

**Cabinet – 14<sup>th</sup> December 2005**

**Report of the Director of Law and Property**

**Review of Constitution**

**Purpose of Report**

1. To review the Constitution and consider a number of amendments.

**Background**

2. The Council introduced its written Constitution in May 2002.
3. Article 15 of the Constitution requires me, in my capacity as Monitoring Officer, to monitor and review the operation of the Constitution in order to ensure that the aims and principles of the Constitution are given full effect. Any changes to the Constitution must be approved by the full Council after consultation with the Cabinet. The only exception to this is that the Leader, with the support of the other Group Leaders, may approve amendments to the Scheme of Delegation.
4. The Constitution was last reviewed by the Council in July 2004 when a number of amendments were introduced. These have now been fully implemented.
5. Within this report I will provide a general overview of the Constitution and will make further recommendations regarding amendments. I have consulted all three Group Leaders who support the report and its recommendations.

**General Overview**

6. The Constitution continues to provide a robust framework for decision making.
7. The Scheme of Delegation needs regular updating principally to reflect new legislation and to rationalise delegations given to Cabinet Members within their various portfolios.
8. Within the last year the Council has strengthened its corporate governance arrangements by introducing a new Scrutiny Protocol and a Protocol for Relationships between Members and Officers.
9. Over the next six months or so the Council will be finalising its remodelling arrangements, particularly for the new directorates of Children's Services and

Adult, Community and Housing Services, and will be deciding upon the new Community Strategy. Both will require amendments to the Constitution because the new structure and the key priorities of the Community Strategy and the Council Plan will have to be reflected in the terms of reference of the Select Committees and the Scheme of Delegation. In the meantime, the Constitution can be updated to reflect the new titles for the Directors of Children's Services and Adult, Community and Housing Services, and their directorates. In addition, the officer delegations should be altered to reflect the responsibilities of the new directorates.

10. The first half of 2005/6 has been a challenging time for the Licensing Committee as it has taken responsibility for the new liquor licensing regime. Between August and October the Licensing Sub-Committees were meeting daily to determine applications to vary licensing hours for which objections have been made. In October and November the meetings reduced to three times per week. This has also presented significant logistical problems for those officers who have to submit reports or attend meetings of the sub-committees. It is pleasing to note, however, that the Council as a whole has managed to deal with this high workload and that we have been regularly complimented on the user friendly procedures that we have introduced for local hearings.
11. This year has also seen the introduction of the Freedom of Information Act 2000. With effect from the 1<sup>st</sup> of January 2005 there has been a general right of access to recorded information held by the Council subject to certain conditions, fees and exemptions. Up to the 1<sup>st</sup> November 2005 the Council had received 321 information requests. On the whole the Council has been able to respond to these requests within the statutory timescale and there has been only 1 appeal to the Information Commissioner against a decision of the Council.
12. The Human Rights Act 1998 has been in force for some five years. The implications of the Act for central and local government are still being developed by the Courts. The Council is aware of the need to take the Act into account in making decisions (and the reports and decision sheets upon which decisions are made), and during the course of the year my colleagues in Legal and Democratic Services have made a series of presentations to each Directorate Management Team to continue raising awareness of the Act and to nominate officers within directorates to take the lead in identifying human rights issues.
13. From September 2005 an electronic version of the Register of Members' Interests has been available though we continue to maintain a manual copy. With regard to declarations of interest at Council meetings, members are encouraged to give advance notice of personal interests to Legal and Democratic Services and a proposal regarding the advance notification of prejudicial interests is dealt with later in this report.

### **Proposed Amendments to the Constitution**

14. Following consultation with the Group Leaders and officers a number of amendments are proposed and these are set out in Appendix 1.

