

**IMPLEMENTATION EXECUTIVE
29 OCTOBER 2008**

CONSTITUTION – PROGRESS REPORT

Executive Summary

To advise the Implementation Executive on the work being undertaken to prepare a constitution for Wiltshire Council and the timescales involved.

Proposals

That the Implementation Executive:

- (a) note the work being undertaken and timescales involved to prepare a constitution for Wiltshire Council and that a draft constitution will be presented to the Implementation Executive on 13 January 2009 for consideration.
- (b) establish a Focus Group comprising 5 elected members and a representative of the Standards Committee with terms of reference as outlined in paragraph 31 to assist with the progress of work on the constitution and agree its membership to ensure that as far as possible cross council and cross party representation is achieved.

**IAN GIBBONS
HEAD OF LEGAL AND DEMOCRATIC SERVICES**

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CONSTITUTION – PROGRESS REPORT

Purpose of Report

1. To advise the Implementation Executive on the work being undertaken to prepare a constitution for Wiltshire Council and the timescales involved.

Background

2. Wiltshire Council will come into effect on 1 April 2009 as a new unitary authority with the functions of the four Wiltshire district councils transferring to it under the Wiltshire (Structural Change) Order 2008. The Council's constitution therefore needs to be revised to ensure that it meets statutory requirements and is fit for the purposes of the new unitary council.
3. The new constitution should:
 - 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.

4. This project is being led by Ian Gibbons, Head of Legal & Democratic Services on behalf of the Monitoring Officer. Yamina Rhouati, Principal Democratic Services Officer is the Project Manager assisted by Janine Gassmann, Democratic Services Officer. Specialist areas have been assigned for review by appropriate officers. The Chief Financial Officer has been tasked with reviewing the Financial Regulations and Financial Procedure Rules and the Head of Procurement and Contract Management has been tasked with reviewing the Contract Regulations.

Main Considerations for the Council

5. As Wiltshire Council will be a continuing authority, the current Wiltshire County Council constitution is being used as the basis for the new constitution.
6. Officers are working on a schedule which highlights areas where changes are proposed, the reasons for those changes and those areas where changes will not be required. The schedule (**Appendix A**) will be sent to Members separately before the meeting of the Implementation Executive. Members are asked to bear in mind that this is very much an initial working draft from which it will be noted that many parts of the constitution will not change as they are governed by legislation and statutory guidance. Members will also be able to see that the main changes are to accommodate the transfer of district functions to the Council. We are also taking the opportunity to review and update material where necessary to reflect agreed working practices.
7. It is anticipated that the new Council will wish to review the constitution subsequently in the light of experience of its application.
8. This schedule will also be used for consultation purposes and to assist Members and Officers in keeping up with the changes proposed.

Main Changes

Policy Framework

9. The Policy Framework, being those areas specifically reserved for determination or approval by Council, will need to be expanded to include statutory plans relating to district council functions. The opportunity will also be taken to review what other plans and strategies should be specifically reserved for approval by Council and therefore form part of the Policy Framework.

Committee Structure

10. The added functions and responsibilities of Wiltshire Council will need to be incorporated in its constitution to provide the necessary legal framework for the Council's decision making process. The committee structure and terms of reference of committees will need to reflect the proposed decision making arrangements for the new council.

11. Revision of the constitution will reflect the decisions made and to be made by the Implementation Executive in relation to the various functions of the new council. Examples of this include the arrangements for planning and development control and associated functions and the operation of the area boards. The constitution will need to address the following areas in particular:

- (a) Planning

12. The Implementation Executive is currently considering how best to deliver the planning and development control function. The recommendations being made to the Implementation Executive in this respect have referred to the establishment of a central strategic planning committee and four area planning committees. The decisions reached will be reflected in the constitution.

- (b) Licensing

13. Wiltshire Council as the Licensing Authority will be responsible under the Licensing Act 2003 for the licensing of relevant activities within its area. The determination of applications in respect of liquor, taxi and other licences will require the establishment of a Licensing Committee having a membership of between 10 and 15 Members. The establishment of a Licensing Committee with its ability to appoint sub-committees to determine licensing appeals will be included in the constitution.

