

Full Council - 15 July 2008

Changes to the Constitution

Report of Legal and Democratic Services Manager

(This matter is the responsibility of Councillor Ross Henley, Leader of the Council)

Executive Summary

This report details the main changes to the Constitution that are required to bring the constitution up to date with the Council's current ways of operating and brings in some new changes to make the decision making process effective and efficient.

1. Purpose of the Report

- 1.1 Full Council is required to approve the changes as set out in this report in order for the Constitution to be updated.

2. Background

- 2.1 Every local authority is required to have a Constitution and that Constitution should be kept up to date with all relevant information on how the Council operates and gives details of its political and management structures.

3. The current position

- 3.1 The Constitution has been undergoing a review for some time and as a result a number of changes have been suggested in order to ensure it properly reflects how this Council wants to operate.
- 3.2 The changes to the Constitution have been endorsed and recommended for approval by the Corporate Governance Committee at its meetings in March and June 2008.
- 3.3 On the 17 March 2008 the Corporate Governance Committee approved the following recommendations:-
 - 3.3.1. That Council be recommended to:-
 - (a) delegate the role of overview and revision to the Constitution to the Corporate Governance Committee;
 - (b) delegate the powers to approve revisions to the Corporate Governance Committee and the Monitoring Officer; and

(c) to adopt the Financial Regulations;

3.3.2. That the standing Sub-Committee of the Corporate Governance Committee (consisting of one representative from each of the political groups on the Council) be established to work with the Monitoring Officer to carry out regular reviews of the Constitution; and

3.3.3. That the powers delegated to the Monitoring Officer, Chief Solicitor and Member Services Manager referred to in the Constitution be re-delegated to the Monitoring Officer.

3.4 On the 26 June 2008, the Corporate Governance Committee endorsed further changes to the constitution and those changes are set out in the attached appendix to this report.

4. Recommendations

4.1 Council is recommended to approve the recommendations of the Corporate Governance Committee as set out in 3.3.1 to 3.4 above.

Contact : Tonya Meers; 01823 356403
or e-mail t.meers@tauntondeane.gov.uk

Article 1 The Full Council

1.1 Meanings

(a) **Policy Framework**

The Policy Framework means the following plans and strategies:-

- Sustainable Community Strategy
- Local Area Agreement
- Corporate Plan
- Corporate Priorities
- Best Value Performance Plan (until 2008)
- Regional Development Plan
- Local Development Framework
- Local Transport Plan
- Housing Investment Programme
- Asset Management Plan
- Crime and Disorder Reduction Strategy
- Other plans and strategies which the council may decide should be adopted by the Council meeting as a matter of local choice

(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) **“Proper Officer”**

Proper Officer is the term used in local government legislation to identify the particular officer who is empowered to deal with formal actions on behalf of the Council. These will often relate to the service of some notice upon the Council. For the purposes of this Constitution the Proper Officer is the Chief Executive - or in their absence - the Section 151 Officer or the Monitoring Officer

Article 6 The Executive

6.1 Role

The Executive will carry out all of the Council's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

6.2 Form and composition

The Executive will consist of the Leader together with eight councillors ("Executive Councillors") appointed to the Executive by the Leader with the agreement of the controlling Party Group or Groups.

6.3 Leader

The Leader will be a councillor elected to that position by the full Council. Subject to the exceptions in Article 6.4 below, the Leader will hold office for twelve months at a time with his or her appointment requiring renewal at each year's Annual Council Meeting.

6.4 Term of Office – Exceptions

Events which will result in the Leader's term of office ending prematurely are:-

- (a) he or she resigns from the office; or
- (b) he or she is suspended from being a councillor (under Part III of the Local Government Act 2000); or
- (c) he or she is no longer a councillor; or
- (d) he or she is removed from office by special resolution of the Council (using the procedure set out in Article 6.8).

6.5 Other Executive members

Other Executive members shall hold office until:-

- (a) the happening of any of the events set out in Article 6.4; or
- (b) they are removed from office by the Leader who must give written notice of any removal to the Chief Executive and to the Executive Councillor. The removal will take effect two working days after receipt of the notice by the Chief Executive.

6.6 Proceedings of the Executive

Proceedings of the Executive shall take place in accordance with the Executive Procedure Rules set out in Part 4 of this Constitution.

6.7 Responsibility for functions

(a) The Executive

It shall be the function of the Executive meeting together to design and allocate Portfolios to each of their number.

