

Meeting of the Cabinet – 29th October, 2014

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, in consultation with 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, 2013. 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 will be necessary during 2014/15 and beyond.

Review of the Council's Senior Management and Organisational Structure

8. A report on the review of senior management and the Council's organisational structure was considered by the Council on 13th October, 2014. The restructuring proposals have major implications for the Council's Constitution, with particular reference to Cabinet and senior officer portfolios/delegated powers and the need for a review of the existing scrutiny arrangements.

9. Following the appointment of the Chief Executive, Strategic Directors and Chief Officers during October and November, 2014, a consultation exercise will take place during December and January concerning functions at fourth tier management level. These changes will need to be reflected in the Constitution.
10. In view of the ongoing restructuring process, I would request authority to make any urgent, necessary or consequential changes to the Constitution, for example to update terminology or post titles. The Constitution will need to be frequently updated to reflect ongoing decisions of the Council. The development of Scrutiny Committee structures and associated arrangements will be a member-led process. A report will be submitted to the Overview and Scrutiny Management Board in December to give consideration to this work in advance of the 2015/16 municipal year. It is recommended that the five existing Scrutiny Committees should continue unchanged for the remainder of this municipal year to complete the work previously allocated to them in the Annual Scrutiny Programme.

Integrated Transport Authority - Establishment of an Overview and Scrutiny Committee

11. During the process for the reform of the Integrated Transport Authority (ITA) earlier this year, the Department for Communities and Local Government indicated that, along the lines of combined authorities, they would like to see an Overview and Scrutiny function for the new ITA. This is to ensure that there is representation from minority parties given there will only be one member per authority on the ITA, and there should be cross party involvement in long term decisions made on transport.
12. At its meeting on 18th September, the ITA agreed to the establishment of a Joint Overview and Scrutiny Committee and its Terms of Reference. Further, that the model for the Committee be based on the principles used for the Police and Crime Panel; and that the appointment of Members to the Committee shall be made by the Authorities with a view to ensuring that the balanced appointment objective is met so far as is reasonably practicable.
13. The ITA has agreed to establish an Overview and Scrutiny Committee as set out in the attached Terms of Reference at Appendix 1 to this report.
14. Membership will comprise twelve elected members appointed on an annual basis by the Authorities.
15. (a) One Member appointed by each of the following Councils, subject to that appointee being the Elected Mayor if any Councils operate such a system of governance:
 - Birmingham City Council
 - Coventry City Council
 - Dudley Metropolitan Borough Council
 - Sandwell Metropolitan Borough Council
 - Solihull Metropolitan Borough Council
 - Walsall Metropolitan Borough Council
 - Wolverhampton City Council

(b) Two further Members to be nominated by Birmingham City Council and appointed by the West Midlands Joint Committee.

(c) Two further Members to be jointly nominated by Dudley, Sandwell, Walsall Metropolitan Borough Councils and Wolverhampton City Council (via the Association of Black Country Authorities) and appointed by the West Midlands Joint Committee.

(d) One further Member to be jointly nominated by Coventry City Council and Solihull Metropolitan Borough Council and appointed by the West Midlands Joint Committee.

16. Following the local elections in 2014 and recent change in political leadership at Walsall MBC, the following political balance applies to the West Midlands ITA Overview and Scrutiny arrangements: Labour 8, Conservative 3 and Liberal Democrats 1.
17. Each district council is responsible for making its own individual appointment. Appointments to the remaining 5 elected member places will be considered by the West Midlands Joint Committee in line with similar arrangements that apply to the West Midlands Police and Crime Panel.
18. The Joint Scrutiny Committee will be hosted under local governance arrangements by Wolverhampton City Council. The Managing Director of Wolverhampton City Council will be Clerk to the Joint Scrutiny Committee.
19. Wolverhampton City Council's Standing Orders will apply to the Joint Scrutiny Committee. The Host Authority will also provide Section 151 (Financial) and Monitoring Officer (Legal) roles to the Joint Scrutiny Committee.

