

TITLE OF REPORT: AMENDMENTS TO THE CONSTITUTION

REPORT OF THE ACTING MONITORING OFFICER

1 SUMMARY

This report recommends amendments to the constitution as part of the annual review of the Council's governance arrangements.

2 FORWARD PLAN

This matter is not a key decision and therefore is not included in the forward plan.

3 BACKGROUND

3.1 This Council is required to prepare and maintain a constitution setting out prescribed governance information including: a summary, articles, the scheme of delegation to officers and terms of reference of committees for discharging the functions of the authority, the procedural and other standing orders, codes and protocols regulating the behaviour of members and staff, the scheme of members' allowances, details of the authority's staff management structure and of its executive members.

3.2 The Monitoring Officer has a duty to:

- keep the Constitution under review and report back to members at full Council any changes that are required to it. This would comprise any legislative or regulatory changes.
- to make recommendations for ways in which the Constitution can be amended to better achieve its purpose, which includes comparing practices within other Councils and considering examples of national best practice.

3.3 In June 2009, Council considered a report from the Acting Monitoring Officer recommending a series of amendments to the constitution carried out as part of a review of the Council's governance arrangements. The report explained proposals for two new schedules to be introduced into Part 3 of the Constitution. This was to reflect the legislative arrangements for defining executive and non executive functions and that the terms of reference for Council and its Committees had been updated. Following the conclusion of the debate it was resolved at Council:

- (1) *That the revised Terms of Reference for Council, Cabinet and Committees and revised Scheme of Delegation to Officers, as attached at Appendix 1, as amended, and the revised Officer Employment Procedure Rules, as attached at Appendix 2, be adopted;*

(2) *That a fundamental review of other parts of the Constitution takes place during the course of the 2009/10 Civic Year.*

3.4 The Review of the Constitution has been limited to the areas detailed in this report. Due to the departure of the Corporate Legal Manager in June 2009, and the temporary nature of the cover for the post it has not been possible to conduct a more fundamental review of other parts of the Constitution during 2009/10.

3.5 The Review was proposed to address technical drafting issues relating to the functionality of the Constitution, so as to review whether it could be more user friendly, straightforward to cross reference and accessible. It is proposed to carry this item forward and deal with it during 2010/11.

4 ISSUES

4.1 Introduction

The Acting Monitoring Officer's review of the Constitution, has included consideration of the following matters:

- Review of the PARC and Scrutiny function
- Review of the operation of the Reduction in Crime and Disorder Committee

This follows the Report of the Acting Monitoring Officer to Council in June 2009 which stated that the Acting Monitoring Officer would conduct a number of reviews in conjunction with the Democratic Services Manager including those listed above.

4.1.1 It has also been past practice for an all party Member Advisory Group to have an input from the political perspective. Annex 2 attached to this Report outlines the deliberations of the Advisory Group.

4.1.2 To assist Members in dealing with the items covered in this Report, a combination of the considerations of the Advisory Group together with the technical and professional input from Officers are included.

4.2 This Report outlines a number of possible amendments to the Constitution. These are listed below and the detail follows:

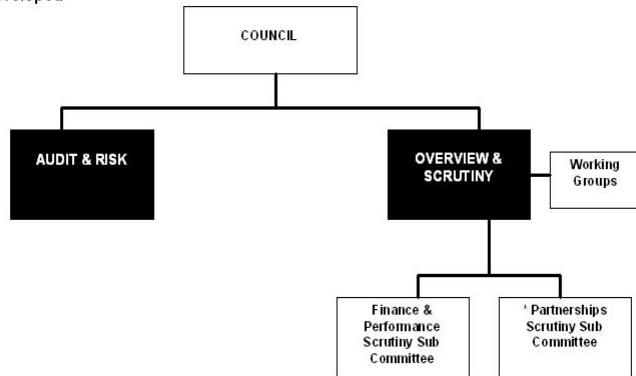
- A: Proposal for a revised Committee Structure
- B: Council Tax Setting Committee
- C: Planning Items
- D: Licensing Committee
- E: Amendments to the Scheme of Delegation
- F: Portfolio Holder Delegations
- G: Legislative Changes
- H: Other Amendments

A Proposal for a Revised Committee Structure

i. Members may recall that the Constitution Review Report for 2009 confirmed that there had been changes to the overview and scrutiny functions arising from legislation. These committees were given an increased prominence through the introduction of the councillor call for action and the Reduction in Crime and Disorder Scrutiny Committee.

