

REPORT TO EXECUTIVE AND COMMUNITY OVERVIEW AND SCRUTINY COMMITTEE

PORTFOLIO AREA: NOT APPLICABLE

Date of Meeting: 4 AND 15 APRIL 2002

Public

**Key
Decision:**

No

**Recorded in Forward
Plan:**

No

Inside/Outside Policy Framework Not Applicable

Title: CONSULTATION ON PROPOSED AMENDMENTS
TO THE CONSTITUTION

Report of: CITY SOLICITOR AND SECRETARY

**Report
reference:** TC.57/02

Summary:

The report sets out a number of proposed amendments to be made to the Council's Constitution upon which the views of both the Executive and the Community Overview and Scrutiny Committee will be sought prior to a report being made to Council on 30 April next.

Recommendations:

It is recommended that the Executive and the Community Overview and Scrutiny Committee:

1. Consider the proposed amendments to the Constitution in Appendix 1 and
2. Put forward any comments which they would wish to make to Council on the recommendations shown in heavy black type in the Appendix and
3. Note the matters in paragraph 10 of the Appendix relating to potential changes to the Leader's Scheme of Delegation which the Leader will be asked to consider.

Contact Officer: John Egan

Ext: 7004

1. BACKGROUND INFORMATION AND OPTIONS

1.1 Under Article 15 of the Constitution I have a responsibility to monitor and review the operation of the Constitution and to report to the Council on any proposed changes.

1.2 Any proposed changes are, under Article 4.02 (a), reserved to the full Council.

1.3 I have, since the new Constitution was introduced in September last, monitored those areas of the Constitution which have thrown up anomalies which need to be addressed to make more sense of the Constitution and enable it to run more smoothly.

1.4 I have identified some proposed changes which I believe need to be made to improve the position and these are set out in Appendix 1 to this report.

1.5 I have to say that they do not represent a fundamental review of the basic principles underpinning the Constitution because, in my view, I believe this would be premature. They are primarily of a "housekeeping" nature and relate to correcting anomalies and picking up changes which have been pointed to by the Council and Members since the Constitution's adoption in September last.

1.6 If fundamental changes were to be made to the Constitution, particularly in respect of those areas which formed the basis of the consultation exercise prior to its adoption, then it would be necessary to undertake a further public consultation exercise before the changes could be made. However, in view of the relatively minor nature of the proposed changes set out in the Appendix then I do not believe there is any requirement under either the legislation or the statutory Guidance to consult beyond the internal workings of the Council.

1.7 I therefore propose to seek the views of both the Executive and the Community Overview and Scrutiny Committee on the proposed changes before reporting to full Council but do not intend to consult any wider than that.

1.8 The changes themselves are explained fully in the Appendix and for those reasons I do not intend to expand on them in the body of the report.

2. CONSULTATION

2.1 It is proposed to seek the views of both the Executive and the Community Overview and Scrutiny Committee prior to reporting to full Council. Chief Officers have been consulted and their observations are reflected in Appendix 1.

3. STAFFING/RESOURCES COMMENTS

Not applicable.

4. CITY SOLICITOR AND SECRETARY'S COMMENTS

They are reflected in the Appendix.

5. LEGAL COMMENTS

These are included in this report.

6. CORPORATE COMMENTS

The views of Chief Officers have been reflected in the recommendations in the Appendix.

7. RISK MANAGEMENT ASSESSMENT

Not applicable.

8. EQUALITY ISSUES

Not applicable.

9. ENVIRONMENTAL IMPLICATIONS

Not applicable.

10. CRIME AND DISORDER IMPLICATIONS

Not applicable.

11. RECOMMENDATIONS

It is recommended that the Executive and the Community Overview and Scrutiny Committee:-

11.1 Consider the proposed amendments to the Constitution in Appendix 1 and

11.2 Put forward any comments which they would wish to make to Council on the recommendations shown in heavy black type in the Appendix and

11.3 Note the matters in paragraph 10 of the Appendix relating to potential changes to the Leader's Scheme of Delegation which the Leader will be asked to consider.

12. REASONS FOR RECOMMENDATIONS

12.1 To improve the Constitution by addressing anomalies and matters which have been highlighted as requiring attention since the Constitution was adopted in September last.

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APPENDIX 1

SUMMARY OF PROPOSED CHANGES TO THE COUNCIL'S CONSTITUTION

1. PROPOSED ADDITIONS TO THE DESIGNATION OF "PROPER OFFICERS"

1.1 Section 2 (c) of the Constitution (commencing on page 63) sets out a list of the designated "Proper Officers" for a variety of statutory functions.

1.2 In order to complete the list of designated "Proper Officers", it is necessary to designate the "Proper Officer" in respect of carrying out functions under the Local Government Act 2000 and any regulations made thereunder. This particular piece of legislation relates to the various aspects in respect of the operation of the new Executive arrangements.

