

**Special Meeting of the Cabinet – 13<sup>th</sup> November, 2012**

**Report of the Director of Corporate Resources**

**Annual Review of the Constitution**

**Purpose of Report**

1. To consider the annual review of the Constitution.

**Background**

2. The Council introduced its written Constitution in May 2002.
3. Section 37 of the Local Government Act 2000 requires the Council to keep the Constitution up to date. This is reflected in Article 15, which requires the Monitoring Officer to monitor and review the operation of the Constitution in order to ensure that the aims and principles are given full effect.
4. Full Council is responsible for approving changes to the Constitution after consultation with the Cabinet. An exception to this is that the Leader, with the support of the opposition Group Leader, may approve amendments to the Scheme of Delegation from time to time.
5. The Constitution is an important vehicle by which the Council promotes its overall democratic governance arrangements.
6. The last annual review of the Constitution was undertaken in October 2010. The review in 2011 was deferred in view of the enactment of the Localism Act 2011. All previously approved amendments have been fully implemented. Amendments are routinely made to update legal provisions and reflect ongoing operational issues.
7. This report takes account of ongoing changes in the national and local context and it is recognised that further amendments to the Constitution may be necessary during 2012/13 and beyond.

**Localism Act 2011 – The New Standards Regime**

8. On 16<sup>th</sup> July, 2012, the Council approved a report on the new standards arrangements, including a new Members Code of Conduct and arrangements for complying with new Government Regulations on registering interests. Training has been organised for all Members of the Council. Article 9 of the Constitution has been amended to reflect that standards functions are now the responsibility of the Audit and Standards Committee.

9. The Council gave delegated powers to the Monitoring Officer to produce arrangements for dealing with standards complaints and these are now available on the Council's website. The standards arrangements are attached in full as **Appendix 1** to this report for endorsement by the Council.

### **Petition Scheme**

10. Since 2009, the Council has operated a Petition Scheme under the provisions of the Local Democracy, Economic Development and Construction Act 2009. The existing scheme is set out in Part 6 of the Constitution. The Localism Act 2011 has now repealed the petitions provisions.
11. It is a matter for the Council to decide locally as to whether a Petition Scheme should remain part of the Constitution to assist with its governance arrangements. The opportunity has been taken to review the way in which the Council deals with petitions to reduce bureaucracy and simplify the previous scheme, which was based on a national model.
12. The Cabinet requested the Chairs of Scrutiny Committees to undertake a review of the procedures for dealing with petitions alongside the Area Committee review. Scrutiny Chairs considered this matter on 19<sup>th</sup> September, 2012 and the revised scheme set out in **Appendix 2** is presented for approval by the Council.

### **Localism Act 2011 – Ongoing Work**

13. On 20<sup>th</sup> June, 2012, the Cabinet received a report on progress in ensuring legal compliance with the Localism Act 2011. In particular, this referred to ongoing work in relation to four work streams: (i) governance and constitution; (ii) housing reform; (iii) development planning and (iv) community empowerment.
14. The Cabinet has previously endorsed the ongoing work being co-ordinated by the Localism Act Officer Steering Group. The relevant Cabinet Members, the Chief Executive and Directors have been authorised to pursue the implementation of the various provisions of the Localism Act 2011 as relevant to their areas of responsibility. I will monitor corporate progress through the Steering Group.

### **Review of Area Committees**

15. The previous agenda item sets out proposals to replace the Council's existing five Area Committees with more locally based Community Forums based around groupings of electoral wards. The introduction of the new Community Forums will require a complete revision of Article 10 of the Constitution and a draft is set out in **Appendix 3**. The Community Forums will be less formal bodies with a focus on encouraging greater community engagement. This will enable far greater flexibility in how the Forums are able to operate and conduct their business locally.