Openness of Local Government Bodies Regulations 2014

20. Further to previous guidance issued by the Department for Communities and Local Government, the above Regulations were issued during the summer of 2014. The Regulations have two main effects – (i) requiring Councils to make available reasonable facilities for members of the public to report on both executive and non-executive meetings using any communication method, including the internet; and (ii) requiring significant officer decisions, both executive and non-executive, to be recorded and published.

Reporting of Meetings

21. The Regulations are designed to enhance people's rights to report on meetings in digital and social media.
22. The Regulations increase the rights of the press and public to film, audio record, take photographs and use social media (eg: Twitter/Facebook) and the internet to report on any meetings that are open to the public.

23. The Council already provides “reasonable facilities” to facilitate reporting. The rules do not allow oral commentary as this would be disruptive. We are encouraged to embrace the use of modern technology and allow maximum openness and transparency at all public meetings, including Community Forums.
24. Dudley’s Constitution already states that the Council has no objection to the use of social media, blogging or similar electronic facilities during any meetings to which the public have access.
25. However, the new Regulations have removed the requirement for the consent of the meeting to be obtained in advance. Individuals do not need to seek prior approval, however, it is good practice that anyone wishing to film or record should notify the relevant officers (eg: Democratic Services) beforehand so that any necessary arrangements can be made and reasonable facilities made available.
26. There is no legal requirement for any meetings to be webcast. Meetings of the full Council are currently recorded for live broadcast on the Internet. The recordings of the Council meeting are not currently retained following the live broadcast, however, given the extension of the rights of individuals to make their own recordings, it is recommended that, in future, the Council meeting is broadcast via the Council’s YouTube channel. The recording would then be retained on the website.
27. Arrangements are in place to advise members of the public attending meetings that the proceedings may be recorded (eg: in the Chair’s announcements, notices in Council Chamber and meeting rooms and a statement on agenda papers). Guidance has been issued to Chairs and Lead Officers on the procedures for dealing with any disruptive behaviour or any objections from individuals concerning them being filmed or recorded.
28. It is recommended that Council Procedure Rule 24.6 be amended to provide that the Council has no objection to recording, filming, photography, use of social media, blogging or any similar electronic facilities during any meetings to which the public have access provided that the use of any equipment does not disrupt the meeting or the lawful transaction of business.

Publishing ‘Significant’ Officer Decisions

29. The new Regulations also require that certain decisions made by officers under both executive and non-executive delegated powers are recorded and published (unless they contain exempt or confidential information) in much the same way that Cabinet Member/Key Decisions are currently published. The Regulations require officers to make written records of certain decisions and make them available to the public along with any relevant background papers.
30. The form of the written record is for the Council to decide, but some guidance is given in the DCLG Guide. This is generally in line with the Council’s standard format for decision sheets and Committee reports, the latter being contained in the Constitution.

31. There is no definitive list of the decisions that need to be recorded and the exact scope of the new Regulations is difficult to determine. The Regulations do, of course, complement existing rights to access documents through the use of Freedom of Information legislation and local transparency arrangements. In the interim, I have taken steps to ensure that the Council complies with these Regulations either by the use of systems that are already in place or by publishing relevant decisions on the Committee Management Information System via the Internet.
32. As referred to above, the Regulations require local government officers to make a written record of certain decisions and to make the record available for inspection by members of the public. An officer, who without reasonable excuse, either intentionally obstructs a person exercising the right to inspect, or refuses a request to provide a written record or background papers, is guilty of a criminal offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Employee Code of Conduct

33. The Employee Code of Conduct is subject to an annual review process. Following consultation with trade unions no significant issues or amendments have been raised for 2014. However, as a result of changes to Contract Standing Orders last April, the following revised paragraph needs to be inserted into the employee code to ensure consistency:

3.7 Contractors

Employees are reminded of the requirements of paragraph 4.1. of Contract Standing Orders which states that:-

"No employee, member, spouse or other close relative will supply goods, services or carry out works unless they have been procured by competitive tender or quotation. The same applies to any company, partnership or firm in which they have an interest."