- ii) Following discussion with the Member Advisory Group, the development of an amended structure for an Overview and Scrutiny Committee and an Audit and Risk Committee is put before Members for consideration as outlined in Figure 1 below:

Proposal to be Developed



* Subject to statutory requirements re Crime & Disorder Reduction Committee

Figure 1: Diagram illustrating possible Arrangements

- iii) This structure proposes an overarching Overview and Scrutiny Committee with two sub-committees operating under the overarching Committee. Those sub committees would be the Finance and Performance Scrutiny Sub Committee and Partnerships Scrutiny Sub Committee
- iv) The Partnerships Scrutiny Sub Committee would include the functions of the Reduction in Crime and Disorder Scrutiny Committee. The functions of the Reduction in Crime and Disorder Scrutiny Committee can be incorporated as part of the terms of reference of another Committee providing that there is only one Overview and Scrutiny Committee. Under the Council's current arrangements a separate Crime and Disorder Committee is required because the Council currently has two Scrutiny Committees.
- v) Section 102 of the Local Government Act 1972 provides that Council creates committees and that committees create sub-committees. This legislation is relevant given the proposal contained in this Report. In the event that the Council chooses to support this structure, Council could appoint the Overview and Scrutiny Committee. However in order to comply with the legislation, the Overview and Scrutiny Committee would need to resolve to create the two Scrutiny Sub Committees. Council is unable to create the two Scrutiny Sub Committees, it could however recommend to the Overview and Scrutiny Committee the creation of the two Scrutiny Sub Committees.
- vi) It is also proposed to include scrutiny of the Local Strategic Partnership within the terms of reference of the Overview and Scrutiny Committee (and specifically within the Partnerships Scrutiny Sub Committee). Again the suggested terms of reference reflect this.
- vii) The Council undergoes a number of external assessments. One such assessment considers the way in which the Council manages and uses its resources, to deliver value for money and better and sustainable outcomes for local people. It is broken down into a number of components which operate on the basis of whether the Council adheres to Key Lines of Enquiry. Combining Finance and Performance into one Scrutiny Sub Committee would contribute to demonstrating sound control in relation to the use of resources in this area.

- viii) The Regulation of Investigatory Powers Act (2000) regulates the use of covert surveillance of individuals by public bodies. A new Code of Practice relating to this Act was introduced and came into effect in April 2010. This requires elected members of a local authority to set the Council's policy (a matter for Cabinet) at least once a year. The Code of Practice also introduces a related strategic role for members to oversee the way in which the Council uses RIPA techniques. This has been reflected in the terms of reference for the Partnerships Scrutiny Sub Committee.
- ix) In addition this Report proposes a separate Audit and Risk Committee. This is in line with current CIPFA guidance, and the terms of reference for the Committee align with that guidance.
- x) There are updated international accounting standards in respect of Treasury Management as a result of work by the Audit Commission/ DCLG and CIPFA. In response to these changes, it is proposed that the Audit and Risk Committee have responsibility for reviewing the Council's approach to these matters.
- xi) It is proposed that the Audit & Risk Committee be delegated to sign off the statutory annual statement of Accounts in accordance with the Accounts and Audit Regulations 2003.

xii) **Conclusion**

The structure proposed represents a more efficient arrangement allowing for less committees and addressing the issue of scrutiny of partnership arrangements more directly. It mirrors arrangements in a number of other authorities and takes into account all appropriate guidance and advice on these matters.

Members are asked to consider whether they wish to support this proposed new structure. Appendix 1 shows the Constitution amended in draft to take account of these proposals and Appendix 3 shows the proposed revised timetable of meetings.