1.3 It is **RECOMMENDED** that an additional paragraph 7 be added on page 67 of the Constitution to the effect that the appropriate "Proper Officer" for this function should be the City Solicitor and Secretary and that the Town Clerk and Chief Executive should be the Alternative Proper Officer. This will require corresponding renumbering of the current paragraph 7 and 8 of that particular section.

2. DEPUTATIONS AND PETITIONS

2.1 Presently, under Rule 10.11 of the Council Procedure Rules which relate to Deputations and Petitions, Deputations and Petitions may only be received at meetings of the Council, at Committees, Sub-Committees, Panels and Working Groups but not at the Executive. If it is the wish of the Council that deputations and petitions should be capable of being considered by the Executive (who in effect are responsible for the majority of the decisions made) then it is **RECOMMENDED** that appropriate amendments should be authorised to Rule 10.11 (a) and 10.11 (b) to insert the words "the Executive" in the appropriate place to enable the Executive to consider Deputations and Petitions as well.

2.2 In the past, some Petitions received have not been presented to the Council because they did not relate specifically to the powers and duties of the Council, although they did affect the residents of the area. In order to enable the Council to consider Petitions and Deputations which are outside

its powers and duties but which nonetheless affect local residents, it is **RECOMMENDED** that there are inserted at the end of paragraph 10.11(a) of the Rules the words "or which affects the district" to enable wider consideration of Deputations. Similarly, it is **RECOMMENDED** that at the end of paragraph 10.11 (b) the following words are added to make it clear that Petitions which affect the area, but which may nonetheless be outside the Council's strict powers and duties, can still be considered:

"The issue raised by a Petition must relate to a matter which falls within the powers and duties of the Council, or the relevant body as determined by the City Solicitor and Secretary, or which affects the district"

3. DURATION OF MEETINGS AND NOTICE OF MOTIONS

3.1 Rule 9 of the Council Procedure Rules provide that a meeting will automatically adjourn after three hours unless the majority of Members present vote for the meeting to continue. As presently drafted, this Rule applies not only to meetings of the full Council (as was previously the case under the former Standing Orders) but also to meetings of Committees as well. It is a question of whether Members wish to make a minor change to the Rules to make it clear that the need to vote to continue beyond three hours applies only to Council meetings or whether they wish to leave the position as currently drawn so that the Rule applies to meetings of Committees as well. If they wish to make amendments and achieve a position where the Rule applies only to meetings of the Council, then it will be necessary to make an appropriate amendment to Procedure Rule 25 which makes it clear that Rule 9 (ie that relating to voting to extend meetings after three hours) applies only to full Council meetings and it is **RECOMMENDED** that Members do this if they wish to limit the Rule to Council meetings only.

3.2 Rule 12.1 of the Council Procedure Rules deals with Notices of Motion and requires them to be submitted 7 clear days before the Council meeting ie by close of business on the Monday in the week before the Council meeting. New Regulations are coming into force on 1 October 2002 which will necessitate the Council summons and reports having to be finalised and available for public inspection on the afternoon of the Monday in the week prior to a Council meeting. It is therefore suggested that Notices of Motion should be submitted by not later than midday on the relevant Monday to enable this new statutory deadline to be met. It would also bring the requirement in line with Rule 10.3 dealing with the submission of written questions which have to be submitted by midday, and so remove the current anomaly between the two requirements.

3.3 It is therefore **RECOMMENDED** that the word "midday" be inserted in the relevant line of Rule 12.1 to give effect to this proposal.

4. ACCESS TO INFORMATION PROCEDURE RULES

4.1 The Council followed the form of Access to Information Procedure Rules set out in the model Constitution produced by the DTLR. Rule 15 provides for certain exceptions when key decisions which are urgent can be taken without the necessity of them being included in the Forward Plan.

4.2 One such exception is where the decision has not been included in the Forward Plan but, nonetheless, at least three days notice of the proposed decision has been given to the public and the Chair of the relevant Overview and Scrutiny Committee has been informed that such a decision is to be taken as a matter of urgency.

4.3 The wording in the model Constitution says that, where such a decision is to be taken collectively under this general exception procedure, then it must be taken in public. On the face of it, this would mean that any emergency decision in respect of matters such as the award of contracts, decisions involving the business affairs of third parties or decisions where legal advice is involved, or any other decision in relation to a matter which it would be usual and permissible for the Council to take it in "Part B" of the Agenda, should nonetheless be taken in public. This anomaly has been commented upon by other Authorities and there is general agreement that this provision goes further than the law demands, because the Council is entitled to take decisions in private in respect of what is termed "exempt information" where to do otherwise would damage the Council's position.

4.4 It is therefore **RECOMMENDED** that, after the final sentence in Access to Information Procedure Rule 15, there are added the following words:

"unless it relates to either confidential or exempt information as defined in Rule 10".

