

Review of the Constitution of Wiltshire Council

Summary

The constitution was last reviewed in 2009/10 to ensure it would meet the needs of the new Wiltshire Council. The purpose of that review was to ensure a constitution fit for purpose was in place when Wiltshire Council came into effect as a unitary authority on 1 April 2009.

The Council adopted the new constitution on the basis that the new Council would review the effectiveness of the constitution in light of experience after six months of operation and requested the Standards Committee to undertake the review.

The Standards Committee established a Focus Group on the Review of the Constitution (Focus Group) to undertake the detailed work required. The Focus Group has met on four occasions and has recommended a number of changes to the constitution. The revised draft of the constitution reflects the recommended changes. The outcome of the work to review the constitution by the Focus Group was reported to the Standards Committee at a special meeting convened for that purpose on 26 October 2010.

The Standards Committee was satisfied with the detailed work undertaken by the Focus Group to review the constitution. The Standards Committee considered the changes proposed and has drawn up a series of recommendations for consideration by Council with a view to adopting a revised constitution.

A hard copy of the revised draft constitution has been made available to members of the Standards Committee to assist in its consideration of the outcome of the review. This report and revised draft constitution will be made available to all members electronically with hard copies available on request from Democratic Services.

Proposals

To consider the following recommendations of the Standards Committee from its meeting held on 26 October 2010 following its review of the constitution of the Council:

- (i) To approve the changes proposed to the constitution shown as tracked changes on the draft revised constitution for adoption by Council at its meeting on 9 November 2010 (summary of main changes referred to in Appendix 5).**

- (ii) To approve for inclusion in the constitution the Protocol on Partnerships, the Protocol on Guidance to Councillors on Outside Bodies and the Protocol on Governance Reporting Arrangements.**
- (iii) To note that the Protocol on Media Relations is still under review and that a revised Protocol will be considered by Group Leaders before being presented to Council as part of the revised constitution.**
- (iv) That Council determines the issue of whether or not provision should be made in the constitution in respect of response times by Cabinet members.**
- (v) To note the decision of Cabinet dated 19 October 2010 to defer consideration of the review of the Development Control Service until such time as the implications of any changes to the planning system as a result of the Decentralisation and Localism Bill are known. Consequently, the Scheme of Delegation on Planning – Part 3C and the Planning Code of Good Practice for Members of Wiltshire Council – Protocol 4 remain unchanged in the meantime.**
- (vi) To designate the current Scrutiny Manager post as Wiltshire Council’s Scrutiny Officer to be responsible for the statutory functions as defined in Section 31 of the Local Democracy, Economic Development and Construction Act 2009 (Appendix 3 refers).**
- (vii) To authorise the Monitoring Officer to make such amendments as are necessary to give effect to decisions of Cabinet, Council or its committees and to ensure that the constitution is clearly presented and legally fit for the purpose of the Council.**
- (viii) To thank the Focus Group, its Chairman Mrs Isabel McCord and other members of the Council who contributed to the review for all its valuable work in undertaking the detailed work required to carry out the review.**
- (ix) To agree that the Focus Group remains in being to assist with**
- the ongoing review work on the constitution as and when required;**
 - producing user friendly summaries of the relevant parts of the constitution for use by members of the public and members of**

the Council and

- **specifically to review the constitution in light of any changes in the legislation including the proposed Decentralisation and Localism legislation**

and to amend its terms of reference to reflect the above.

**Ian Gibbons
Monitoring Officer**

Wiltshire Council

Council

9 November 2010

Review of the Constitution of Wiltshire Council

Purpose of Report

1. To consider the outcome of the review of the constitution with a view to adopting a revised constitution for the Council.