B Council Tax Setting committee

- i The Strategic Director of Finance, Policy and Governance recommends the creation of a Council Tax Setting Committee that would be delegated to agree the Council Tax Base and the formal Council Tax resolution each year. The formula to be used for the calculation of the Council Tax Base is set out in the Local Authority (Calculation of Council Tax Base) Regulations 1992 No.612. The Tax Base agreed is used to determine the level of Council Tax levied by the Council. The formal Council Tax Resolution then brings together the identified precept requirements of each precepting body to arrive at the total amount of Council Tax to be levied against each Council tax band.
- ii The benefit of this Proposal is that it takes account of the formulaic processes that inform the setting of the council tax base and the subsequent Council Tax resolution and avoids the need to call a full Council meeting to undertake this function. The Council's detailed service and financial planning processes and the setting of the budgets would be unaffected by this change.
- iii The Committee would be required to meet twice a year.

C Planning Items

i Procedure Rules for town and parish council call in: Planning Committee terms of reference

i.i The Constitution currently includes a provision put in place by this Council (rather than to comply with any legal requirement) where town and parish council's can call in planning applications under the Planning and related legislation, for consideration by the Planning Control Committee where a written opinion is received from a parish council contrary to any officer recommendation. This right of parish council call in is not in place in any other Council that the Acting Monitoring Officer is aware of. It has proven to be largely ineffectual (as officer recommendations have rarely been overturned on a parish call in) and has affected the Council's ability to meet its performance standards to decide planning applications within the required statutory deadline.

i.ii It is therefore proposed that a Parish Council call in be referred to Planning Control Committee only, where it is supported by a ward member.

ii Appeals received against the making of a Tree Preservation Order

Any appeals received against the making of a Tree Preservation Order are currently considered by the Licensing and Appeals Committee. This relates back to the previous constitutional arrangements when decisions on planning applications were made by Area Committees. It is suggested that decision making in relation to Tree Preservation Orders, on the limited occasions it is required, be included within the remit of the Planning Committee. This is the only planning matter not currently dealt with by the Planning Committee. Changes to the terms of reference for the Planning Control Committee have been made to allow for this.

D Licensing Committee

i The Policing and Crime Act 2009 (in effect April 2010) introduces the concept of a sexual entertainment venue (e.g. lap dancing). A Report will follow to Licensing and Appeals Committee during 2010/11 regarding the detail of the legislation. However the terms of reference of the Committee need to be amended to include this.

E Amendments to the Scheme of Delegation

There needs to be the following changes to the Scheme of Delegation:

i The Constitution was amended in 2009 to take account of the Councillor Call for Action CCfA (2007 Act). It is proposed that individual submissions to be taken through CCfA, will be delegated for decision to the Proper Officer in consultation with the chair of the Overview and Scrutiny Committee, taking due regard of activities already undertaken to resolve the matter.

ii The amended Scheme of Delegation includes an amendment to the delegation of the Monitoring Officer, to delegate authority to make consequential changes to the Constitution to reflect resolutions of Council or of the Executive, and changes of fact and law subject to regular notification to all members of all such changes, without the need for specific reports to Council.

iii The following minor changes to the scheme of delegation for officers are required:

- Delegation for the appointing officer under the Party Wall etc Act 1996
- Delegation for the Director of Finance, Policy and Governance to attend Magistrates Court for the recovery of council tax and non domestic rates to enable onwards delegation to the Head of Revenues and Benefits
- Amended drafting to explicitly refer to delegation for the Director of Customer Services to authorise the use of Council owned land and property for community use and events

F Portfolio Holder Delegations

- i On 1st April the Housing & Environmental Health Service changed its name to the Housing & Public Protection Service as a consequence of the absorption of the community safety function. It may be appropriate to amend the Portfolio title.
- ii A recommendation is included in this Report to delegate authority to the Acting Monitoring Officer, to make any consequential changes to the Constitution that may be required to the Scheme of Delegation to record the delegations made by the Leader to Portfolio Holders. This is be on the basis that the Monitoring Officer will bring a Report back to full Council detailing those changes.