### **Declarations of Interest**

15. Advance notification of personal interests at meetings of the Council has worked reasonably successfully and it is felt that we should now introduce two further refinements. First, members should now be encouraged to make advance disclosure of prejudicial interests which will be set out in the list of interests circulated at the meeting of the Council. A member who has a prejudicial interest will still need to vacate the room whilst any matter in which they have an interest is discussed and, of course, they must play no part in the debate or vote on that matter.
16. Secondly, a number of the personal and prejudicial interests which are declared at the meeting of the Council simply repeat a declaration which already appears in the White Book. In future it is proposed to take these declarations as read and the Mayor will make a general announcement that any declarations of interest which are recorded in the White Book are deemed to be repeated at the meeting. Again, this will not affect the requirement that a member with a prejudicial interest in a matter must not play any part at all in the deliberations on that matter.
17. These revised arrangements should streamline the process for declaring interests and reduce the amount of unnecessary time spent on declarations.

### **Code of Practice for Members and Officers dealing with Planning Matters**

18. The Planning Code has been in place for a number of years and a number of its provisions are out of date. It is proposed that the Director of Law and Property and the Director of the Urban Environment, in consultation with the Cabinet Member for Planning Policy and the Chairman of the Development Control Committee, review the Code and submit a report to the Development Control Committee and the Cabinet. A final decision on updating the Code will be taken by full Council.

### **Finance**

19. There are no direct financial implications arising from this report.

### **Law**

20. Section 37 of the Local Government Act 2000 requires the Council to prepare and keep up to date its written Constitution.

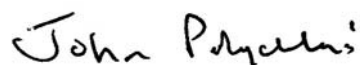
### **Equality Impact**

21. The Council's ever-increasing awareness of human rights issues and equality legislation helps to ensure that our policies, strategies and decision making are consistent with our statutory responsibilities.

### **Recommendation**

22. It is recommended that the Council be recommended to: -
  - (i) note this report

- (ii) approve the amendments to the Constitution set out in paragraph 9 and Appendix 1
- (iii) approve the arrangements for declarations of interest set out in paragraphs 15 and 16, and
- (iv) approve the arrangements for the review of the Code of Practice for Members and Officers dealing with Planning Matters set out in paragraph 18.



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**John Polychronakis**  
**Director of Law and Property**

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

1. The Constitution
2. Internal e-mails regarding proposed amendments

### **Proposed Amendments to Constitution**

#### **Select Committees**

1. Article 6.03(d)(page B13) requires Select Committees to report annually to full Council. It has been the practice in recent years for annual reports to be submitted to the Council via the Cabinet in accordance with Article 6.02(ii). In future it is proposed that the annual reports should be submitted directly to the Council without having to go through the Cabinet.
2. The Select Committee for Culture and Recreation has introduced a “public forum” slot as a permanent feature of its agenda. The Environment Select Committee has introduced a similar standard item and it is appropriate for the Constitution to provide a facility for all Select Committees should they wish to adopt this practice in future. It is suggested, therefore, that the following additional sentence be included at the end of paragraph 14 of the Select Committee Procedure Rules: -  
  
“In addition a Select Committee may choose to include a standard item entitled “Public Forum” on its agenda to facilitate members of the public asking questions on any matter falling within the terms of reference of the Select Committee”.
3. Article 6.07 states that the Chairmen of Select Committees will meet on a regular basis. It would be more appropriate for this Article to state that “ Arrangements will be made for the Chairmen of Select Committees to meet.....”. In practice the meetings of the Select Committee Chairmen are infrequent and are only called when there is a specific item of business.

#### **Area Committees**

4. Article 10.06(page B25) raises the same issue as for meetings of Select Committee Chairmen. It is proposed that this Article be amended to read “Arrangements will be made for the Chairmen of Area Committees.....”. In practice the meetings of Area Committee Chairmen are infrequent.
5. Area Committees are no longer required to produce a local community plan for their area but they may choose to do so. This requires a minor amendment to Function (2) on page C113 by including the words “if appropriate”.
6. The Protocol for Area Committees at page F31 refers to a decision summary being circulated by e-mail the next working day after a meeting of an Area Committee. This is not feasible and the standard needs to be altered to 2 working days.