Background

2. The purpose of the constitution is to:
 - enable the Council to provide clear leadership to the community of Wiltshire in partnership with citizens, businesses and other organisations;
 - support the active involvement of citizens in the process of local authority decision making;
 - help councillors represent their constituents more effectively;
 - enable decisions to be taken efficiently and effectively;
 - create a powerful and effective means of holding decision-makers to public account;
 - ensure that no-one will review or scrutinise a decision in which they were directly involved;
 - ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
 - provide a means of improving the delivery of services to the community;
 - help the Council to focus on its strategic objectives.
3. The last full review of the constitution took place during 2009/10. The purpose of that review was to ensure a constitution fit for purpose was in place when Wiltshire Council came into effect as a unitary authority on 1 April 2009. This included work to ensure that the decision making process of the new council reflected the functions previously administered by the former district councils.

4. Wiltshire County Council at its meeting on 24 February 2009 adopted a revised constitution for use by the new Council. This was on the basis that the new Council would review the effectiveness of the constitution in light of experience after six months of operation. Council also noted that work was ongoing in respect of the Area Boards and Overview and Scrutiny arrangements which would be reflected in the constitution for approval by the new Council.
5. At the Annual meeting On 16 June 2009, Wiltshire Council approved the constitutional arrangements for Area Boards, Overview and Scrutiny and public participation, and a number of additional protocols and amendments of a minor nature for inclusion in the constitution. Council also agreed that a review of the constitution should be undertaken in the light of experience after six months and requested the Standards Committee with its responsibility for oversight of the constitution, to undertake the review.
6. This report sets out the outcome of the review by the Standards Committee.

Focus Group on the Review of the Constitution

7. The Standards Committee at its meeting on 11 November 2009 agreed a process for reviewing the constitution by establishing a Focus Group to undertake the detailed work required. The membership of the Focus Group comprised representation from the Standards, Audit and Overview and Scrutiny Organisation and Resources Select Committees and a member from each of the political groups on the Council. The Focus Group was chaired by Mrs Isabel McCord, Independent Member and Chairman of the Standards Committee.
8. Details of the membership and terms of reference of the Focus Group are set out in **Appendix 1**. The Focus Group met on 4 occasions: 15 March, 29 July, 20 September and 8 October. As background information, the minutes of those meetings are attached as **Appendix 2**

Main Considerations for the Council

9. The Council is required to have a constitution in place to ensure that it is able to discharge its functions effectively and lawfully.
10. Whilst the opportunity has been taken to review the entire constitution, many parts of it have not been changed as these are required by legislation and statutory guidance.
11. In adopting the current constitution, it was acknowledged that areas new to Wiltshire Council such as Area Boards, Planning Committees and also the Overview and Scrutiny arrangements would be the subject of review at a later stage. The priority at the time was to have a constitution in place which provided the necessary decision making framework and processes to discharge

these functions effectively. This was the rationale for requesting the new Council to review the constitution in the light of experience after six months.

12. Accordingly, there have been separate reviews of these areas, the outcomes of which have been reflected in the constitution.

Area Boards

13. The Leader of Council undertook a review of the operation of Area Boards as reported to Cabinet on 23 March 2010. The review took into account feedback received during consultation on the operation of Area Boards. The only constitutional implication arising from this review related to amending the Scheme of Delegation to Officers (Part 3B) to include the Area Board and Delegated Decisions checklist for officers. The checklist provides guidance to officers on the issue of when and how to involve local councillors and Area Boards in decisions about local services. As this is very much an operational internal document, the view has been taken not to include it as part of the constitution, but to refer to it in both the Scheme of Delegation to Officers and in the Protocol on Briefing and Information for Local Councillors.
14. The Focus Group at its meeting on 20 September 2010 and 8 October reviewed the sections of the constitution relating to Area Boards and has recommended a number of changes as outlined in the attached summary of main changes at **Appendix 5**. The recommended changes have been reflected in the draft revised constitution.

