

Constitutional changes

1. Consequential changes following change in directors' job titles and areas of responsibility

Members decided in November last year that all directors should have the same title- Corporate Director – and that the monikers 'Environment', 'Communities' and so on would be abandoned.

However, officer delegations under the constitution need to identify which director has responsibility for which functions and delegated decisions. It is proposed to leave the reference to areas of responsibility (Environment, Communities and so on) in Article 11.01 the Constitution and update them with the current functional areas.

Officer delegations in Section 3 will also need to be updated to reflect the changes, with, for example, the planning delegations moving to the Corporate Director – Communities.

In anticipation of possible future further reorganisation it is recommended that the delegations make clear that the directors' functional responsibilities may be changed from time to time. So, for example, the heading will remain 'Powers delegated to the Corporate Director - Communities [which will link the delegations back to the functions and areas of responsibility set out at Article 11.01] followed by 'or any director who has for the time being been allocated all of any of the statutory functions referred to below following reorganisation, changes of job title or responsibilities'.

Recommendation:

That the references to functional areas for directors be retained in the Constitution for the purpose of identifying the relevant officer exercising the delegation (Article 11.01 and Section 3) and the Constitution be updated to reflect already approved changes in officer delegations and that functions and areas of responsibility may be changed from time to time.

2. Expansion of description of councillor roles.

The Member Development Working Group at its meeting on 2 May 2008 recommended that the constitution be updated at Article 2 to better reflect the diverse roles of councillors. The Group felt that specific mention should be made to include Scrutiny, Overview and Housing Review Board functions in particular and as well as making reference to councillor involvement in planning and licensing decision making. In addition the Group asked for 2.06 Political Groups (b) to be revisited for clarity.

Recommendation:

That the Head of Legal, Licensing and Democratic Services clarifies the councillor role descriptions in Article 2 of the constitution to better reflect councillors' current key roles and functions.

3. New Areas of Statutory responsibility already approved/delegated by Council over the last year

The constitution will be updated to reflect new responsibilities the Council has taken on in the last year, and also new officer delegations which have already been approved, for example:

Civil Parking Enforcement under the Traffic Management Act 2004
Gambling Act 2005

4. Housing Review Board

At its meeting on 1 May, the Housing Review Board approved new arrangements for the election of tenant and leaseholders representatives. Co-option onto the Board will still formally be required at Council. Currently the Constitution provides for Board members to serve for a maximum of five years. It is proposed to extend this to six, to allow for a maximum of two three year terms for tenant and leaseholder representatives.

Recommendation

That the Constitution be amended to enable non-councillor board members to serve up to six years. (Page 65).

5. Changes to the Local Authorities (Functions and Responsibilities) (England) Regulations

The Local Government Act 2000 introduced the Executive/Overview/Regulatory functional splits, and set up rules and some discretion as to how individual functions should be allocated. Regulations amend these arrangements as new statutory functions are introduced from time to time, and sometimes correct mistakes in the government's original allocation of the function in the Regulations. The Constitution should be kept updated to reflect this.

The latest set of regulations, which came into force at the end of March, set out a list of further functions shown in the table below which are not to be the responsibility of the Executive Board. These relate to:

- (i) the ability to change to elections by halves or to-thirds under certain circumstances, and to change the year of election for parish councils and the name of the electoral area.
- (ii) Functions relating to changing governance to alternative arrangements instead of executive arrangements.
- (iii) Proposals for recommending new parishes in unparished areas, for amalgamating parishes and dividing parishes
- (iv) Updating the constitution to reflect the delegation of anti-smoking legislation, and the delegation of powers to deal with regulations under the Superannuation Act 1972.

Recommendations as to how these functions may be discharged are set out in the table.

Recommendation:

The non-Executive Functions referred to in the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008 be discharged as set out below and the Constitution be amended accordingly:

Committee	Membership	Functions	Delegations of functions
Electoral matters			
Council	59 councillors	Duty to consult on change of scheme for elections	Chief Executive
Council	59 councillors	Duties relating to publicity	Chief Executive
Council	59 councillors	Duties relating to notice to Electoral Commission	Chief Executive
Council	59 councillors	Power to alter years of ordinary elections of parish councillors	
Council	59 Councillors	Functions relating to change of name of electoral area	
Functions relating to changing governance arrangements [Alternative arrangements to executive arrangements]			
Council	59 councillors	Duty to draw up proposals where change in governance arrangements proposed	Chief Executive
Council	59 councillors	Duty to consult prior to drawing up proposals	Chief Executive
Council	59 councillors	Duty to implement new governance arrangements	Chief Executive
Council	59 councillors	Duty to comply with direction given by Secretary of State	
Council	59 Councillors	Duty to hold referendum	Chief Executive
Council	59 councillors	Duty to publish notice if proposals not approved in referendum	Chief Executive
Council	59 Councillors	Duty to obtain written consent of elected mayor	Chief Executive

