

Wiltshire Council

Council

12 July 2011

Wiltshire Council Constitution

Summary

1. To seek Council approval to amend the constitution as follows:

a) Consequential amendments following a review of the Development Control Service as recommended by Cabinet at its meeting on 24 May 2011 in respect of the following parts of the constitution:

- Part 3C Scheme of Delegation (Development Control)
- Protocol 4 – Planning Code of Good Practice for Members of Wiltshire Council
- Part 3 – paragraph 2.1 – terms of reference of the Strategic Planning Committee

b) Amendments to the following documents in respect of the constitutional requirement for all matters relating to the transfer of staff in or out of the Council to come before the Cabinet:

- Part 9 – Financial Regulations: Paragraph 105
- Part 11 – Contract Regulations: Paragraph 2.11

2. To update Council on matters which remained outstanding following the last review of the constitution, namely

- Protocol 7 – Media Relations Protocol
- Part 4.3 – Guidance on Amendments to Motions

Proposals

a) Council is asked to approve the following:

- i) **Part 3C - Scheme of Delegation (Development Control) as revised;**
- ii) **Protocol 4 – Planning Code of Good Practice for Members of Wiltshire Council as revised;**

- iii) the function of revising and or setting planning fees be delegated to the Strategic Planning Committee;**
 - iv) to amend Part 9 – Financial Regulations and Part 11 – Contract Regulations to allow for delegation of matters involving the transfer of staff in or out of the Council as detailed at paragraph 16 of this report.**
 - v) note the content and adoption of the amended Protocol 7 - Media Relations Protocol and Part 4.3 - Guidance on Amendments to Motions.**
- b) That the above decisions be incorporated into the Council’s constitution.**

Reasons for Proposals

Council approval is required under Part 3 of the constitution – Responsibility for Functions to approve and amend the constitution and to update Council on matters outstanding following the last review of the constitution.

Ian Gibbons
Solicitor to the Council and Monitoring Officer

Wiltshire Council

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Wiltshire Council Constitution

Purpose of Report

1. To seek approval of:
 - a revised Scheme of Delegation for Development Control (Part 3C)
 - a revised Planning Code of Good Practice for Members of Wiltshire Council (Protocol 4)
 - minor extension to the Terms of Reference of the Strategic Planning Committee (Part 3 – paragraph 2.1) and
 - amending the Financial Regulations (Part 9) and Contract Regulations (Part 11) to allow for the delegation of decisions to a particular threshold involving the transfer of staff in or out of the Council.
2. To update Council on matters which were left outstanding following the last review of the Constitution.

Background

3. A thorough review of the constitution took place during 2008/09 in order to have a fit for purpose constitution in place for the new unitary authority when it came into being on 1 April 2009. Council requested a review into the effectiveness of the constitution following six months in light of operational experience. The Standards Committee was tasked with carrying out the review which it did through a cross party and cross committee Focus Group on the Review of the Constitution (Focus Group).
4. A report on the outcome of the review by the Standards Committee was reported to Council at its meeting on 9 November 2010 when it adopted a revised constitution effective from 1 December 2010. This report focuses on amendments required to the constitution since this last review in 2010.
5. 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; and
- help the Council to focus on its strategic objectives.

Main Considerations for the Council

6. Council is asked to consider amending the constitution as follows for the under mentioned reasons:

Planning

7. It was agreed that a review of the way in which the development control service was delivered would be reviewed after nine months of operation. Accordingly, a review was carried out which included consultation with members of this Council, and parish, town and city councils. The outcome of the review was presented to the Focus Group which considered the recommended consequential amendments to the constitution in great detail.
8. A report on the outcome of the review together with the recommendations of the Focus Group was presented to Cabinet at its meeting on 19 October 2010. However, Cabinet resolved defer consideration of the report until such time as the implications of any changes to the planning system as a result of the Decentralisation and Localism Bill were known. The matter was again considered by Cabinet at its meeting on 24 May 2011 (Cabinet report attached as background information at Appendix A). Cabinet resolved as follows:
- (a) That Council be recommended to approve the following:
- the revised Scheme of Delegation for Development Control as amended (Appendix 1)
 - the revised Planning Code of Good Practice for Members of Wiltshire Council (Appendix 2)
 - that the function of revising and or setting planning fees be delegated to the Strategic Planning Committee
- (b) That the Constitution be amended accordingly.
9. Notwithstanding that the Focus Group had previously considered the proposals in detail, the informal views of members of the Standards Committee were sought in order to convey them to this meeting. This approach in lieu of being considered formally by the Committee was approved by the Chairman of the Standards Committee.

10. Informal comments from members of the Standards Committee are summarised as follows:

Paragraph Ref.	Comment
Cabinet Report 24 May 2011	
Paragraph 42	Object to the determination of planning applications made by Wiltshire Council under delegated powers
Draft Scheme of Delegation (Appendix 1)	
Bullet point 4	Suggest that only the Committee that made a decision that became subject to appeal should be able to decide whether or not to defend that decision. Time constraints are of limited relevance in this case
Bullet point 10	Ask what implications exist if a forum or working party should be open to Members
Bullet point 12	Suggest that proposed approach should not be the case if agreements were part of a permission granted by Committee
Bullet point 13	Object strongly to proposal and suggest conditions on permission granted by Committee should only be altered by Committee consent
Bullet point 16	Suggest such decisions should only be taken under delegated powers following consultation with the local Member or permitting Committee
Point (b) on call-in	Suggest that any variation and/or discharge of legal agreements should be eligible for call-in by Members
'Definitions' section	Recommend attention on the definition of a 'close relative', and question whether this should include individuals such as a sibling's partner
Draft Planning Code of Practice (Appendix 2)	
Paragraph 11(f)	Propose that representatives of Parish and Town Councils should have the same amount of time to speak at Planning Committee meetings as other interested parties (3 minutes)

11. Accordingly, Council is asked to agree the above recommendations of Cabinet taking into account the above comments and any other comments made at this meeting.

