

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

1. INTRODUCTION

- 1.1 Under the Local Government Act 2000, local authorities were required to adopt written constitutions to regulate their systems of governance and proceedings. Since then the Council has continued to review its Constitution regularly and at biennial intervals since 2005. 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 terms of reference of the Corporate Governance Panel includes 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.
- 1.3 Adopting the same approach as previously, Members 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 proposed changes to the senior management structure, re-assign delegations appropriately.
- 1.4 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. There appears to be 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 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 to 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 81 – 182), this requires comprehensive change principally because of recent changes to the senior management structure which will result in the appointment of a new Managing Director and has led to the recent appointment of two Assistant Directors for Environment, Growth and Planning and for Finance and Resources. Heads of Service have been requested to examine the Scheme of Delegation in relation to their respective areas and where a former Managing Director or Head of Service is referred to, consider where the delegation should be re-assigned. Given other pressures on the organisation, this purely administrative exercise, being detailed and time consuming may 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 Managing Director (Resources) largely will fall to the Assistant Director for Finance and Resources and those to the Returning Officer to the Head of Legal and Democratic Services.

2.5 At the time of the last major review In November 2011, the Council authorised the Head of Legal and Democratic Services, after consultation with the Chairman of the Corporate Governance Panel, to make any necessary amendments to the Scheme of Delegation relating solely to the structure of the organisation and post titles and not to substantive change, and to make any further adjustments when these are considered to be necessary in the future.

3. COUNCIL PROCEDURE RULES (STANDING ORDERS) (Pages 185 – 224)

3.1 Scheme of Substitution

A proposal to appoint substitute Members to Panels, Committees and Advisory Groups has been re-submitted by former Councillor P J Downes. This also has been raised by the Chairman of the Panel, Councillor E R Butler. A copy of a potential scheme is reproduced at Appendix A. Five of six Cambridgeshire Authorities* currently operate a scheme for appointment of substitute Members.

The views of the Panel are invited.

3.2 **Recorded Votes**
(Section 14.4 - Page 200)

Currently the Rules allow a recorded vote to be taken and entered into the Minutes if at least one third of Members present demand it before the vote is taken. In terms of the Council meeting and should all Members be present, a Motion for a recorded vote would require to be supported by 17 Members but only by 3 in the case of the Employment Panel for instance.

3.3 A Member has requested that the Panel considers varying this Rule so that 3 Members regardless of the size of the meeting could instigate a recorded vote. This Member believes that the current Rule 'contravenes true democracy'.

3.4 For comparative purposes and in terms of the other Cambridgeshire Authorities, the County Council require 14 Members to demand a recorded vote at full Council and other meetings but not including Cabinet. Six Members are required to request a recorded vote in Fenland and South Cambridgeshire Districts but with regard to the latter, the Constitution requires 6 Members or one quarter of those present whichever is the fewer to demand a recorded vote. In Cambridge and Peterborough City Councils, three and one quarter of the Members attending meetings respectively are required to indicate that a vote should be recorded or otherwise. East Cambridgeshire District requires a straight majority by show of hands should a recorded vote be requested.

3.5 It should also be noted that under the current Constitution any individual Councillor has the right to request that their individual vote be recorded in the minutes. Furthermore, a fully recorded vote should only be required in exceptional cases. There may be an argument to adjust the figure e.g. to a quarter or a fifth, but as can be seen from the preceding paragraph, almost all the Cambridgeshire authorities have a reasonably high threshold and it does not seem appropriate for a very small number potentially to be able to invoke its frequent use, particularly bearing in mind their right to have their individual vote recorded.

The views of the Panel are invited.

4. **ARTICLE 13 – DECISION MAKING**
(Page 41)

Key Decisions

4.1 In Huntingdonshire, it is the practice for a key decision to be taken by the Cabinet or an individual Member of the Cabinet (in the case of grants to external organisations) which is likely –

- ◆ to result in a local authority incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates; or
- ◆ to be significant in terms of its effects on communities living or working in the area comprising two or more wards.