#### **Deputy Leader**

7. Although we have had the position of Deputy Leader for a number of years, it is not specifically referred to in the Constitution and 3 proposals are put forward to regularise this situation.

8. First, Article 4.02(d) (which deals with the functions that will be exercised by the Council) should include the election of the Deputy Leader.
9. Paragraph 1.1(vi) (page D4) which sets out the business for the Annual Meeting of the Council should make provision for the election of the Deputy Leader.
10. Finally, paragraph 2.1 of the Cabinet Procedure Rules (page D50) should refer to the Deputy Leader chairing a meeting of the Cabinet in the absence of the Leader.

### **Scheme of Delegation**

11. It is proposed that the Scheme of Delegation be amended to transfer the functions relating to the use of the designated entertainment areas in Dudley, Halesowen and Stourbridge Town Centres to the Town Centre Managers in the Directorate of the Urban Environment. This role is currently undertaken by Legal and Democratic Services.
12. At page C72 regarding Housing functions, the delegated power to allocate properties (paragraph 14) should now be exercised in consultation with the Director of Children's Services in relation to the accommodation needs of children leaving care.
13. The following amendments are required to the Function of the Cabinet Member for Social Services:-
  - at page C95 the reference to the assumption of the parental rights and duties of children in care (paragraph 9) is no longer part of legislation and should be deleted
  - at page C95 the reference to the termination of rights of parental access to children in care (paragraph 10) is now a matter for the courts and should be deleted
  - at page C96 the reference to the Adoption Agencies Regulations 1983 (paragraph 11) should be replaced by the Adoption and Children's Act 2002
  - at page C96 the reference to appeals from the Adoption Panel in relation to the payment of an adoption allowance (paragraph 12) is no longer required and should be deleted
  - at page C96 the delegation regarding the Registered Homes Act 1984 (paragraph 13) can be removed as it is no longer a function of the Council.
14. A number of the onward officer delegations also need to be amended.
15. At page C95 paragraph 2 dealing with the reception of children into the care of the Council should be reworded as follows:-

"The reception into the care of the Council including taking emergency action to safeguard their welfare where this is needed."
16. At page C95 paragraph 3 refers to "children in care" and this should now be amended to "looked after children".

17. At page C95 paragraph 4 regarding the adoption of children should be replaced with the following:-  
“The determination of matters in relation to the adoption of children following the recommendations of the Adoption Panel including post adoption support”.
18. At page C95 paragraph 5 regarding the panel of Guardian ad Litem should be deleted as this is no longer a responsibility of the Council.
19. At page C95 paragraph 6 regarding the registration and regulation of nurseries and child minders should be deleted as this is no longer a responsibility of the Council.
20. At page C96 paragraph 7 the reference to the determination of matters with regard to the custodianship of children under the Children Act 1975 including the payment of an allowance is no longer applicable and should be deleted.
21. At page C96 paragraph 9 the delegation regarding the guardianship of mentally disordered patients can be deleted because the Mental Health Act 1983 has been repealed.
22. At page C96 paragraph 11 regarding the registration and inspection of private and voluntary residential care homes should be deleted as this is no longer a responsibility of the Council.
23. At page C97 it is proposed that the limit on the officer delegation for the approval of interest free loans or grants under the Chronically Sick and Disabled Persons Act (paragraph 13) be increased from £5,000 to £10,000.
24. At page C97 paragraph 16 should be replaced with the following:-  
“The exercise of parental rights, on a day to day basis, in respect of looked after children and young people”.
25. At page C98, the reference to the Boarding Out of Children (Foster Placement) Regulations 1988 (paragraph 17), should be replaced by the Fostering Services Regulations 2002. In the same paragraph, the reference to Accommodation of Children (Charge and Control) Regulations 1988 should be replaced by the Placement of Children with Parents etc. Regulations 1991.
26. At page C98 it is proposed that the limit on the approval of loans in connection with disabled facilities' grants (paragraph 19) be increased from £10,000 to £15,000.
27. At page C98 with regard to the current delegation regarding Out of Borough placements (paragraph 19), it is proposed that such placements be delegated to the Director of Children's Services where the cost does not exceed £100,000, and to the Director, in consultation with the Cabinet Member for Social Services, where the cost does exceed £100,000.
28. At page C98 the delegation regarding changing a child's name (paragraph 20) no longer applies and should be deleted.