- (c) Area Boards

14. A key part of the bid for unitary status is the commitment to create Area Boards by building on the community engagement work achieved through the creation of 20 community areas. The development of the Area Boards is being overseen by the Community Leadership and Governance Board which reports to the Implementation Executive with its conclusions and recommendations. The decisions of the Implementation Executive on the operation of the Area Boards, including the delegation framework for Area Boards and Parish and Town Councils will be reflected in the constitution.

- (d) Appeals

15. The Constitution will set out arrangements for the determination of appeals by Members.

This excludes appeals against school admissions or exclusions where established arrangements are already in place.

- (e) Audit Committee

16. Current professional guidance from CIPFA recommends that in order to function effectively, an Audit Committee should be independent of the executive and scrutiny functions and should be established as a committee in its own right reporting to the Full Council. Proposals for the establishment

of a new Audit Committee replacing the existing Final Accounts and Audit Committee are currently under development and will be presented to the Implementation Executive in due course. This will include the terms of reference for the Audit Committee, its core functions, structure and administration.

(f) Standards Committee

17. The move to one Council for Wiltshire will also have an impact on the Council's Standards Committee. Under the Standards Committee (England) Regulations 2008 which came into force on 8 May 2008 local authorities have responsibility for the Code of Conduct for its Members. Wiltshire Council will assume the same responsibility for members of parish councils in its area. This has statutory implications for the Committee's terms of reference and composition as the committee must include at least two members who are parish councillors who are not also members of the council. Furthermore, at least one of these parish council members must be present when allegations against parish councillors under the Code of Conduct are considered. This will therefore require an increase to the size and a change to the composition of the Committee and a revision of its terms of reference.
18. The Standards Committee has been keen to consult with members and officers of the district councils' standards committees to ensure a cross-council approach is taken to help shape the future of the committee. A Wiltshire Standards Seminar was held in January 2008 where all standards committee members of the five authorities were invited to discuss the future of the committee including its composition and terms of reference.
19. The Standards Committee at its meeting on 24 September 2008 agreed proposed terms of reference and composition of the committee based on the conclusions of the Seminar for the purposes of consultation with district and parish councils. The proposal includes increasing the size of the committee from the current 9 members to 22 members comprising 6 elected members, 8 parish council representatives and 8 independent members. This size will give the flexibility required to appoint sub-committees to deal with the anticipated volume of complaints received against members into alleged breaches of the Code of Conduct.
20. The district council standards committee members were invited to attend and participate in the discussion on this and other items on the agenda for that meeting and have been formally consulted on the proposals. Parish councils have been consulted in particular on the question of parish council representation on the committee by way of a questionnaire issued with the Council's October Parish Newsletter.
21. Responses to the consultation exercise will be considered by the Standards Committee at a meeting primarily arranged for this purpose on 10 November 2008 to which all Wiltshire district council standards committee members have been invited. The recommendations from the Standards

Committee on the terms of reference and composition of the committee will be presented to the Implementation Executive in January 2009.

(g) New Executive Arrangements

A report on the requirements of the Local Government and Public Involvement in Health Act 2007 on executive governance arrangements will be presented to the Implementation Executive at its November meeting.

Schedule of Meetings

22. In order to be able to book venues for meetings particularly where such venues are located in premises other than the County Council campus, it will be necessary to make these bookings as early as possible to ensure their availability. Taking into account the committee structure which will be required to fulfil the responsibilities of the unitary authority and the frequency of meetings that is envisaged from that structure, a draft schedule is being drawn up and will be presented to a future meeting of the Implementation Executive.

Financial Regulations/Financial Procedure Rules and Contract Regulations

23. The opportunity has been taken to bring forward reviews of the Financial Regulations and Financial Procedure Rules and Contract Regulations to ensure that these sections meet the needs of the unitary authority, legal requirements and take account of new and emerging best practice.
24. A progress report by the Chief Financial Officer on the Financial Regulations and Financial Procedure Rules is attached at **Appendix B**.
25. A progress report by the Head of Procurement and Contract Management on the Contract Regulations is attached at **Appendix C**.
26. These sections will be reviewed as detailed in the progress reports and incorporated into the draft constitution to be presented to the Implementation Executive in January 2009.