4.2 In determining the meaning of the word “significant”, the Secretary of State issued guidance as to the categories of decisions which should be considered as key and these are set out on page 42 of the current Constitution. The categories include, for example, one which may result in the adoption of any additional policy, plan or strategy by the Council etc. and one not in accordance with the budget approved by the Council. Since the introduction of the Leader/Cabinet model of decision making, the District Council has treated any decision to incur expenditure or savings or re-align expenditure in excess of £50,000 to be significant for these purposes.

4.3 Given the passage of time since the original legislation was conceived, there has been a suggestion that the District Council might consider increasing the figure of £50,000 given that this relatively low figure, in terms of the overall budget, can be inhibiting on occasions when the Authority may be required to act quickly.

4.4 Practice across the Cambridgeshire Authorities is varied although, arguably, the very different nature of the City and County Councils and the scale of their total revenue expenditure would have influenced the level at which their figures have been set. For example –

Cambridge City	- £300,000
Peterborough City	- £500,000
Cambridgeshire County	- £500,000
Fenland District	- £100,000
South Cambridgeshire District	- no precise value
East Cambridgeshire District	- do not operate a Leader/Cabinet model of decision making

4.5 **In light of the above and the passage of time since the financial limit was adopted, it is recommended that the Council adopt a figure of £200,000 as the level above which the matter concerned would be considered to be significant for ‘key decision’ purposes.**

**5. TABLE 2, RESPONSIBILITY FOR COUNCIL FUNCTIONS
(Pages 70 – 71 and 76)**

5.1 Elsewhere on the Panel’s Agenda is a report containing proposals to streamline the process for consideration of employment matters currently dealt with by the Employee Liaison Advisory Group and Employment Panel. This report has been re-submitted to the Panel having been deferred at the last meeting to allow the terms of reference of the proposed new Employment Panel to be clarified and the precise parameters of the authority to be delegated to the Head of Paid Service to be better defined.

5.2 Once the terms of reference for the new Employment Panel and Senior Officers Panel and the authority to be delegated to the Head of Paid Service are approved by the Panel, the consequential amendments will require to be made to the Constitution.

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

6. **ACCESS TO INFORMATION PROCEDURE RULES**
(Pages 225 - 233)

6.1 Major changes are required to the Constitution following the coming into force of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. In essence, the Regulations establish the presumption that meetings of a local authority executive (and its Committees and Sub-Committees etc.) must be held in public. In practice, there are few occasions when it is necessary for the District Council's Cabinet to consider matters in private, so the Regulations will have minimal impact in this respect. The District Council also has for many years published its Agenda and Reports on its website, so the explicit requirement for certain notices to be published for these reasons, again has not proved too onerous. Whilst the Constitution needs to reflect the new legal provisions, these arrangements have already been operating since the Regulations came into effect on 10th September 2012. The Access to Information Procedure Rules have been amended to reflect the principal changes required under the Regulations. For ease of understanding, these Rules are appended at Appendix D and proposed changes to the text are highlighted.

6.2 A summary of the main changes required to executive decision making and access to information arrangements is set out as follows –

- ◆ the Regulations prescribe the procedures which must be followed before the Cabinet can hold part of its meeting in private. The public or other Councillors can object or make representations contending that meetings should be open to the public. A reply has to be given in response to any representations received and it is suggested that this be prepared by the Head of Legal and Democratic Services after consultation with the Executive Leader;
- ◆ the requirement to publish monthly a forward plan of key decisions to be taken by the Cabinet over a four month period has been repealed. Instead a document must be published 28 clear days before the key decisions are taken setting out the decision to be made and a range of other information similar in content to the former Forward Plan. Reference has to be made to any confidential or exempt information likely to be submitted to the Cabinet and thus requiring the exclusion of the public from the meeting.
- ◆ Although not a requirement, the District Council has continued to publish a Notice of Executive Decisions (the former Forward Plan), ensuring compliance with the 28 clear days notice required to be given for both key decisions and exempt information. It was considered that Members, Officers and the public were familiar with the former arrangements and the format provided a tool for both Members, Officers and the Overview and Scrutiny Panels to monitor and programme up and coming business and ensure compliance with this part of the Regulations without the need for complex changes. The document continues to be made available on the District Council's website and is distributed as before to the press and libraries.