(b) The Leader

It will be the duty of the Leader to:-

- (1) Redefine, clarify and update the list of these Portfolios set out in Part 3 of this Constitution.
- (2) Similarly note the names of those Executive Councillors to whom those portfolios have been allocated by him/her.
- (3) Note those Executive functions which have been similarly allocated to the officers, to any Area Committees or to joint arrangements.

6.8 “Special Resolution”

This is the process referred to in 6.4 and 6.5 above whereby - in exceptional circumstances - the Leader or a member of the Executive may be removed by full Council.

Fourteen days written notice of the intended moving of such a resolution at a Council meeting must be given to the Democratic Services Manager, the Chief Executive, the Leader and to any member of the Executive named in the notice. The notice shall require the signatures of at least one half of the Council.

It shall be placed on the agenda of the next ordinary Council meeting unless an extraordinary council meeting has been requisitioned. The proposal having been debated, it shall be voted upon. It shall require the votes of more than one half of the membership of the Council (that is, the votes of at least 29 councillors) to be approved. If approved:-

- (a) a proposal shall be immediately laid before the same Council meeting as to the appointment of a new Leader; and
- (b) such a proposal shall require a simple majority, and if passed;

- (c) the change of Leadership shall take effect immediately on the passing of that resolution.

Article 7 Regulatory Committees

7.1 Regulatory committees

The Council will appoint the committees set out in Part 3, Section 2 of this Constitution in order to discharge the non-Executive functions described there.

7.2 The Council will appoint regulatory committees, (i.e. the Development Control Committee and the Licensing Committee), and a Standards Committee. The functions discharged by the particular committees and their subcommittees are described in part III of this constitution. The Council's procedure rules will apply to meetings of the committees and subcommittees.

7.3 The Development Control Committee will be responsible for undertaking the regulatory powers related to town and country planning as described in part 3 of this constitution. The committee will comprise 18 members, politically balanced, and will meet as and when the committee deems it necessary to discharge its functions. Many of its decisions will be quasi-judicial in nature. In discharging its responsibility to determine development control applications and enforcement issues the political whip will not be appropriate and all issues will be considered on the planning merits of each matter.

7.4 The Licensing Committee will be responsible for discharging the licensing functions of the Council and in particular the powers under the Licensing Act 2003. It will comprise 15 members politically balanced, but no member shall be a concurrent member of the Executive. It may establish one or more subcommittees consisting of three members (which shall be the quorum number for the subcommittees) to conduct hearings of applications where the Council has received relevant representations (objections) to the application. The Licensing Committee (which expression shall include any subcommittee) shall meet as and when required to discharge its functions. Many of its decisions will be quasi-judicial in nature. In discharging its responsibility to determine licensing applications and enforcement issues the political whip will not be appropriate and all issues will be considered on the licensing merits of each matter.

Article 8 The Standards Committee

8.1 Standards Committee

The Council will establish a Standards Committee.

8.2 Constitution

(a) Membership

The Standards Committee will be composed of at least:

- (i) one member from each of the political groups who are then represented on the Council [currently there are three such Groups];
- (ii) seven people who are not councillors or officers of the Council or of any County, District or Unitary Council or of any Parish Council within Taunton Deane (these are referred to as "Independent members");
- (iii) (subject to the same exceptions as (ii) above) three members of a parish council from within Taunton Deane who shall represent the interests of all such Parish Councils (the Parish Members);
- (iv) members of the Standards Committee will hold office from one Annual Meeting until the next - at which point their appointments shall be either renewed or terminated.

(b) Independent members

Independent members (see 8.2(a)(ii) above):-

- (i) shall be selected in accordance with the statutory rules prescribed under the The Standards Committee (England) Regulations 2008 ;
- (ii) will be entitled to vote at all meetings of the Committee or on any sub-committees to which they have been appointed by the Standards Committee.

(c) Parish Members

A Parish Member must be present at any meeting of the Standards Committee when matters relating to Parish Councils or their members are being considered.

(d) **Chairing the Committee**

The Committee shall be chaired by an independent member.

(e) **Substitutes**

No substitute members shall be permitted to either the main Committee or to any sub-committee

(f) **Sub-committees**

The Standards Committee shall, in accordance with the Standards Committee (England) Regulations 2008, appoint sub-committees to assess complaints received against members where allegations are made that a member has failed to comply with the code of conduct; where this happens the following limits will apply:-

- (i) the quorum (that is, minimum size at which business may be transacted) shall be 3;
- (ii) All sub-committees shall be chaired by an Independent members
- (iii) All sub-committees shall consist of one elected member
- (iv) where a Parish Councillor is the subject of a complaint then a Parish Member (unless s/he is the subject of that investigation) shall be appointed to that sub-committee.