16. The former Area Committee protocols, as set out in Part 6 of the Constitution, and the references to Area Committees in Part 3 (Responsibility for Functions) will be deleted. The practical operation of the new Forums will be discussed further in the planned development sessions during December/January. In relation to the local area budgets, it is proposed that recommendations from ward members comprising the Community Forums be actioned by the Director of Corporate Resources.
17. Area Committees were previously responsible for the administration of local charities where the Council has been appointed Trustee. In practice, this affects the Stevens Trust, which was administered by Stourbridge Area Committee. To ensure the proper administration of the affairs of the Trust, detailed consideration is being given as to how this can best be achieved within the Council's Constitutional arrangements. This matter will be subject of a further report to the Cabinet.

### **Scheme of Delegation**

18. Part 3 of the Constitution deals with responsibility for functions. The scheme of delegation is considered each year at the annual meeting of the Council. Following the annual meeting in May, 2012, a review of the functions has been carried out with a view to updating terminology, legislative provisions and statutory guidance. The revised scheme of delegation is available on the Committee Management Information System and in the Members Room. A paper copy can be supplied to any Member on request to Democratic Services. The scheme of delegation has been the subject of consultation with all Directorates and now includes a separate portfolio for the Cabinet Member for Health and Wellbeing.

### **'Reference Up' of Decisions**

19. Within the general scheme of delegation, circumstances may arise, from time to time, where an individual Cabinet Member may decide that it would be more appropriate to refer a matter to the Cabinet although the matter may technically fall within his/her delegated functions. A similar situation may apply to an officer who considers it necessary to refer a matter to a Cabinet Member in appropriate circumstances. To recognise this situation, it is recommended that Article 7.06 (Responsibility for functions) be amended accordingly.

This provision is, however, intended to reflect exceptional circumstances where, for example, a decision is likely to attract significant public interest. The Monitoring Officer must be consulted in all cases where a Decision Taker intends to use this provision.

### **Process for calling special meetings of Committees**

20. The Constitution currently contains different provisions for convening special (or extraordinary) meetings of Committees. In order to avoid confusion, it is recommended that in all cases the Chair of a Committee, in consultation with the Director of Corporate Resources, shall be authorised to call a special meeting of any Committee at any time. A special meeting may also be called on the written requisition of the required number of members of the Committee concerned. For this purpose, the 'required number' shall be equal to the number of opposition members appointed to the Committee. This process would be consistent with the rules relating to scrutiny call-in approved by the Council several years ago.

### **Deputy Leader of the Council**

21. Article 7 of the Constitution (The Cabinet) refers to the role of Leader and other Cabinet Members but does not make specific reference to the Deputy Leader. It would seem appropriate to include the following within Article 7:

"The Deputy Leader will be a Councillor appointed to that position by the Leader. He/she shall hold office until the end of the Leader's term of office or until:

- (a) his/her term of office as a Councillor expires; or
- (b) He/she resigns from the office; or
- (c) He/she is no longer a Councillor; or
- (d) He/she is removed from office by the Leader.

If the office of Deputy Leader is vacant, the Leader shall appoint a person to that position. If the Leader is unable to act, the Deputy Leader must act in his/her place. If the Leader and Deputy Leader cannot act then the Cabinet must do so or appoint another Cabinet Member to act as appropriate."

### **Scrutiny Officer**

22. The Localism Act 2011 has repealed the statutory requirement for the Council to designate a Scrutiny Officer as previously contained in Section 31 of the Local Democracy, Economic Development and Construction Act 2009. The Assistant Director of Adult, Community and Housing Services (Housing Strategy and Private Sector), Dr Ron Sims, has undertaken this role since its inception.
23. In practice, however, many local authorities are continuing to designate an officer to lead on scrutiny issues. A review of the Council's Scrutiny Committees will be undertaken, with a view to new arrangements being considered in advance of the annual Council meeting in May 2013. It is proposed to retain the existing arrangements pending the review of the scrutiny process.