Transferring Staff in or out of the Council (TUPE arrangements)

12. Following a request by Cabinet, the Focus Group considered how the constitutional requirement whereby matters involving the transfer of staff in or out of the Council must be determined by Cabinet could be delegated. This was to avoid delays in the decision making process and make better use of Cabinet time.

13. The requirement to obtain Cabinet approval is covered by the following sections of the Constitution:

Part 9 – Financial Regulations: Paragraph 105:

“The Cabinet is responsible for approving the contractual arrangements for any work for third parties or external bodies in excess of £1,000,000 **which involves the transfer of any employees in or out of the council**; or the matter to which it relates is commercially, politically or strategically sensitive.”

Part 11- Contract Regulations: Paragraph 2.11:

“Cabinet approval must be obtained for any contract (or programme) which:

2.11.1 exceeds an annual value of £1 million or the total contract value exceeds £4 million;

2.11.2 **involves the transfer of any employees in or out of the council**; or

2.11.3 the matter to which it relates is commercially, politically or strategically sensitive.”

The following proposal was considered and recommended by the Focus Group:

14. Reports on staff transfers would be considered by the Corporate Leadership Team (CLT) which includes the Monitoring Officer, Chief Finance Officer and Head of HR and Organisational Development. Once approved by CLT, proposals involving less than 50 staff would be progressed for delegation to the Cabinet member for Resources following consultation with the relevant cabinet member for the particular service area concerned and relevant Scrutiny chairman. The established delegated decision procedure whereby details would be published on the Council’s website and brought to the attention of Councillors via email would be used to ensure transparency of decision making and opportunity given to make representations. Proposals involving more than 50 staff would progress to Cabinet.
15. The Monitoring Officer, Head of Procurement, the Chief Finance Officer and the Service Director for HR and Organisational Development have been consulted on this proposal and are happy with this approach. This proposal has also been circulated to members of the Standards Committee for their informal comments and no objections have been received.
16. Accordingly, Council is asked to approve the necessary amendments to the Financial Regulations and Contract Regulations as follows. The opportunity has been taken to achieve consistency between the two sections:

Part 9 – Financial Regulations: Paragraph 105:

“The Cabinet is responsible for approving the contractual arrangements for any contract (or programme) with an annual value in excess of £1 million or total value in excess of £4 million; or which involves the transfer of 50 or more employees in or out of the council; or the matter to which it relates is commercially, politically or strategically sensitive.”

Part 11- Contract Regulations: Paragraph 2.11:

“Cabinet approval must be obtained for any contract (or programme) which:

- 2.11.1 exceeds an annual value of £1 million or the total contract value exceeds £4 million;
- 2.11.2 involves the transfer of 50 or more employees in or out of the council;
or
- 2.11.3 the matter to which it relates is commercially, politically or strategically sensitive.”

17. The detail of the reporting arrangements through CLT and how the delegation would operate as referred to in paragraph 14 above will be included in guidance to officers.

Updates

18. Council at its meeting on 9 November 2010 in adopting the revised constitution, acknowledged that the two areas of the Constitution detailed below remained outstanding. Authority was delegated to the Monitoring Officer to approve these documents following further consultation.

Protocol 7 - Media Relations Protocol

19. Finalisation of a new Protocol was delayed by the late publication of DCLG's Code of Recommended Practice on Local Authority Publicity (the Code), with which the Council's Media Relations Protocol should conform. Following publication of the former, a draft Media Relations Protocol was considered initially by the Focus Group at its meeting on 3 February and endorsed with a slight amendment at its meeting on 13 June following publication of the Code as revised.
20. The Media Relations Protocol has now been approved by the Monitoring Officer following consultation with the Focus Group and the Service Director for Policy and Communication in accordance with the delegation granted by Council at its meeting on 9 November 2010. This is attached for information at Appendix 3.

Part 4.3 - Guidance on Amendments to Motions

21. The Focus Group at its meeting on 3 February 2011 considered and endorsed Guidance on Amendments to Motions which had been deferred from consideration at Council on 9 November 2010 in order to facilitate further consideration by Group Leaders and the Chairman of Council.
22. In accordance with the delegation granted by Council and following consultation with Group Leaders, the Focus Group and Chairman of Council, the Monitoring Officer has approved the Guidance in its unaltered form. A copy of the Guidance was circulated to Councillors via the Elected Wire dated 11 February 2011. The Guidance is attached for information at Appendix 4.

Ongoing Review of the Constitution

23. Council at its meeting on 9 November 2010 resolved that the Focus Group remains in being to assist with the ongoing review work of the constitution as and when required. This would also include reviewing the constitution in light of any changes as a result of the Localism legislation. The Standards Committee at its meeting on 18 May formally re-appointed the Focus Group for this purpose and remains an effective forum in which to carry out the detailed work required to review the constitution.

Ian Gibbons
Solicitor to the Council and Monitoring Officer

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Appendices:

Appendix A – Report to Cabinet on 24 May 2011 “*The Wiltshire Council Member and Parish, Town & City Council Review of the Development Control Service of Wiltshire Council following a year of operation*”

Appendix 1 – Part 3C - Scheme of Delegation (Development Control)

Appendix 2 – Protocol 4 - Planning Code of Good Practice for Members of Wiltshire Council

Appendix 3 – Protocol 7 - Adopted Media Relations Protocol, including appended Code of Recommended Practice on Local Authority Publicity

Appendix 4 – Part 4.3 – Adopted Guidance on Amendments to Motions