8.3 Role and Function

The Standards Committee will have the following roles and functions in relation to the Borough Council and Parish Councils within Taunton Deane.

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members;
- (b) assisting the councillors and co-opted members to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;

- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train councillors and any co-opted members on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to councillors and any co-opted members from requirements relating to interests set out in the Members' Code of Conduct or delegating such power to the Monitoring Officer. who will be authorised to deal with such dispensations based on principles agreed by the Committee.)
- (g) Assessing complaints made against members of the Borough Council and Parish Councils within the Taunton Deane Borough
- (h) conducting hearings on reports as to contraventions of the Members' Code, and deciding upon appropriate sanctions.

Article 11 Joint Arrangements

11.1 The Council in order to promote the economic, social or environmental well-being of its area, may and is encouraged to (but is not required to do so):

- a) Enter into arrangements or agreements with any person or body;
- b) Co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- c) Exercise on behalf of that person or body any functions of that person or body.

It may also:

- a) Establish joint arrangements with one or more local authorities and/or their Executives to exercise functions which are not executive functions in any of the participating authorities or to advise the Council and such arrangements may involve the appointment of a joint committee with these other authorities.
- b) Establish joint arrangements with one or more local authorities to exercise functions which are executive functions and which would involve the appointment of a joint committee.
- c) Except as detailed in paragraph d) below appointments to a joint committee may be from Executive members and need not reflect the political balance of the Council.
- d) Appoint non-executive members to a joint committee where the joint committee has functions for only part of the administrative district that is less than two-fifths of the authority by area or size of population and where the appointed member may be the ward member which is wholly or partly contained within the area in which case the appointments need not reflect the political balance of the Council.
- e) Publish details of any joint arrangements, including delegation to joint committees, as an addendum to this constitution.

11.2 Any joint arrangements will accord with the provisions of this constitution including the access to information provisions in part IV.

11.3 Delegation to or from other local authorities

11.3.1 The Executive may delegate executive functions to another local authority or accept delegated executive functions from another authority where it deems it expedient and in the interests of the Council and the administrative district.

11.3.2 The decision whether to delegate non-executive functions to another local authority or to accept delegation from another local authority will be reserved to Full Council.

Article 12 Officers

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| Solicitor to the Council (Monitoring Officer) | Responsible for ensuring the legality of the actions of the Council and promoting good standards of ethical and corporate governance. |
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Monitoring Officer and Chief Financial Officer

The Council will designate the following posts as shown for the purposes of the Local Government Acts:-

| Post | Designation |
|---|----------------------|
| Chief Executive (Penny James 2007) | Head of Paid Service |
| Legal & Democratic Services Manger (Tonya Meers 2008) | Monitoring Officer |
| Strategic Director (Shirlene Adam 2007) | Section 151 Officer |

(a) **Supporting the Standards Committee**

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

(d) **Receiving reports**

The Monitoring Officer will provide such information or reports as required by the Standards Board for England, its Ethical Standards Officers and act upon any decisions of the Panels or tribunals of the Standards Committee or the Standards Board for England.

(e) **Conducting investigations**

The Monitoring Officer will conduct, or arrange to be conducted, investigations into matters referred by the Standards Committee, or the Ethical Standards Officers, and make reports or recommendations in respect of them to the Standards Committee.

13.2 Types of decision

(a) **Decisions reserved to full Council**

Decisions relating to the functions listed in Article 4.2 will be made by the full Council and not delegated.

(b) **“Key Decisions”**

- (i) A ‘Key Decision’ is a decision which will have a significant impact within the administrative borough, or an operational impact on the community of more than one electoral ward, or involves a significant level of expenditure to be incurred by the Council relating to the discharge of a specific Council function (rather than solely staff related), e.g. where the aggregate expenditure is £50k or more (but not to include any expenditure included in a budget which has been approved in a framework policy).
- (ii) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution

ARTICLE 16

16.0 Suspension of the Constitution

(c) Rules capable of suspension

The following rules may be suspended in accordance with the above provision:

The council's procedure rules apart from SO22 and SO26 and financial procedure rules

PART IV

PART I REPORTS OF EXECUTIVE COUNCILLORS

8. (1) An Executive Councillor shall submit a report to each Full Council meeting. The report shall be in two parts.
- (2) Part I shall contain recommendations and Part II shall contain reports as to current and future business for the information of and comment from the Council.
- (3) Each recommendation shall be proposed separately by the Executive Councillor, or, in his/her absence, by the Leader of the Executive; it shall not need to be seconded before being discussed.
- (4) The normal rules of debate will apply to the recommendations contained in Part I