## **Access to Information Regulations**

24. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 came into force on 10<sup>th</sup> September, 2012 and apply to decisions taken by the 'executive', namely the Cabinet, Cabinet Members and Officers acting under delegated powers.
25. The main principles behind the Regulations are to increase transparency and promote the transaction of business in public session as far as possible. The presumption of openness underpins the Regulations and will complement the Council's long established decision-making processes.
26. 28 clear days notice is now required of the intention to take an 'executive' decision in private session. In practice, the Council will use the Forward Plan as a practical way of complying with these Regulations. If the 28 clear days notice cannot be complied with, then there is still provision for decisions to be taken: so long as the approval of the relevant Scrutiny Chair is obtained (or the Mayor/Deputy Mayor in his/her absence).
27. The Council must specify the date, time and venue for the signing of decision sheets. The public must be given access to these 'meetings'. The five clear days notice requirement for making all decisions is still in force. Democratic Services will continue to be responsible for ensuring the notice requirements are complied with.
28. Administrative arrangements have been put in place to deal with the practical application of the Regulations requiring all Directorates to give notice to Democratic Services of forthcoming business to be considered in private session. The requirements of the new Regulations will be reflected in the Access to Information Procedure Rules in Part 4 of the Constitution.

## **Forward Plan of Key Decisions**

29. Paragraph 14 of the Access to Information Procedure Rules states that a Forward Plan will be prepared by the Leader to cover a period of four months beginning with the first day of any month. The Plan is available on the Internet via the Committee Management Information System.
30. Directorates routinely notify Democratic Services of key decisions to include in the Plan. As referred to in paragraph 26 above, we are extending the Forward Plan to include any executive decisions that will be taken in private session to comply with new Government Regulations concerning access to information.
31. To make more effective use of the Forward Plan and increase opportunities for prior notification/consultation on items in the Plan, it is proposed that the Forward Plan be reported to all ordinary meetings of the Cabinet. Increasing accessibility to the Forward Plan will also assist the process of overview and scrutiny.

## **Finance**

32. There are no financial implications arising from this report. Any costs arising from compliance with the Constitution are met from existing budgets.

## **Law**

33. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up to date.

## **Equality Impact**

34. This report complies with the Council's policies on equality and diversity and there are no particular implications for children and young people.

## **Recommendations**

35. That the Council be recommended:
- (a) To endorse the standards arrangements, produced by the Monitoring Officer under delegated powers, as set out in Appendix 1.
  - (b) To approve the Petition Scheme as set out in Appendix 2.
  - (c) To approve a revision of Article 10 of the Constitution as set out in Appendix 3 to reflect the replacement of Area Committees with the new Community Forums (subject to the outcome of the previous agenda item).
  - (d) To delegate authority to the Director of Corporate Resources to action recommendations from the Community Forums in respect of area budgets, as referred to in paragraph 16.
  - (e) That the revisions and updates to the scheme of delegation, as referred to in paragraph 18, be approved and adopted.
  - (f) That the provisions for the 'reference up' of decisions, as set out in paragraph 19 be approved and incorporated in Article 7.06 of the Constitution.
  - (g) That the arrangements for calling special meetings of any Committee, as referred to in paragraph 20, be approved to ensure consistency in all parts of the Constitution.
  - (h) That Article 7 of the Constitution be amended to make specific reference to the role of the Deputy Leader as set out in paragraph 21.
  - (i) That the Council's existing overview and scrutiny arrangements and Scrutiny Committee structure be reviewed and that recommendations be presented to the Council in advance of the 2013/14 municipal year.

- (j) That the implications of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, be noted and that the Director of Corporate Resources be authorised to make any consequential changes to the Access to Information Procedure Rules in Part 4 of the Constitution.
- (k) That the Forward Plan of Key Decisions be reported to all ordinary meetings of the Cabinet as referred to in paragraph 31.



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#### **List of Background Papers**

[The Council's Constitution - Full copy on the Council's Website](#)