Development Control

15. A review of the development control service was undertaken following consultation with members of the Council and town and parish councils. The outcome of the review included proposals to revise the Scheme of Delegation on Planning and the Planning Code of Good Practice for Members of Wiltshire Council.
16. The changes which had been proposed were considered in detail by the Focus Group at its meeting on 29 July 2010 following presentation by the Service Director for Development and the Cabinet Member for Economic Development, Planning and Housing. The Focus Group was supportive of the general approach that was being taken but made a number of comments which it would like taken into account.
17. Cabinet at its meeting on 19 October 2010 considered a report on the outcome of the review of the development control service. Cabinet resolved to defer consideration of the review of the service until such time as the implications of any changes to the planning system as a result of the Decentralisation and Localism Bill were known.
18. This was reported to the Standards Committee which acknowledged the Cabinet position. Consequently, the Scheme of Delegation and Planning Code of Good Practice for Members of Wiltshire Council within the revised draft remain unchanged until such time as changes are agreed as part of the review

of the development control service and any changes in the legislation. Any changes to the Scheme of Delegation or Planning Code would require Council approval as they form part of the constitution.

Overview and Scrutiny

19. An interim review of the overview and scrutiny arrangements was undertaken as part of a planned review. One of the outcomes of the review was to establish a Liaison Board which has been meeting on an informal basis. The operation of this Board will be reviewed after 12 months of operation in the light of experience.
20. Slightly amended Articles and Overview and Scrutiny Procedure Rules were considered by the Focus Group at its meeting on 20 September and 8 October 2010 following presentation by the Scrutiny Manager and the Chairman of the Organisation and Resources Select Committee. Apart from a few further minor changes, the amendments were supported by the Focus Group.
21. The Focus Group at its meeting on 29 July 2010 considered a report on the requirement under Section 31 of the Local Democracy, Economic Development and Construction Act 2009 to designate one of the Council's officers as the statutory designated 'Scrutiny Officer'. The Focus Group supported the recommendation to Council to appoint the current Scrutiny Manager post as the Council's Designated Scrutiny Officer. By way of background information, the report considered by the Focus Group and the Organisation and Resources Liaison Board is attached at **Appendix 3**.
22. The Focus Group was advised of progress to develop a Protocol promoting a clear two way relationship between the Executive and Scrutiny. It was noted that this would now form part of a wider governance review called for by the Leader which would focus on backbench member involvement in the Council's decision making process.
23. The issue of whether overview and scrutiny committees should be chaired by members belonging to the majority group on the Council was also considered by the Focus Group. The Focus Group accepted the principle of minority parties influencing the content and direction of the overview and scrutiny function. This was supported by the research into arrangements operated by some other local authorities. This will be considered further as part of the wider governance review referred to in paragraph 22 above.

Changes previously agreed

24. Councillors may recall that a number of changes to the constitution have been previously agreed by the Council where the changes could not be delayed and considered as part of this review. A summary of those changes is attached at **Appendix 4**.

Main Changes now being proposed

25. The changes now being recommended as a result of this review of the constitution are shown as tracked changes in the draft revised constitution. To further assist Councillors, a summary of the main changes is attached at **Appendix 5**.

Introduction of new Protocols

26. The Focus Group has recommended the inclusion of three new Protocols in the revised constitution as follows:

Protocol 3 – Guidance to Councillors Appointed to Outside Bodies

27. This Protocol sets out the main issues which councillors should consider when appointed by the Council to serve on outside bodies. This is especially important in the context of voluntary sector representation and funding, where the need to ensure transparency and avoid conflicts of interest is paramount.
28. Much of the guidance also applies to councillors who are involved in outside bodies in their private capacity, though the Council's insurance and indemnity arrangements will not apply in these circumstances.
29. The guidance:
- sets out the issues which councillors should consider before accepting appointment to any outside body;
 - deals with the roles, responsibilities and potential liabilities that apply to various types of organisation;
 - provides that councillors should generally be appointed to outside bodies on behalf of the Council as members with observer status only, unless there are exceptional reasons for more formal participation.
 - covers issues relating to the Code of Conduct for Members and pre-determination;
 - summarises the Council's insurance cover and provides for the extension of the officers' indemnity to members and co-opted members
30. It is intended to undertake a review of the Council's appointments to outside bodies in the light of this guidance.
31. Further assistance on this subject will be provided to councillors through information (e.g. Frequently Asked Questions) on the Councillors' area of the Council's web-site and through Councillor development training.
32. This Protocol was considered by the Focus Group at its meeting on 29 July 2010 and, briefly again on 8 October, to update members on some further changes, including the addition of some recent guidance from Standards for England on dual-hatted members, and the proposed extension of the officers' indemnity to cover members. The Focus Group fully supported the Protocol.