PART II OF EXECUTIVE COUNCILLORS' REPORTS

9. (1) When Part II of an Executive Councillor's report is being considered, Councillors may, upon items referred to in that report :-

(a) submit up to 3 written questions per group to be received by the Democratic Services Manager by 4pm 2 working days before the Council meeting;

(b) Responses will be given to these questions and 1 further supplementary question will be allowed related to the question arising from the answer to seek further clarification;

(c) Comments on a report should be no longer than 1 minute in length

- (2) Part II items are for information, discussion and comment only and no motion shall be put to the meeting as to any such item - other than those closure motions described in Standing Order 13.
- (3) A councillor may not speak on Part II of a report if a recommendation relating to that same item has already appeared in Part I of a report submitted at that meeting.
- (4) The Executive Councillor may introduce Part II of his report and update the Council on developments that have taken place since the report was dispatched.

QUESTIONS FROM COUNCILLORS

- 15** (1) At a Full Council meeting any Councillor, upon giving 5 working days written notice to the Democratic Services Manager, may ask the Mayor a question on a matter which concerns the Council's functions, powers, duties and which affects the borough.
- (2) Any Councillor, upon giving 2 working days written notice to the Democratic Services Manager, may ask the Leader of the Council, a portfolio holder, chairman of a committee or another member who has been appointed to an outside body, a question which concerns the Executive's or committee's functions, powers and duties or the work of the outside body and which affects the borough.
- (3) The leader, portfolio holder, or committee chair may direct the question to be answered by the Chairman of the appointed sub-committee which has been delegated the subject matter of the question.
- (4) The member asking the question may ask a supplementary question related to the question or arising from the answer to seek further clarification.
- (5) Questions are to be asked and answered without further discussion by other members present. The Leader of the Council or a committee chairman to whom the question has been addressed may ask another member or officer to answer it if they are of the

opinion that a discussion is required or they may refer it to another relevant meeting of the Executive or Committee.

TIME LIMITS FOR ALL MEETINGS*

- 29.** (1) A meeting of full council or other committees/panels including Overview and Scrutiny committees shall not exceed three hours in duration except in accordance with SO 30 below.
- (2) If the business of the meeting has not been completed within that time the Mayor or Chairman will interrupt the debate to announce the time and call for a vote to be taken immediately on the item under discussion.
- (3) No member will be able to address the meeting after the Mayor's or Chairman's interruption on any item appearing on the agenda.
- (4) Any items remaining on the agenda, which have not been considered, will be adjourned to the next scheduled meeting or a date to be fixed before the meeting adjourns.

SUSPENSION OF COUNCIL PROCEDURE RULES*

- 30.** (1) A motion to suspend a particular procedural rule shall state the particular purpose and require a majority of at least half the total number of members appointed to that Council Meeting or Committee.
- (2) on occasions that rule 29(1) (guillotine) is being waived, the duration of the suspension shall not exceed 30 minutes and shall, if seconded, be put to the vote without discussion.
- (3) Rule 29(1) can only be suspended once per meeting. However the Mayor, Chairman of Planning Committee or Chairman of the Licensing Committee may decide otherwise in respect of the meeting they are chairing. This will generally only occur in exceptional circumstances.
- (4) Rules 22 and 26 cannot be suspended. But section 13 still applies.

Part IV – Public Question Time

- (1) Questions should be given in writing to the Democratic Services

Manager by 4pm on the 3rd working day before the meeting and the questioner shall provide his/her full address and confirm their attendance at the meeting.

19. (1) All motions and amendments, unless the law otherwise requires, shall

be decided by affirmation or by a show of hands, as the Mayor shall choose.

(2) If before the Mayor calls for the vote, either,

(a) the mover and seconder of the motion - or of the amendment, or,

(b) any councillor supported by the votes of at least a quarter of the councillors present,

request that a Recorded Vote be taken, then votes shall be publicly declared, and recorded in the minutes.

(3) In addition to the option under SO 19(2), any member may require - immediately after a vote is taken - that the manner in which that member's vote was cast (for, against or abstaining) shall be recorded in the minutes.

(4) Where a vote is taken upon the choice of more than two candidates for an appointment and there is not an absolute majority in favour of one candidate, the candidates receiving the least number of votes shall be excluded and a further vote taken, the procedure being continued until there is an absolute majority in favour of one candidate.

(5) (a) in the case of an equality of votes, the Mayor shall have a second or casting vote.

or (b) The Mayor shall have unfettered discretion as to its use for against the proposition.