This small amendment would enable the Executive to have the capacity to take such decisions in private if they related to either confidential or exempt information, which is legally permissible and which is the position which has always prevailed.

5. EXECUTIVE PROCEDURE RULES

5.1 Executive Procedure Rule 1.6 currently provides for the Executive to meet at least 15 times per year at times to be agreed by the Leader. The Council have now approved a calendar of meetings which involves the Executive meeting at least 13 times per year and have agreed that the Constitution can be amended to reflect this.

5.2 Accordingly, it is proposed to make an appropriate amendment to the first line of paragraph 1.6 to change the minimum number of Executive meetings from 15 to 13 times per year and it is **RECOMMENDED** that this be done.

6. OVERVIEW AND SCRUTINY PROCEDURE RULES

6.1 The current terms of reference of the Corporate Resources Overview and Scrutiny Committee in paragraph 2.2 on page 124 of the Constitution provide for the Committee to be responsible for scrutinising matters relating to the management of the Council's financial resources, both internal and external.

6.2 It is implicit in these terms of reference that the Committee should be responsible for audit matters in respect of the Council's activities and the Committee has in fact taken on this role during the course of the last number of months.

6.3 In order to give more sharpness to the terms of reference of the Committee and to make it clear that this particular role rests with the Committee, it is **RECOMMENDED** that the following words are added to the end of paragraph 2.2 on page 124 of the Constitution:

"and including acting as the Council's Audit Committee in respect of internal and external audit matters of the Council".

6.4 The Council have recently approved a calendar of meetings which involves the Overview and Scrutiny Management Committee meeting once every six weeks rather than every four weeks as provided for in the Overview and Scrutiny Procedure Rules. It is therefore **RECOMMENDED** that an appropriate change is made to Rule 4 to reflect this.

7. POLICY FRAMEWORK

7.1 Article 4 of the Constitution sets out the Policy Framework approved by the Council within which the Executive must work.

7.2 During the course of the last month policies have been added and the names of some have been changed and I have therefore amended the list in Article 4, after consulting with Chief Officers, to make sure that the content and wording accurately reflects the present Policy Framework position.

7.3 It is therefore **RECOMMENDED** that the revised Policy Framework list attached to this Appendix be substituted for that currently set out in Article 4 of the Constitution.

8. CONTRACTS PROCEDURE RULES

8.1 Rule 9 (2) (a) of the Contracts Procedure Rules at page 264 provide for all contracts over £2,000 to be signed by at least two officers, as required by Regulations. The existing Rules go further, however, and state that one of those signatures should be either the City Solicitor and Secretary or the City Treasurer or officers in their respective departments above section head level nominated by them.

8.2 In practice, this is imposing unnecessary bureaucracy on the signature of relatively minor contracts and was not a requirement under the Council's former standing orders. It is proposed that there would be sufficient protection if the contracts continued to be signed by two officers but these did not necessarily have to be the City Solicitor and Secretary and the City Treasurer as long as they were at section head level or above.

8.3 It is therefore **RECOMMENDED** that paragraph 9 (2) (a) be amended to read:

"(2) Every such Contract must either:

(a) be signed by at least two Officers of the Council who shall be at Section Head level or above from the Department or service concerned;"

9. FINANCIAL PROCEDURE RULES

9.1 The City Treasurer has identified a lack of clarity in paragraph A12 of the Financial Procedure Rules. He suggests that to improve the position the final sentence of paragraph A12, dealing with aspects of the virement rules, be deleted and it is **RECOMMENDED** that this deletion be made.

9.2 The City Treasurer also advises that the adoption of the new CIPFA Code will require some amendment to the wording of paragraphs 3.13 to 3.18 of the Rules relating to Treasury Management set out in the Financial Procedure Rules. It is therefore **RECOMMENDED** that the following wording be substituted for that currently set out in Rules:

"TREASURY MANAGEMENT

3.13 The City Council has adopted the key recommendations of CIPFA's Treasury Management in the Public Services Code of Practice 2001 (the Code) as described in Section 4 of that Code.

3.14 Accordingly the City Council will create and maintain the following two documents as the cornerstones for effective treasury management.

3.15 A Treasury Management Policy Statement (TMPS) will state the policies and objectives of its treasury management activities.

3.16 Suitable Treasury Management Practices (TMP) will set out the manner in which the City Council will seek to achieve those policies and objectives and prescribe how it will manage and control those activities.

3.17 The City Council will receive quarterly reports on its treasury management policies, practices and activities including an annual strategy and plan in advance of the year and an annual report after its close in the form prescribed in its TMPs.

3.18 The City Council has delegated responsibility for the implementation and monitoring of its treasury management policies and practices to the Executive and for the execution and administration of treasury management decisions to the City Treasurer who will act in accordance with both the City Council's TMPs and TMPs and also CIPFA's Standard of Professional Practice on Treasury Management."