Protocol 8 – Partnership

33. Cabinet in May 2007 adopted a framework policy for the evaluation, approval and registration of partnerships in order to strengthen the Council's partnership governance arrangements. This Protocol has now been updated. In order to raise the profile of the governance of partnership arrangements and in recognition of increased partnership activity, it is being recommended for inclusion as a Protocol to the constitution. The Focus Group considered the Protocol on 8 October and apart from a very minor amendment, supported this view.

Protocol 11 - Governance Reporting Arrangements

34. This Protocol documents the governance reporting arrangements for the Council's Cabinet, Audit, Overview and Scrutiny and Standards Committees. It identifies key areas of council activity, the extent of involvement by the executive and non-executive lead committee for each of those activities. This is a useful reference document relating to the decision making structure of the Council and is therefore being recommended for inclusion as a Protocol to the constitution.

Outstanding Issues

35. The following issues remain outstanding:

Protocol 7 – Media Relations Protocol

36. Apart from a few very minor amendments, it had not been proposed to change this Protocol. However, the Focus Group was not happy with the Protocol as it stood and asked for it to be redrafted taking on board specific comments it made. The Focus Group asked for a revised version to be considered by Group Leaders initially before being presented to Council as part of the revised constitution.
37. The Protocol is currently being redrafted to take into account comments from the Focus Group, recognising that further changes may be required as a result of the introduction of a revised Code of Practice on Local Authority Publicity, which is currently out for consultation. The intention is to present a revised Protocol (on an interim basis pending the outcome of the review of the Code of Practice on Local Authority Publicity) for initial consideration by Group Leaders before presentation to Council if this can be done within the time available. For the reason, this Protocol has not been included in the revised draft constitution at this stage.

Cabinet Member Response Times

38. A recommendation from the Member Support in the Locality Task Group related to the need to include a protocol stipulating that Councillors can expect an initial response from Cabinet Members and Portfolio Holders within two days and a substantive response within seven days.

39. The view of Cabinet Members is that realistically, the suggested protocol could not be kept to all of the time. They have therefore recommended a broader protocol to the effect that in respect of member enquiries from other members, every effort should be made to provide a prompt response wherever possible with this being applied to all Councillors and not just Cabinet members.

40. The stance taken by the majority of members of the Focus Group is as follows:

'Response from Cabinet members to other members of the Council

A response will, unless there are exceptional circumstances be acknowledged within two working days of receipt. A substantive response will be provided within ten working days of receipt. If that is not possible an explanation will be given as to the reason for the delay, what action is being taken, and when a response will be sent'.

41. The Standards Committee considered the recommendation from the Task Group, the views of Cabinet members and the Focus Group. The view of the Standards Committee is that whilst it would be useful to include an appropriate timescale for responses, this was a matter for the Councillors to determine.

42. Should Council agree to include provision for a timescale for responses as suggested, this could be reflected in Part 12 previously entitled 'Members' Job Description'. One of the recommended changes to the constitution is that Part 12 should be renamed 'Role and Responsibilities of Councillors'.

Amendments to Motions (within the Rules of Procedure: Council – Part 4)

43. A number of Councillors have through their feedback via the questionnaire on the constitution and at recent meetings of Council expressed concern over what constitutes a valid amendment to a motion. The wording of this particular rule of the constitution is as set out in the Modular Constitution prescribed in statutory guidance.

44. The Focus Group considered Councillors' concerns and has not recommended a change to this particular rule. It also acknowledged that it was more about the application of this rule rather than the wording of the rule itself. Accordingly, it has requested that consideration be given to the Monitoring Officer drawing up a convention on the application of this rule acceptable to the Chairman of Council and Group Leaders.