Scheme of Delegation

27. The Council's scheme of delegation will need to be revised to reflect the new functions and responsibilities of the unitary council. This will need to cover:
- delegations to officers, including the scheme of delegation for BMP;
 - delegations to Cabinet Members;
 - the framework for delegation to area boards and Town and Parish Councils; and

- the development control function.

28. Detailed proposals will be presented to the Implementation Executive in January 2009. We envisage continuing the same approach as present for the overall scheme of delegation to officers. This provides for general delegations to officers, rather than having a long list of specific delegations which have to be updated every time there is a change in legislation. Work on this is progressing.

Consultation

(a) Members

29. A briefing note was issued on 1 August 2008 to all Wiltshire district and county councillors to advise them of the work being undertaken to provide a new constitution. The briefing note also included a questionnaire seeking feedback on a number of key issues. Members will be given the opportunity of commenting on the draft constitution before this is presented to the Implementation Executive in January 2009.

(b) Focus Group

30. A number of Members responded positively to an invitation to serve on a Focus Group to assist with the progress of work on the constitution.
31. From those who kindly volunteered as listed below, cross-council membership can be achieved, however, it would not be cross-party. Smaller groups tend to be more effective and the preference would therefore be to limit the number of Members on the Group to say, five; one representative from each of the Wiltshire Councils. The Implementation Executive is therefore requested to formally constitute the Focus Group and agree its membership.

Member	Authority	Party
Mrs Bucknell	North Wilts DC	Con
Mr Fowlder	Salisbury DC	Con
Mrs Groom	WiltshireCC/North Wilts DC	Con
Mr Mitchell	Salisbury DC	Con
Mr Moss	Wiltshire CC/Salisbury DC	Con
Mr Osborn	Wiltshire CC/West Wilts DC	Lib Dem
Mr Parker	Salisbury DC	Independent
Mrs Rawlins	Kennet DC	Con
Mr Seed	Kennet DC	Con
Mrs Soden	Wiltshire CC	

The following terms of reference are suggested for the Focus Group:

- To provide a forum for Member engagement in the drafting of the Constitution.

- To consider Member views ascertained through questionnaire responses on a number of key issues and make recommendations where appropriate.
- To offer a Member perspective on and accordingly influence key issues within the constitution.
- To consider the draft constitution.
- To consider responses to the draft constitution from Members and officers and make appropriate recommendations.

(c) Standards Committee

32. The Standards Committee has within its remit, oversight of the constitution and is therefore being consulted and kept informed on the preparation of the new constitution. A progress report was presented to the Standards Committee on 24 September 2008.
33. The Standards Committee noted the progress being made, noted the suggested terms of reference of the Focus Group and nominated Mrs Isabel McCord, an Independent Member of the Committee to serve on the Group as its representative.

Timescale

34. We are working to the following timescale:

Report to Implementation Executive	29 October 2008
Further consultation with Members/Officers	November 2008
Update to the Standards Committee	10 November 2008
Draft constitution being made available to Members For comment	December
Draft Constitution to Implementation Executive	13 January 2009
Report to WCC Standards Committee	21 January 2009
Draft Constitution to Council (for adoption - effective from inception of new Council)	24 February 2009

Environmental Impact of the Proposal

35. None.

Equalities Impact of the Proposal

36. The new constitution will comply with the Council's obligations under the equalities legislation and its Equality and Diversity Policy.

Financial Implications

37. Work on this project is being 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. Training for Members on the constitution will form part of the induction process following the elections in 2009.

Legal Implications & Risk Assessment

38. It is a legal requirement to have a constitution in place to ensure that the new unitary council is able to operate effectively and lawfully from 1 April 2009.

Proposals

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HEAD OF LEGAL AND DEMOCRATIC SERVICES

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Background Papers

None

Appendices

Appendix A - Schedule of changes to the constitution (to follow)
Appendix B - progress report on Financial Regulations/Financial Procedure Rules
Appendix C - progress report on Contract Regulations