"Other Close Relative" shall include but shall not be limited to a person cohabiting on a similar basis to a spouse, a civil partner, a parent, grandparent, uncle, aunt, son, daughter, grandson, grand-daughter, brother, sister, niece or nephew of the employee or member or their spouse or cohabitee, whether the relationship is through blood, marriage or adoption.

Anti –Social Behaviour, Crime and Policing Act 2014

34. The above legislation is in effect from 20th October 2014 and the majority of powers relate to Adult, Community and Housing Services and Children's Services.
35. Some of the powers under the Act relate to Urban Environment concerning the prevention of nuisance and annoyance; provision for community protection notices and public spaces protection orders (provision for premises closure notices and orders to be issued and made in respect of premises which cause nuisance to the public); the Act will also amend the provisions of the Dangerous Dogs Act 1991, etc.

36. The Act introduces a series of 'tools' available to deal with Anti-Social Behaviour, replacing a number of previous provisions. Alongside a general reference to the Act, the following delegations will need to be included in the Constitution under the portfolios of the relevant Cabinet Members and onward delegations to Officers:

- Injunction (replaces Anti Social Behaviour Order/Anti Social Behaviour Injunction/Individual Support Orders and Drinking Banning Orders)
- Criminal Behaviour Order (replaces Criminal Anti Social Behaviour Order)
- Closure Order (replaces Crackhouse and Premises Closure Order)
- Community Protection Notice (replaces certain Environmental Powers)
- Public Spaces Protection Order (replaces certain Orders relating to the control of land)

Powers Relating to Dangerous Trees and Functions of the Development Control Committee relating to Trees

37. The list of delegated powers, under the portfolio of the Cabinet Member for Transport, currently refer to 'Dangerous Trees (other than those on Education land or those abutting highways)'. The words in brackets have caused some confusion in that there are no other references in the Constitution to similar powers being undertaken by any other Cabinet Member(s) or Officers. Accordingly, it is recommended that the words in brackets are deleted for the purposes of clarity.
38. A number of amendments are required to the delegated functions under the Development Control Committee to bring the functions relating to trees in line with the way in which other development control applications are dealt with. This will ensure that the same criteria are applied to all applications. The wording of these amendments will be agreed in consultation with the Director of the Urban Environment and the Chair and Vice-Chair of the Development Control Committee prior to implementation.

Finance

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

Law

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

Equality Impact

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

Recommendations

42. The Council be recommended:

- (a) That the Director of Corporate Resources be authorised to make any urgent, necessary or consequential changes to the Constitution arising from the ongoing review of the Council's Senior Management and Organisational Structure.
- (b) That the Overview and Scrutiny Management Board consider revisions to the Council's Scrutiny Committees and associated scrutiny arrangements in advance of the 2015/16 municipal year with a view to recommendations being submitted to the annual meeting of the Council in May, 2015.
- (c) That the creation of the ITA Overview and Scrutiny Joint Committee in the form set out in the report and at Appendix 1 be approved.
- (d) That a Member be appointed as this Council's representative on the ITA Overview and Scrutiny Joint Committee.
- (e) That West Midlands Joint Committee be given delegated powers to determine the remaining places on the ITA Overview and Scrutiny Joint Committee on the principles set out in this report and Appendix 1 in order to establish political proportionality.
- (f) That the Director of Corporate Resources be authorised to agree and enter into such documents that are necessary to give effect to the above decisions concerning the ITA Overview and Scrutiny Joint Committee.
- (g) That the proposals set out in this report to comply with the Openness of Local Government Bodies Regulations 2014 be approved, including the amendment of Council Procedure Rule 24.6 as referred to in paragraph 28.
- (h) That the amendment of the Employee Code of Conduct, as set out in paragraph 33, be endorsed.
- (i) That appropriate references to the Anti –Social Behaviour, Crime and Policing Act 2014 and the specific provisions referred to in paragraph 36 be included in Part 3 of the Constitution under the portfolios of the relevant Cabinet Members and Officers.

- (j) That the proposed amendments to the powers relating to dangerous trees and the functions of the Development Control Committee relating to trees be approved, subject to the revised wording of the Development Control Committee terms of reference being agreed by the Director of Corporate Resources in consultation with the Director of the Urban Environment and the Chair and Vice-Chair of the Development Control Committee.



