> <p>Land Charges  Legal advice  Conveyancing  Prosecutions and litigation  Planning advocacy  Data protection / Regulation  of Investigatory Powers  Contracts  Document Centre</p> <p>Communication &amp;  marketing  Corporate policy / research  Corporate performance  management  Localism  Economic Development  Investment Estate</p> <p>Facilities Management  Operational Estate  Project / Contractual  management  Engineering and  architectural design</p>	<p>Customer and Shared  Services</p> <p>Leader</p> <p>Leader &amp; Deputy  Leader</p> <p>Strategic Economic  Development (Leader)</p> <p>Resources</p>
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**PROPOSED PROCEDURE FOR APPOINTMENT OF SUBSTITUTE MEMBERS TO COMMITTEES, PANELS AND ADVISORY GROUPS**

**1. ALLOCATION OF SUBSTITUTES**

The Council at its Annual Meeting shall appoint up to 2 named substitute Members for each Panel or Committee and from each political group, to attend Committees, Panels and Advisory Groups of the Council in the absence of ordinary Members.

A Member of the Council who is not aligned to a political group (“independent Member”) shall be entitled to appoint one other named Member to take his/her place in the event of his/her absence at meetings of any Committee, Panel or Advisory Group to which s/he is appointed.

The Executive Leader, Deputy Executive Leader and any Member of the Cabinet shall not be appointed as a substitute Member to an Overview and Scrutiny Panel and neither shall a Member of an Overview and Scrutiny Panel be appointed as a substitute Member to the Cabinet. The Executive Leader shall not be appointed as a substitute Member to the Standards Committee.

As the Constitution of the Development Management, Employment and Licensing and Protection Panels and Licensing Committee provides for the appointment of only one Member of the Cabinet with Portfolio responsibility at each Panel, Portfolio holders other than the one with appropriate responsibility for those non executive functions within the terms of reference of each Panel may be appointed as substitute Members to the Development Management, Employment and Licensing and Protection Panels/Licensing Committee but may only attend in the absence of the appropriate Portfolio holder.

**2. POWERS AND DUTIES**

Other than the Standards Committee which must be chaired by an independent person, substitute Members, when substituting for an ordinary Member of the Committee, Panel or Advisory Group shall have the powers and duties of any ordinary Member of the Committee, Panel or Advisory Group but shall not be able to exercise any special powers or duties exercisable by the person for whom they are substituting.

Except in respect of the Standards Committee which must be chaired by an independent person, a substitute Member shall be entitled to be elected Chairman or appointed Vice-Chairman of the meeting of the Committee, Panel or Advisory Group at which s/he is in attendance but s/he shall be so elected or appointed for the duration of that meeting only.

The named Members appointed as substitute Members to the Overview and Scrutiny Panels shall not be entitled to participate in the Call-In procedure.

### **3. PROCESS FOR ATTENDANCE**

Substitute Members may attend meetings in that capacity only -

- (i) to take the place of an ordinary Member of the Committee, Panel or Advisory Group for which s/he is the designated substitute;
- (ii) after notifying the Head of Legal and Democratic Services or the relevant Democratic Services Officer of the intended substitution before the start of the meeting; and
- (iii) in the event of the ordinary Member not being present at the start of the meeting.

Attendance at a meeting of the Committee, Panel or Advisory Group for the purposes of substitution shall be determined at the start of the meeting and substitution or further substitution shall not be permitted during the course of the meeting.

### **4. GENERAL**

- (i) A Member tendering an apology for absence at a meeting shall have that absence recorded irrespective of a substitute Member attending in his/her place to enable an accurate record of attendance to be published at the ensuing Annual Council meeting.
- (ii) Substitute Members shall be eligible for travelling and carer's allowances as if they were appointed Members of the Committee, Panel or Advisory Group.
- (iii) Substitute Members attending meetings of the Development Management Panel shall not be eligible to receive the Special Responsibility Allowance payable to ordinary Members of the Panel but shall be entitled to claim reimbursement for the travelling costs incurred when undertaking site visits in connection with the meetings.
- (iv) Those appointed as named substitute Members shall be required to undertake appropriate training necessary to enable full participation in the business of the Committee, Panel or Advisory Group to which they are appointed, e.g. the Development Management or Licensing and Protection Panels/Licensing Committee.
- (v) Named substitute Members shall receive agenda issued for all meetings of the relevant Committee, Panel or Advisory Group to which they are appointed to assist in continuity and knowledge of issues under consideration.