G Legislative changes

i The Local Government & Public Involvement in Health Act 2007

The Act contained a wide range of provisions of which the majority were subject to implementation dates and statutory guidance to be determined by Ministers following the passage of the Act in to legislation. There are provisions of the Act not included in the revised constitution for 2010/11 and which maybe subject to a further Constitution report at a future time. These include:

- New executive and election arrangements from 2011; this includes the new strengthened leadership model introduced in the Act. This provides councils with a choice between a directly elected mayor and an indirectly elected leader with a four year term. Legislation requires these new models to be implemented in phases, with district councils going last in 2011. A separate report will follow during 2010/11.
- The power to issue byelaws without the consent of the Secretary of State in certain circumstances; this is not currently being actively pursued by NHDC as there needs to be demonstration of benefits for additional resource/investment but is something which will be kept under review by relevant services.
- The duty to co-operate – including not only our own duty as a partner agency, but also the scrutiny by the authority of the way in which that duty is discharged by other public bodies. Preparatory work for this was carried out via the Partnerships FSR and an annual review of seven top partnerships will commence from late 2009. The ability to hold a partner ‘to account’ for not co-operating has not yet been tested in law, nor are there any sanctions in place under legislation at this stage to punish those who do not co-operate, so this must retain a ‘watching brief’ status at this stage.

ii **The Local Democracy, Economic Development & Construction Act 2009**

There must be a Scheme concluded by June 2010 confirming how the Council will respond to Petitions received. This will need to be implemented by December 2010.

H Other amendments

- i The references in the Constitution to EU Procurement thresholds have been amended so that they no longer refer to a specific financial amount to allow for the fact that these levels change. These are relevant in relation to the extent of a Portfolio Holders delegated authority, and also in relation to the Contract Procurement Rules. For information the current limits are for supplies and services; £156,442 and for works; £3,927,260.
- ii The reference in the Constitution to the Cabinet Sub Committee (Hitchin Town Hall Trust) is recommended to be amended to Cabinet Sub Committee (Hitchin Gymnasium and Workmans Hall Trust) for clarity.
- iii There have been a small number of very minor general and technical updating amendments included in the track changes shown at Appendix 1. These are for clarity and accuracy and include:
- minor drafting amendments to the Articles
 - in relation to the functions of full Council the Best Value Performance Plan is now the Annual Report to Council and the Crime and Disorder Reduction Strategy is now the Community Safety Plan
 - deletion of references to best value

4.3 For Information

4.3.1 The Standards Committee responded to a consultation on proposed changes to the Members Code of Conduct in December 2008. It was anticipated that this would lead to further revisions to the Code of Conduct during the civic year 2009-10. However this has not happened and development in relation to this area is awaited.

4.3.2 There are items that must still be reviewed. These will be actioned during 2010/11 as part of the Review referred to at paragraph 3.5 above. These are listed below and the detail follows:

A: Monitoring Officer to consult with all Committees in relation to their terms of reference

B: Review standing orders to make clear which rules apply to full Council and which apply to other meetings and general update

C: Review the rules of public participation

D: Ensure that the Scheme of Delegation properly fits with Financial Regulations and Contract Procurement Rules

E: Review Member/Officer protocol for effectiveness

A The revisions to the Constitution in 2009 altered the manner in which responsibilities for all Committees were recorded. It had been intended and reported with the Constitution Review Report for 2009 that the Monitoring Officer would present a report to each Committee to set out and explain their terms of reference and seek members opinion on whether the terms of reference ought to be altered in any way. Any

proposed alterations to of course be subject to the sanction of full Council (or Cabinet for execution functions).

B-E In addition to the two matters referred to at paragraph 4.1 above, it was also proposed by the Acting Monitoring Officer last year, that additional reviews be conducted in conjunction with the Democratic Services Manager. These are the items referred to as B, C, D and E above.