- ◆ there remains provision for general exception and special urgency arrangements when compliance with the notice periods has not been possible. These notices also must now be published on the website;
- ◆ there is no change to the definition of a key decision under the Regulations (see paragraph 4.1 of this report);
- ◆ Whilst much of the Regulations remain the same in respect of publishing Executive Decisions, there has been a suggestion that **all** decisions connected to the function of the Executive i.e. including those delegated to Officers by the Cabinet (under the Scheme of Delegation) also should be published. Ensuring compliance with this requirement to publish Officer decisions, which are often purely administrative, would present a significant challenge.

No action has yet been taken by the District Council in respect of this part of the Regulations. Whilst the scope and definition of “Executive Decisions” continues to be questioned and further guidance is awaited, Cambridgeshire County Council has included the following provision within their Constitution to address this issue, (which accords with Counsel’s Advice obtained by the Association of Council Secretaries and solicitors) - *“After an Officer has taken a decision closely associated with the discharge of an Executive function, and where that decision is not exempt from publication, a record of the decision will be published on the Council’s website”*. It is recommended that **the District Council should likewise include this provision in the Constitution pending further consideration and clarification of this part of the Regulations.**

- ◆ where a report considered at a public meeting contains the list of background papers, a copy of each of the documents in that list must now be published on the Council’s website, unless it contains exempt or confidential information.

The Panel is invited to –

- (a) note the implications of the new Regulations and recommend to the Council the adoption of the consequential changes to the Access to Information Procedure Rules as described in Appendix D hereto;**
- (b) endorse the practice whereby a notice of decisions (replacing the former Forward Plan) continues to be published to ensure compliance with the 28 clear day notice required for both key decisions and the intention to consider specific business in private; and**
- (c) authorise the Head of Legal & Democratic Services to prepare, in consultation with the Executive Leader, a response to any representations received to a notice of the intention to consider specific business at a meeting of the Cabinet in private session;**

- (d) **Recommend the addition of wording to cover executive decisions taken by Officers as set out in paragraph 6.2 above.**

**7. OVERVIEW AND SCRUTINY PROCEDURE RULES
(Pages 247 - 253)**

- 7.1 Paragraph 10 of the Overview and Scrutiny Procedure Rules describes the way in which the Panel's reports are considered by the Cabinet. In practice, once an Overview and Scrutiny Panel's report on any matter which is the responsibility of the Cabinet has been completed it is included on the agenda for the next available meeting of the Cabinet. Similarly, where an Overview and Scrutiny Panel has formed a view or recommendations on an Item that is scheduled to be considered by the Cabinet, a report is prepared for the Cabinet to consider concurrently with the substantive item.
- 7.2 Whilst this process generally works well, concern has been expressed at a meeting of Joint Chairmen (Overview and Scrutiny Panels) that the response of the Cabinet to a report or recommendations of a Panel is sometimes less than satisfactory and that it would assist the exchange of views/report back process if the Overview and Scrutiny Procedure Rules were amended to formalise this stage.
- 7.3 Following the model adopted by the County Council, the last sentence of paragraph 10 of the Rules –

'the Council or the Cabinet shall respond to a report and recommendations of an Overview and Scrutiny Panel within two months of receiving the report or a written notice from the Panel requiring them to consider the report (if later).'

could be deleted and replaced by –

'the Agenda for Cabinet meetings shall include an Item entitled "issues arising from Overview and Scrutiny Panels". The reports of Overview and Scrutiny Panels referred to the Cabinet shall be included at this point in the Agenda (unless they have been considered in the context of the Cabinet's deliberations on a substantive item elsewhere on the Agenda) within two months of the Overview and Scrutiny Panel completing its report/recommendations. Following consideration by Cabinet, the relevant Executive Councillor shall provide a written response to each of the Overview and Scrutiny Panel's recommendations, including reasons where recommendations are not accepted.

