

KENNET DISTRICT COUNCIL
MEETING OF THE COUNCIL ON 25TH APRIL 2006
AMENDMENTS TO THE CONSTITUTION

Report by the Solicitor to the Council

1. PURPOSE OF REPORT

To request that the Council considers a number of changes to the constitution to approve changes to the scheme of delegation to reflect the new staff structure brought about by the new Director of Environment and Leisure Services post, to update the Whistle Blowing Policy in accordance with a new model policy produced by CIPFA and to correct inconsistencies that have become apparent during the last year.

2. FINANCIAL IMPLICATIONS

None

3. STAFFING IMPLICATIONS

None

4. LEGAL IMPLICATIONS

The Council is required under the Local Government Act 2000 to keep its Constitution under review.

5. RISK IMPLICATIONS

Failure to provide a clear scheme of delegation to Committees and Officers within the Constitution could potentially lead to decisions being taken that are not lawful.

6. INTRODUCTION

Following the staff restructuring to accommodate the merging of the Environment and Amenities and Leisure departments, it is necessary to amend the Scheme of Delegation to officers to reflect new roles and responsibilities. Furthermore, a number of inconsistencies have become apparent in the "Rules of Procedure" section of the Constitution which this report seeks to address.

7. BACKGROUND

The Local Government Act 2000 required councils to adopt a constitution. This Council adopted its constitution on 23 April 2002. A constitution is a living document that requires regular updating, and this report is the latest in a series of updates.

8. AMENDMENTS TO THE CONSTITUTION

8.1. REVISED SCHEME OF DELEGATION TO OFFICERS

The merger of Environment and Amenities Services and Leisure Services came into effect on 1 April, and it is necessary to amend the scheme of delegation to officers to reflect the new staffing roles. The delegations to the Director of Resources and Director of Community Services are also affected by the merger. A revised scheme of delegation for the three Directors is attached at Appendix A.

The scheme of delegation for the Solicitor to the Council contains a reference to “Renewal and assignment of miscellaneous agreements, easements, leases and tenancies.” For the sake of clarity, it is suggested that the words “Entering into” are added at the start of the item.

Furthermore, it is suggested that an additional paragraph of text be added to the preamble for the scheme of delegation so that when posts are deleted the post that acquires responsibility for those functions assumes those delegated powers, until such time as the scheme of delegation is amended.

8.2. AMENDMENTS TO RULES OF PROCEDURE

A number of minor issues and inconsistencies have become apparent in the Rules of Procedure for Council and Committees.

8.2.1. Limitation on Chairmanships and Vice-Chairmanships

Under the terms of paragraph 1.04 of Part IV (1) A of the Constitution a limit is placed on the number of chairmanships and vice-chairmanships that any particular councillor may hold at any one time. After the formation of the Licensing Committee the list of prescribed committees was not amended leading to an anomaly in the rules, which this report seeks to address.

8.2.2. Questions by Members of the Public

Paragraph 9 of Part IV(1) A of the Constitution deals with questions by members of the public. Members of the Council have a separate right to ask questions in Council, or raise Notices of Motion. For the avoidance of doubt, this report seeks to amend paragraph 9.01 to specifically bar Members from asking questions as members of the public.

8.2.3. Rules of Debate - Withdrawal of Motion

There have been a number of Notices of Motion brought before the Council during the last 12 months. This report seeks to amend paragraph 13.09 of Part IV(1)A of the constitution to simplify the procedure for a Member to withdraw a Notice of Motion of which they are the proposer.

8.3. MATTERS OF URGENCY

Part IV(1)C of the Councils' Constitution deals with matters requiring to be dealt with urgently between meetings.

The delegated powers allow the Chief Executive and appropriate Chief Officers to take urgent actions between meetings in consultation with the relevant chairman and vice-chairman.

However, paragraph 1.02 of this section contains a contradiction in its' last two paragraphs which read as follows:

"Where any such proposed action is contrary to the approved budget or the adopted policy of the Committee concerned then the agreement of the Chairman and Vice-Chairman of the Overview and Scrutiny Management Board must also be obtained.

All such urgent action shall always comply with the overall policies and budgets of the Council, the Constitution and the Council Procedure Rules."

The first paragraph gives power to override budget and policy matters whilst the next paragraph removes the same power.

Circumstances may occur, however remote, where budget and policy matters need to be ignored. The Lockerbie incident and the flooding in Carlisle are examples where urgent unplanned expenditure was necessary without formal committee authority.