4.3.3 Comprehensive Area Assessment

Changes to the performance reporting regime for local authorities from April 2009 established the identity of a 'Place' and the relevant change to reporting of outcomes and their impact on local communities. The first CAA assessments were published in December 2009. The process is subject to review and this has the potential to change the process from the September 2010 review cycle, with any additional reporting required affecting one or more of the Council's committees from early 2011. Performance reporting for Police and Community Safety partners is also subject to further review and implementation of a new framework from April 2010 to take account of new Local Area Agreement arrangements.

4.3.4 Sustainable Communities Act

The Sustainable Communities Act received further review prior to the dissolution of Parliament for the 2010 General Election. It was agreed that a regular cycle of submissions from Councils should be put forward, but that the timing of that cycle and its regularity would not be issued by the Secretary of State until January 2011.

5. LEGAL IMPLICATIONS

Section 37 Local Government Act 2000 requires the Council to have in place a constitution and to keep that constitution under review.

Only full Council can sanction amendments to the constitution save for any delegation that full Council may agree to the Acting Monitoring Officer.

Section 102 of the Local Government Act 1972 provides that Council appoints committees and that committees appoint sub-committees.

6. FINANCIAL AND RISK IMPLICATIONS

None arising from this report

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

None arising from this report

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

None arising from this report

9. RECOMMENDATIONS

9.1 That Members note the information contained:

9.1.1 at paragraphs 3.5 and 4.3.2 in relation to the proposal to bring a review of the Constitution forward during 2010/11; and

9.1.2 at paragraph 4.2 G (i) regarding the separate Report that will follow in relation to the new executive and election arrangements and the possible items relating to the power to issue byelaws and the duty to co-operate.

9.2 That the Council considers the proposals in section 4.2 A of the Report regarding the proposed Committee structure for an Overview and Scrutiny Committee and an Audit and Risk Committee and if satisfied:

9.2.1 resolves to approve the amendments required to the Constitution to enable that

9.2.2 recommends to the Overview and Scrutiny Committee that it appoint the Finance and Performance Scrutiny Sub-Committee and the Partnerships Scrutiny Sub Committee

9.3 That the Council considers and approves the following proposals and the consequential changes to the Constitution:

9.3.1 at paragraph 4.2 B of the Report for the formation of a new Council tax setting Committee

9.3.2 at paragraph 4.2 C(i) of the Report regarding the proposal to amend the Parish/Town Council call in of planning applications made under the planning legislation

9.3.3 at paragraph 4.2 C(ii) of the Report regarding the proposal to move consideration of objections to Tree Preservation Orders from the Licensing and Appeals Committee to the Planning Control Committee

9.3.4 at paragraph 4.2 D of the Report regarding the amendment to the terms of reference of the Licensing and Appeals Committee

9.3.5 at paragraph 4.2 E of the Report relating to the Scheme of Delegation including delegation to the Acting Monitoring Officer to make consequential changes to the Constitution to reflect resolutions of Council or of the Executive, and changes of fact and law subject to regular notification to all members of all such changes

9.3.6 at paragraph 4.2 H of the Report relating to the other amendments.

9.4 That, consequent upon the decisions in Recommendation 9.1 to 9.3 above, the Council approves the revised Calendar of Meetings for 2010/11, as set out at Annex 3 to the report.

9.5 That the Council delegates authority to the Acting Monitoring Officer further to paragraph 4.2 F(ii) of this Report, to make any consequential changes to the Scheme of Delegation that may be required to record any changes to Portfolio Holder arrangements made by the Leader to Portfolio Holders.

10. REASONS FOR RECOMMENDATIONS

To ensure the Council meets its statutory obligations and continues to improve its working practices

11. ALTERNATIVE OPTIONS CONSIDERED

None.

12. APPENDICES

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| Annex 1 | Revised Constitution with 'track changes; between 2009/10 & proposed 2010/11 version |
| Annex 2 | Notes of Policy Portfolio Holder's Advisory Group |
| Annex 3 | Draft (alternative) Civic Meetings Timetable 2010/11 Spreadsheet listing details to the constitution |

13. CONTACT OFFICERS

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14. BACKGROUND PAPERS

None.