10. AMENDMENTS TO THE LEADER'S SCHEME OF DELEGATION

10.1 It is a matter entirely for the Leader in respect of any amendments to be made to his Scheme of Delegation. However, the following matters have arisen during the course of the past few months which require his attention.

10.2 Paragraph 7.3 of the Leader's Scheme makes it clear that no key decisions are currently delegated to any individual member of the Executive or any Officer, except to the extent that awarding contracts (which is delegated to Officers) may be a key decision.

10.3 However, it has been the case over the past few months that decisions have had to be made quickly as a matter of urgency when there has been no time to call a meeting of the Executive if the Council's position is to be properly protected. It is therefore suggested that amendments should be made to the Leader's Scheme to provide for Members of the Executive to take key decisions if they are required to be taken urgently and it is suggested that the following wording could be added to the end of paragraph 7.3 of the Leader's Scheme to make it clear that all key decisions will be made by the Executive as a whole, except:

"If a key decision is required to be taken urgently and there is insufficient time to call a meeting of the Executive without prejudicing the interests of the Council then the relevant portfolio holder may take the decision after first consulting, where practicable, with the Leader or Deputy Leader and after complying with any relevant requirements set out in the Constitution".

Notwithstanding this change, the person taking the key decision would still have to comply with the relevant provisions in the Constitution and so the Council's position would not be prejudiced in any way.

10.4 Under the relevant legislation, the Leader is still able to take any decisions which he may have delegated down to any other person or body under the Scheme of Delegation. However, it is considered that this "reserve power" in favour of the Leader should be specifically spelled out in his Scheme and it is therefore suggested that for the purposes of clarity the following new paragraph 10 be inserted in the Leader's Scheme:

"10. Decisions by the Leader

10.1 For the avoidance of doubt, the Leader may also take any decision which under this Scheme of Delegation is capable of being taken by any portfolio holder".

The existing paragraphs 10 and 11 of the Leader's Scheme will be renumbered 11 and 12 accordingly.

10.5 The Leader has delegated certain powers to the City Treasurer under his Scheme of Delegation which the City Treasurer believes requires amendment. Under paragraph 5.2.4 of the Scheme, the City Treasurer suggests that the words "where considered necessary" should be added to the end of the paragraph to make it clear that it is not every single internal audit report that needs submitting to the Executive and the relevant Overview and Scrutiny Committee.

10.6 Similarly, the City Treasurer believes that paragraph 5.2.13 of the Leader's Scheme needs amending slightly. Currently it provides for the Treasurer to report on the Council's Treasury Management Policy at least twice a year to the Executive. However, the Council's Financial Procedure Rules provide for reports to be submitted to the Executive four times per year. In the interests of consistency, therefore, paragraph 5.2.13 of the Scheme should be amended to make it clear that the report should be made "not less than four times in each financial year".

10.7 All the matters set out in paragraph 8 are matters for the Leader to consider but they are set out here for the sake of clarity and openness.

JOHN EGAN

CITY SOLICITOR AND SECRETARY

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Article 4 - The Full Council

4.01 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-
- Best Value Performance Plan;
 - Community Strategy;
 - Crime and Disorder Reduction Strategy;
 - Local Transport Plan;
 - Plans and alterations which together comprise the Development Plan;
 - Council's Corporate Plan (if any);
 - Food Law Enforcement Service Plan;
 - The plan and strategy which comprise the Housing Investment Programme;
 - Local Agenda 21 Strategy;
 - Quality Protects Management Action Plan;
 - Equality Plan;
 - Consultation Strategy;
 - Advice Agencies Strategy;
 - Marketing Strategy;
 - Tourism Strategy;
 - Economic Development Strategy;
 - Supporting People Strategy;
 - Recreation Strategy;
 - Environmental Protection Plan;
 - Environmental Health Strategy;
 - Sports Development/Provision Plan;
 - Waste Management Strategy;
 - Parks and Countryside Strategy;
 - Public Relations Strategy;

- Corporate Communications Strategy;
 - Risk Management Plan;
 - Emergency Planning;
 - Human Resources Strategy;
 - Health and Safety Strategy;
 - Corporate Charging Policy;
 - Performance Management Plan;
 - Customer Care Strategy;
 - IT Strategy;
 - Asset Management Plan;
 - Medium Term Financial Plan;
 - Treasury Policy Statement;
 - Capital Strategy;
 - Strategic Audit Plan;
 - Discretionary Rate Relief Policy;
 - E Government Strategy;
 - Partnerships Strategy;
 - Procurement Strategy;
 - Partnership for Health Strategy;
 - All other plans and strategies of the Council.
- (b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council tax base, setting the Council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.
- (c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.