It is suggested therefore that the second paragraph be deleted and replaced with the following:

“In cases of extreme emergency the Chief Executive (or in his absence a Director) or relevant Chief Officer may act after consulting the Leader of the Council or his/her Deputy”

8.4. TERMS OF REFERENCE

8.4.1. LICENSING COMMITTEE

To avoid any confusion about the respective functions of the Licensing Committee, Regulatory Committee and the Licensing Sub-Committee of the Regulatory Committee, it seems sensible that the Licensing Committee should be the sole committee of the Council dealing with licensing matters.

It is recommended that matters relating to hackney carriage and private hire licensing in the terms of reference for Regulatory Committee be transferred to the Terms of Reference for Licensing Committee. It is also recommended that the Terms of Reference for the Licensing Sub-Committee be transferred in their entirety to the Terms of Reference for the Licensing Committee, and that its functions be discharged by Licensing Panels.

The suggested amended Terms of Reference for the Licensing Committee are attached at Appendix B.

8.4.2. OVERVIEW & SCRUTINY MANAGEMENT BOARD

The Terms of Reference for the Overview & Scrutiny Management Board require updating to reflect the annual requirement to appoint a Corporate Finance Scrutiny Sub-Committee.

8.5. ARTICLES OF THE CONSTITUTION

Article 7 of the Constitution lists those committees that it is necessary for the Council to appoint. The list of committees needs updating to include the Licensing Committee.

9. WHISTLEBLOWING POLICY

“Whistleblowing” is a colloquial term for “confidential reporting” and was introduced by the Public Interest Disclosure Act 1998 which gives a mechanism for employees to register and have matters of concern investigated by their employers. Although Kennet District Council adopted a Whistle Blowing Policy some years ago, this is now somewhat outdated in that it is not comprehensive and refers to roles to be played by a number of postholders where those posts have been abolished because of structural

changes or because of change of personnel. Recently, a revised national model policy has been produced further to the Act by CIFPA and the proposals contained in Appendix A have used that model as a base, with some local adaptations.

10. RECOMMENDATIONS

It is recommended that the Council adopt the following amendments to the Constitution:

1. That the schemes of delegation for the Director of Community Services and the Director of Leisure and Amenity Services attached at Appendix A be adopted, and that the schemes of delegation for the Leisure Services Manager and the Environment and Amenity Services Manager be deleted.
2. That the preamble for the Scheme of Delegation to Officers has the following extra paragraph inserted at Part III (3) 8a: “In respect of all functions delegated to officers, the delegation shall be deemed to extend to any officer responsible for those functions following restructuring or re-designations of posts, until such time as the scheme of delegation is updated.”
3. That the words “Entering into” be added to the delegation to the Solicitor to the Council dealing with the renewal and assignment of easements, leases and tenancies.
4. That Licensing Committee be added to the list of bodies subject to Limitations on Chairmanships and Vice-Chairmanships at Part IV(1)A para 1.04.
5. That the sentence “For the avoidance of doubt, Members of the Council may not ask questions as members of the public” be added at Part IV(1)A para 9.01.
6. That the first 2 sentences of PartIV(1)A para 13.09 be deleted and replaced with “A Member may withdraw a motion which he/she has moved with the consent of the Chairman”.
7. That the second paragraph of Part IV (1) C 1.02 be replaced with “In cases of extreme emergency the Chief Executive (or in his absence a Director) or relevant Chief Officer may act after consulting the Leader of the Council (or in his absence the Deputy Leader of the Council)”.
8. That the Licensing Committee be added to the list of committees in Article 7.

9. That the amended Terms of Reference for the Licensing Committee attached at Appendix B be adopted, and that any consequential amendments to the Terms of Reference for the Regulatory Committee and Regulatory Sub-Committees be made by the Solicitor to the Council.
10. That the following item be added to the Terms of Reference for the Overview & Scrutiny Management Board:

“8.9 To appoint at its first meeting in each municipal year a politically balanced Corporate Finance Scrutiny Sub-Committee, that shall have specific responsibility for scrutinising the Statement of Accounts, Risk Management, Audit, The Statement of Internal Control and Budgetary Control and Monitoring.”
11. Adopt the Whistle Blowing Policy attached as Appendix C to this Report.

Background Papers: Revised National Model Whistle blowing Policy produced by CIPFA

Appendices:

Appendix A – Schemes of Delegation for the Directors.

Appendix B – Amended Terms of Reference for the Licensing Committee.

Appendix C – Whistleblowing Policy