29. Currently, all Directors have delegated authority to agree local settlements of complaints to the Ombudsman up to £2,000 and it is proposed that this limit be increased to £5,000.

The corresponding function for Cabinet Members should also be amended accordingly.

### **Other Committees**

30. We currently appoint a Social Services (Appeals) Committee (page B17). The Committee has not met for some time and its functions have been overtaken by the Freedom of Information/Data Protection legislation and amendments to the Social Services Complaints Procedures. It is proposed, therefore, that this Committee be not reappointed at the Annual Meeting of the Council next May.
31. Under Article 8.01 the Tree Preservation Orders Committee functions should now include powers relating to the preservation of trees and deciding on applications for the felling of trees subject to a TPO or in a Conservation Area. It is proposed, therefore, that Article 8.01 be amended accordingly.

### **Council Procedure Rules**

32. Paragraph 12.1 of the Council Procedure Rules deals with Notices of Motion. Currently a member must deliver a written Notice of Motion to the Director of Law and Property not later than 6 working days before the date of a meeting of the Council. In practice this means that the deadline for serving a Notice of Motion is the same day upon which the agenda for the Council meeting is dispatched. In theory, therefore, a Notice of Motion served on that day could either delay sending out the agenda or require an amended agenda to be sent subsequently. In order to overcome this problem it is proposed that the deadline for delivering a Notice of Motion should be 8 working days before the meeting of the Council. This will also require a consequential amendment to paragraph 12.3 of the Council Procedure Rules which states that, if a Notice of Motion is not received by the due date, it will stand over to the next but one meeting of the Council.
33. Paragraphs 2.1 and 2.2 of the Council Procedure Rules refer to the order of business for ordinary meetings of the Council. A minor amendment is required to provide a more logical order for the preliminary items of business i.e. to start with apologies for absence followed by declarations of interest and then confirmation of the minutes.

### **Officer Employment Procedure Rules**

34. These are set out at page D68 and they govern the process for appointing senior officers i.e. the Chief Executive, Directors and Deputy Directors. The definition of a Deputy Director is wide enough to include Assistant Directors and it is proposed that an additional sentence be included in paragraph 5.1 as follows: -

“This includes an Assistant Director”.



## **Corporate Format of Reports**

35. It is proposed that the Equality Impact paragraph in the Corporate report format include a requirement for report writers to make reference to:-
- the effect of the decision on children and young people
  - whether there was consultation with children and young people, and
  - the involvement of children and young people in developing the proposals

## **Financial Management Regime**

36. It is proposed that paragraph 2.8 of the Financial Management Regime be amended as follows to require the Director of Finance to produce an overall summary showing forecast outturn compared with the approved budget, in the quarterly performance management report to the Cabinet:-

2.8 Monthly reports will be produced by each Director, in conjunction with the relevant Accountant, showing forecast outturn compared with approved budget for each division of service, and explaining how any variances have arisen and how they will be dealt with. These reports will be countersigned by the relevant Cabinet Member, and will be submitted to the Director of Finance in accordance with an agreed timetable. The Director of Finance will then report the overall summary position to Directors and the Cabinet quarterly, as part of the Corporate Performance Management Report.

## **Changes to the Constitution**

37. Article 15.02 (page B35) states that changes to the Constitution will only be approved by the full Council. This requires a modest amendment to reflect the fact that the Council has previously agreed that the Scheme of Delegation may be amended by the Leader through a Decision Sheet with the approval of the other 2 Group Leaders.