.....
Philip Tart
Director of Corporate Resources

Contact Officers: Philip Tart / Steve Griffiths
Telephone: 01384 815300 / 815235
Email: philip.tart@dudley.gov.uk
steve.griffiths@dudley.gov.uk

List of Background Papers

The Council's Constitution - Full copy on the Council's Website

**West Midlands Integrated Transport Authority Joint Overview and Scrutiny
Committee - Terms of Reference**

1. Governance

The Joint Overview & Scrutiny Committee will act as a Joint Committee under sections 101 and 102 Local Government Act 1972 and s9F Local Government Act 2000 (as amended).

1.2 Access to Meetings

Normal rules apply as to public access i.e. as a Joint Committee the public has access except for exempt business.

1.3 Host Authority

1.3.1 The Joint Overview & Scrutiny Committee will be hosted under local government arrangements by Wolverhampton City Council and the Managing Director of Wolverhampton City Council shall be Clerk to the Joint Scrutiny Committee.

1.3.2 Wolverhampton City Council Standing Orders will apply to the Joint Scrutiny Committee (save for section 5 below).

1.3.3 The Host Authority will also provide s151, Legal support and Monitoring Officer roles to the Joint Scrutiny Committee.

1.3.4 Administration costs will be met by the ITA Levy.

2. Objects of ITA Scrutiny Committee

2.1 To review and/or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the WMITA.

2.2 To make reports or recommendations to the WMITA with respect to the discharge of any functions which are the responsibility of the WMITA.

2.3 To undertake the following as required:

- Consider the draft policies and strategies which the ITA will be progressing in the upcoming year, to be identified via the Forward Plan
- Identify policies or areas to review if necessary
- To examine areas of best practice and highlight national issues that may be of relevance
- To have oversight of the progress of Transport policy and strategy

3. Membership

3.1 One member from each constituent authority and then Section 7(b),(c) and (d) becomes applicable.

3.2 Power for the committee to co-opt other non-voting members as it sees fit.

3.3 Members of the Joint O&S cannot be members/subs of the ITA or Centro Members

4. Voting

- 4.1 One member one vote for local authority members i.e. twelve in total.
- 4.2 Conflicts of Interest will be dealt with in accordance with the Members Code of Conduct of the Host authority.

5. Quorum

- 5.1 Four members present at the meeting.

6. Meetings

- 6.1 The Chair of the Meeting will be elected at the first meeting of the Committee at the start of each municipal year. A Vice Chair shall also be elected at the same meeting.
- 6.2 Meetings are to take place when the Committee considers it expedient to have an overview of the overall expressed purpose and intended outcomes of the WMITA provided that a minimum of one meeting of the Scrutiny Committee shall be held in each municipal year.

7. Elected Member Appointments

The WMITA Overview and Scrutiny Committee consists of twelve elected members appointed on an annual basis by the Authorities as follows:

- (a) One Member appointed by each of the following Councils, subject to that appointee being the Elected Mayor in the case of those Councils operating such a system of governance:

Birmingham City Council
Coventry City Council
Dudley Metropolitan Borough Council
Sandwell Metropolitan Borough Council
Solihull Metropolitan Borough Council
Walsall Metropolitan Borough Council
Wolverhampton City Council

- (b) Two further Members to be nominated by Birmingham City Council and appointed by the West Midlands Joint Committee.
- (c) Two further Members to be jointly nominated by Dudley, Sandwell, Walsall Metropolitan Borough Councils and Wolverhampton City Council (via the Association of Black Country Authorities) and appointed by the West Midlands Joint Committee.
- (d) One further Member to be jointly nominated by Coventry City Council and Solihull Metropolitan Borough Council and appointed by the West Midlands Joint Committee.
- (e) Appointments shall be made in accordance with sections 15 and 16 of the Local Government and Housing Act 1989 in order to reflect political balance.
- (f) Allowances will not be paid, but travelling expenses will be re-imbursed.