Functions relating to community governance [proposals for re-organisation of parishes]			
Council	59 councillors	Duties relating to community governance reviews	Chief Executive
Council	59 councillors	Functions relating to community governance petitions	Chief Executive
Council	59 councillors	Functions relating to terms of reference of review	Chief Executive
Council	59 councillors	Power to undertake a community governance review	
Council	59 Councillors	Functions relating to making of recommendations	Chief Executive
Council	59 councillors	Duties when undertaking review	Chief Executive
Council	59 Councillors	Duty to publicise outcome of review	Chief Executive
Council	59 Councillors	Duty to send two copies of order to secretary of state and Electoral Commission	Chief Executive
Council	59 Councillors	Power to make agreements about incidental matters	Chief Executive
Functions related to smoke free premises			
Licensing and Enforcement Committee	15 Councillors		Corporate Director-Communities
Functions under certain local government pensions regulations			
Council	59 Councillors		Chief Executive

The regulations also amend the description of certain local choice functions (those which may be, but which need not be, the responsibility of an authority's Executive). Currently Best Value reviews are delegated to Executive Board, having considered the views of the relevant Overview and Scrutiny committee(s).

Recommended:

That the functions under sections 106, 110, 111 and 113 of the Local Government and Public Involvement in Health Act relating to Local Area Agreements be delegated to Executive Board, having considered the views of the relevant Overview and Scrutiny committee(s).

6. Councillor Code of Conduct enforcement machinery

The Standards Committee has already considered a report from the Head of Legal, Licensing and Democratic services on the recent changes, operative from 8 May 2008. All complaints concerning the Code of Conduct will now be referred to the Standards Committee of this authority for initial assessment. This follows legislative change.

Knowing the new system was imminent (although the government did not make the regulations until 17 April) the Standards Committee has made recommendations to Council for the new committee processes; these were approved on 16 April. The Head of Legal, Licensing and Democratic services has delegated authority to make the necessary constitutional changes and administrative arrangements and any changes in the light of the regulations.

The regulations confirm there will need to be two statutory sub-committees First, a Referrals Sub-committee which will decide whether or not to investigate. This may also operate as the hearings sub-committee, which is the option approved by the Standards Committee. Second, the Review Sub-committee will take a second look at decisions not to investigate, where this is requested by a complainant. The Referrals and Hearings Sub-Committee and the Review Sub-committee will replace the existing Standards sub-committees.

The Referrals and Hearings Sub-committee will 'sift' which complaints are to be investigated, and which are to be referred to the Monitoring officer for further action, and those which will not be investigated at all. Statutory guidance is still awaited from the Standards Board, and the Standards Sub-committees will need to have reference to this. It may be necessary to increase the number of members of the Standards Committee to cope with the work-load; again proposals will be made if necessary.

A substantial increase in the workload of the committees is anticipated; the number of cases that come to the Standards Committee is projected to increase seven-fold based on Standards Board statistics. There will be a need to review current complaint procedures in line with the new processes, and to publicise them. The new regulations also require data returns to be made to the Standards Board by the Monitoring Officer. A Referrals and Hearings sub-committee will need to be diarised every twenty working days; it will not meet if not needed.

The regulations permit independent members of one authority's Standards Committee to be appointed as independent members of another authority's Standards committee. Such a member can be appointed for a specific period of time or to deal with particular allegations. This means authorities can effectively operate a joint 'pool' of independent members. Guidance and further regulations are awaited on how this will work; it cannot be taken advantage of until regulations are available. Appointing independent members to more than one standards committee is likely to help in dealing with the increased volume of work in dealing with 'sifting' complaints, and the Standards Committee has already indicated its willingness to examine the potential for joint working.

7. Councillor Code of Conduct enforcement machinery (cont)..

The regulations have brought in a number of organisational changes, which this Council had anticipated and are already reflected in our procedures: the chairman of the Standards Committee and sub-committees are independents; at least 25% of the committee must be independents. One of the members of the standards Committee now needs to be on the Executive Board, and that is reflecting in the annual appointments this year.