The Overview and Scrutiny Panel Chairman or his/her representative shall have a right to attend and address the Cabinet meeting on the report or recommendations of the Panel and shall be entitled to speak for up to five minutes.'

The Panel are invited to consider the proposed amendment to the Overview and Scrutiny Procedure Rules.

8. AUTHORITY TO APPEAR IN COURT PROCEEDINGS

- 8.1 Whereas rights of audience are normally limited to solicitors and barristers, under Schedule 3(1)(3) of the Legal Services Act 2007, the Council has a right to grant an exempt person a right of audience before a magistrates' or county court when such right is granted by another enactment.
- 8.2 To avoid the necessity of such authorisations having to come to Council, the Panel is requested to recommend that:-

Delegated authority be granted to the Head of Legal and Democratic Services to authorise suitably trained and qualified staff to:-

- (i) Prosecute, defend and appear on behalf of the Council before the Magistrates' Court in accordance with Section 223 of the Local Government Act 1972; and**
- (ii) exercise rights of audience in the County Court in accordance with Section 60 of the County Courts Act 1984 in relation to local authority housing matters and the Lay Representatives (Rights of Audience) Order 1999 in relation to civil matters heard in chambers or dealt with as a small claim.**

9. CODES OF FINANCIAL MANAGEMENT AND PROCUREMENT – (Pages 255 – 286)

- 9.1 During the biennial review exercise, the opportunity is always taken to propose changes to the Codes of Financial Management and Procurement.
- 9.2 The Code of Procurement and the Code of Finance Management are important elements of the Council's Constitution that detail sound governance principles for key activities. It is important that they are "live" documents that adapt to the changing needs of the Council and are reviewed regularly.
- 9.3 The draft code of Procurement is attached as Appendix B with the changes highlighted in grey. Aside from minor changes (such as change of post titles), the amendments are outlined below:

Community Right to Challenge (Localism Act) (Section 14)

The Community Right to Challenge permits a Community Body, Town and Parish Councils, the third sector and employees to submit expressions of interest to undertake authority activities and services. The proposed amendment tells staff that any enquiry or expression of interest submitted under the Community Right to Challenge must be referred to the Information and Research Officer. Also that the Procurement Manager shall maintain and publish a programme of the timings for the acceptance of expressions of interest in order to align the potential workload with any identified resource requirements or other constraints.

Late Tenders (Section 9.8)

Current wording states that all late tenders must be rejected. The amendment proposes that the Head of Legal and Democratic Services may, where there are exceptional circumstances, allow the consideration of late tenders provided no other tender has been opened. This will align the Code with current Tender Instructions.

Single Tender Exemption (Section 6.1)

A significant number of single tender requests are received by the Head of Legal and Democratic Services that relate to the maintenance of propriety systems (typically IT software) where Intellectual Property Rights prevent other companies providing the required service. As there is no independent market for the service the single tender request is effectively “rubber stamped”. The proposal is to give Head of Service authority to directly award such maintenance renewals provided:

- there is evidence that it is a propriety system;
- the initial contract award was compliant;
- the renewal is for a period not greater than 4 years (this is the time interval the EU uses to calculate contract value for ongoing contracts);
- the ongoing value does not exceed the EU threshold; and
- the direct award is recorded in the single tender register.

Electronic Pre-Qualification Questionnaire (Section 6.3)

To ease the process for small businesses a simplified Excel version of the Pre-Qualification Questionnaire has been introduced. Returning the form by email would further speed the process. A dedicated e-mail box "procsupport@huntingdonshire.gov.uk" has been created. Heads of Service wishing to have Pre-Qualification Questionnaire returned in electronic format (Excel) must tell bidding suppliers to use the designated email address and tell the Procurement Manager of the closing date. The Procurement Manager will forward of the Pre-Qualification Questionnaire to the Head of Service after the closing date.