Further Review

45. The constitution will need to be reviewed in the light of any new legislation to ensure that it remains lawful and fit for purpose. The proposed Decentralisation and Localism Bill in particular, is likely to have a significant impact on the Council's decision making arrangements.

46. The review of the constitution by a representative Focus Group has once again proved to be a very practical and constructive way of undertaking the detailed work required. One of the recommendations in this report is that the Focus

Group continues with the same membership to consider any significant further revisions as part of an ongoing review. More specifically, the Focus Group would be asked to review the constitution in light of the Localism Bill and other relevant new legislation and for this to be reflected in its terms of reference.

Consultation

47. All elected and co-opted members of Wiltshire Council were given the opportunity to contribute to the review by completing a questionnaire. Of the 123 questionnaires issued (to 98 elected members and 25 co-opted members), 35 completed questionnaires were received; this equates to a 28.45% response rate. The comments received were taken into account by the Focus Group during the review. A summary of the responses together with a commentary is attached at **Appendix 6**.
48. Using the Parish Newsletter, town, parish and city councils were advised that the constitution was being reviewed and invited to submit their comments to help inform the review. No responses other than a few requests for further information on specific areas of the constitution were received. Town, parish and city councils were specifically consulted on the main areas of interest to them namely, the operation of Area Boards, development control and the operation of Planning Committees.
49. The Focus Group was keen to seek the views of members of the public, although it recognised that a number of the documents which make up the constitution might not generate much public interest. The Focus Group therefore agreed a series of questions for inclusion in an online snap survey which centred on public engagement and participation at meetings, details of which were reported to Councillors in the Elected Wire dated 1 October 2010. Whilst a response of only 28 completed surveys is not representative, the comments received will be taken into consideration in seeking to increase public engagement.
50. Cabinet at its meeting on 19 October 2010 received an update on the outcome of the review of the constitution. Cabinet considered that user friendly leaflets summarising the relevant parts of the constitution for use by members of the public and Councillors should be provided. This had been acknowledged during the last review of the constitution and a proposal for this to be undertaken is included as a recommendation to Council. Cabinet also considered that a user friendly summary of the Area Handbook should also be provided.

Environmental Impact of the Proposal

51. None.

Equalities Impact of the Proposal

52. The constitution as amended complies with the Council's obligations under equalities legislation and its Equality and Diversity Policy.

Financial Implications

53. Work on this project has been undertaken within existing resources. There will be a relatively minor cost in the printing of the constitution, although as far as possible the emphasis will be on providing electronic copies of the document. As mentioned in paragraph 49, it is recognised that a user-friendly summary of how members of the public can engage in the decision making process of the Council is needed. This is an area that the Focus Group could be asked to consider along with any financial considerations.

Legal Implications & Risk Assessment

54. The Council is required to have a constitution in place to ensure it is able to discharge its functions effectively and lawfully. The Constitution is a fundamental part of the Council's governance and risk management arrangements.

Conclusion

55. This essentially concludes the review of the constitution requested by the Council. Generally the constitution has been fit for purpose and worked effectively in meeting the objectives in paragraph 2.
56. The few outstanding issues are referred to in paragraphs 35 - 44 of this report. A further review of the constitution will be necessary once the proposals in the Localism Bill and other relevant new legislation are clear.

IAN GIBBONS
MONITORING OFFICER

Report Author:

Yamina Rhouati
Democratic Governance Manager

Appendices:

Appendix 1	-	terms of reference and membership of Focus Group
Appendix 2.1	-	minutes of the Focus Group – 15 March 2010
Appendix 2.2	-	minutes of the Focus Group – 29 July 2010
Appendix 2.3	-	minutes of the Focus Group – 20 September 2010
Appendix 2.4	-	minutes of the Focus Group - 8 October 2010
Appendix 3	-	Report – Designated Scrutiny Officer
Appendix 4	-	Summary of previously agreed changes to constitution
Appendix 5	-	Summary of main changes now proposed
Appendix 6	-	Summary of questionnaire responses from members

Background Papers: None