In summary, the Monitoring Officer will have a significantly increased role and workload in dealing with these new processes, and is currently assessing the resources she will need to staff the new statutory responsibilities. Training for all officers and councillors involved in this process will be arranged now that the detail of regulations is known. She will also publicise the new complaints procedures, as required by guidance and regulations.

Recommendations

Members note the changes in the role of the Standards Committee and the additional committee and officer workload that will result.

8. Public involvement and speaking at committee meetings.

On 30 April, Executive Board made recommendations to 1-4 to Council about public speaking. All that remains is for members to agree when the new system is to be brought in, bearing in mind committee chairs and key committee officers may wish to get together to plan for its introduction. It is suggested the new system becomes operative from 1 July.

Recommendations:

1. that Standing Orders be amended so as to allow the following:
 - a) 15 minute period of public question time at the commencement of all Council and Committee meetings with the exception of the Licensing Committee and the Planning Inspection Committee. Each individual questioner exercising a right during the public question time to be restricted to speaking for a total of 3 minutes.
 - b) the opportunity for Councillors at each Council meeting to ask verbal questions of the Leader and/or Portfolio Holders during the 15 minute period of public question time should it not otherwise be utilised by members of the public.
 - c) the rights of Councillors to submit written questions to Council in accordance with Procedure Rule No. 8.2 with this being extended to include putting questions to specific Portfolio Holders in addition to the Leader.

Recommendations cont..

d) at all meetings of the Executive Board, the Corporate Overview Committee, the Scrutiny Committee, the Audit and Corporate Governance Committee members of the public to have a general right to make statements and/or ask questions in respect of all agenda items that are not to be considered in Part B. The normal procedure to be that after a report has been introduced by the relevant Portfolio Holder and/or officer the Chairman to enquire of any member of the public whether they wish to speak in respect of the matter and/or ask questions. In each case, contributions from members of the public to be limited to a period of 3 minutes.

2. that it be noted that public speaking rights already exist in respect of the Licensing & Enforcement Committee and the Planning Inspection Committee and that no changes are proposed to be made to these rights,
3. that in respect of the Council's Development Control Committee it be confirmed that it is intended to introduce public speaking at the earliest possible opportunity at the discretion of the Chief Executive in consultation with the Chairman of the Development Control Committee at such time that the Council has considered its current review of systems and procedures in respect of the determination of all planning and related applications,
4. that the right and discretion of the Chairman to control question time to avoid disruption, repetition and wasting of the meetings time be confirmed.
5. that the changes to public speaking be operative from 1 July 2008

7. Community call for action: Local authority scrutiny of crime and disorder

It is already noted in the Constitution that the Scrutiny Committee is the Council's Crime and Disorder Committee for the purposes of section 19 of the Police and Justice Act 2006. The Local Government and Public Involvement in Public Health Act (Section 126) has made further amendments and requires the Council to ensure that its crime and disorder committee has power to make a report or recommendations to the local authority, and arrangements for a member to refer a crime and disorder matter to the committee. The amended legislation is not yet in force, but it is recommended that the Constitution is amended to reflect the new arrangements, ready for their coming into force.

Recommended:

That it be noted in the Constitution (page 30) that Scrutiny Committee may :

- make recommendations or a report to the Executive Board and/or Council in relation to local crime and disorder matters [as defined in section 19 Police and Justice Act 2006] once that section is in force
- consider any local crime and disorder matters [as defined in section 19 Police and Justice Act 2006] referred to it by a member of the Council once that section is in force.

8. Community Call for Action: Reference of other matters to Overview and Scrutiny committees

The Local Government and Public Involvement in Health Act has strengthened the overview and scrutiny function in a number of respects, although the relevant statutory changes have not yet been brought into force. It is recommended that the Constitution is amended to include these changes, operative from legal commencement.

Recommended:

Those executive arrangements be amended so that the functions of Overview and Scrutiny Committees are ready to reflect the following statutory changes:

- (i) Including provision to enable members to refer matters relevant to the functions of the committee to it by including items on committee agenda. (Section 19 Local Government and Public Involvement in Health Act 2007)
- (ii) Including provision to enable overview and scrutiny committees to question any member of the authority as regards delegated ward member functions if and when such a scheme is made. (Section 120 and 236 of the 2007 Act)

9. Minor and/or consequential amendments

Minor and/or consequential amendments will be needed to the Constitution to implement the changes in this report, and to give effect to on-going changes in the legislative framework, and to ongoing changes, including councillor details.

Recommended:

The Head of Legal, Licensing and Democratic services be given authority to amend the Constitution in line with this report and to keep it updated to reflect minor/ consequential amendments required by legislative change.

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