Under £5k Threshold (Section 5.6)

The rule permits acceptance of a single offer for purchase under £5k. Whilst trivial values do not justify any additional process larger purchases may achieve savings from seeking more than 1 offer. The minor change to the wording in the table at paragraph 5.3 is to encourage Heads of Service to seek more than one offer where there is the reasonable prospect of savings.

- 9.4 The draft code of Financial Management is attached as Appendix C with all but very minor changes highlighted in grey. Most changes are to reflect the fact that the Assistant Director (Finance and Resources) is now the Council's Responsible Financial Officer (often referred to

as the Chief Financial Officer or S151 Officer) and the Accountancy Manager will act as his deputy.

- 9.5 There are other changes to tighten up requirements in particular areas but the only changes of significance are outlined below:

Section 3.4

The first paragraph incorporates into the Code a specific delegation that has existed for many years allowing officer approval of additional expenditure in a peacetime emergency.

The second paragraph is a new addition and proposes that:

“The Managing Director, or in his absence, the Assistant Director (Finance and Resources), may incur expenditure of up to £350,000 for any purpose which is urgent and demonstrably in the Council’s best interests to do so following consultation with the Executive Leader or Deputy Executive Leader. Any exercise of this power must be reported to the Cabinet at the first opportunity.”

In the third paragraph, Cabinet’s limit for supplementary estimates is raised from £300,000 to £350,000.

Section 3.6

The budget transfer (virement) levels have been increased as follows:

Budget Managers	£ 60,000 to £ 75,000
COMT	£120,000 to £150,000
Cabinet	£300,000 to £350,000.

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

10. CONFERMENT OF THE TITLE OF ALDERMAN

- 10.1 Whilst not strictly a matter for the Constitution itself, as the Panel holds responsibility for the Council’s Constitutional arrangements, the Council Programme Group has requested the Panel to re-consider the criteria upon which future Aldermen should be selected Section 249 of the Local Government Act 1972 enables a Principal Council to confer the title of Honorary Aldermen or Alderwomen on former Members who have, in the opinion of the Council, rendered eminent services to the Council.
- 10.2 The Panel is reminded that in September 2010, the Council introduced the titles of Honorary Alderman and Honorary Alderwoman. These were to be conferred upon Members who cumulatively had served a minimum of 15 years as an elected Councillor on the District Council. A quick survey of other authorities revealed that it was a standard requirement to have a minimum time qualification, varying from 10 to 25 years, with 15 years being fairly typical.

- 10.3 As conferring the title of Honorary Alderman is the highest honour that a Council can bestow, the Panel may continue to hold the view that these titles only should be awarded to persons who have rendered eminent public service over a stipulated number of years. However, if the Panel agrees that the criterion for nomination should be wider, the Group has asked for some assistance in establishing rules for selection and has requested the Panel to consider the matter further. Whilst any conclusions potentially could be subjective, the aim should be to establish a way to assess and recognise an individual's outstanding contribution to the activities of the Council and the wellbeing of the District rather than loyalty to a political party.
- 10.4 To encourage nominations to come forward, it is suggested that candidates be considered annually by the Council Programme Group at its May meeting, but that it would not be obligatory to make a nomination in each Municipal Year. Indeed some authorities impose a limit to the total number of Aldermen appointed at any one time.

The views of the Panel on any additional criterion are invited.

(Members of the Council Programme Group may wish to attend and address the Panel on this Item.)

11. RECOMMENDATION

- 11.1 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

Contact Officer: Christine Deller, Democratic Services Manager
☎ 01480 388007
Christine.Deller@huntingdonshire.gov.uk

* Cambridgeshire Authorities –
Cambridgeshire County, Peterborough City, Cambridge City, East Cambridgeshire, South Cambridgeshire and Fenland Districts.