

## **COUNCIL – 13 DECEMBER 2011**

### **REVIEW OF THE CONSTITUTION**

#### **Report by the Monitoring Officer**

#### **Review of the Council's Constitution**

### **Introduction**

1. A major review of the Constitution took place in 2009. There have been no significant concerns raised with the Monitoring Officer in relation to its operation. The Monitoring Officer keeps the Constitution up to date and is authorised to make changes to comply with the law, give effect to decisions of the Council or to correct or clarify matters for accuracy.
2. Other changes require the approval of the full Council. Some minor changes, to improve the business and efficiency of the Council, are suggested in this report. The report also specifically reviews the operation of the Council's Petition Scheme to fulfil Council's requirement for an annual review of the Scheme.
3. As part of the review, the Monitoring Officer discussed with each political group leader whether there were any issues of particular concern. No such issues were raised from the Conservative, Labour and Liberal Democrat groups. The leader of the Green Group expressed his concern that the current council procedure rules for including motions on council agendas did not include his group on the same terms as the three main groups on the Council and consequently both his group and the independent member were at a disadvantage in ensuring their motions were debated.

### **Potential changes**

#### **Communication with councillors:**

4. Members have on occasion expressed concern that procedures for keeping them informed about issues affecting their divisions are either not clear or not always followed. The position is reviewed by the Monitoring Officer and by the Strategy & Partnerships Scrutiny Committee. However, it may be appropriate to reflect more fully in the Constitution the current informal protocol whereby directors have responsibility for demonstrating to the Monitoring Officer, by quarterly report, their arrangements for keeping members informed. This requirement could be accommodated as a further paragraph within the Protocol on Members' Rights and Responsibilities, section 10 of which deals specifically with 'effective communication with members'.

**Petition Scheme:**

5. The Petition Scheme, at Part 11 of the Constitution, has been in operation since June 2010 and sets out clearly how members of the public can create petitions, including online petitions, and what the Council will do with these once they are received. The Localism Act 2011 **will repeal** the requirement for Council's to keep and maintain petition schemes and so it will be a discretionary matter whether Petition Schemes are retained or not.
6. The County Council's Petition Scheme has been generally well-used. For instance, seventeen e-petitions have been raised during the past year. Of these, thirteen were in relation to libraries with others relating to environmental issues. The e-petition facility on the Council's website is effectively low maintenance, for the public and for the Council. It is also possible for persons without electronic facilities to be added to an e-petition and is therefore not discriminatory. Also, it is possible for written and e-petitions to be 'joined together' therefore maximising the impact of petitions. To date, no petitions have triggered a requirement to 'hold an officer to account' or a debate at Full Council. The petitions that have been made have therefore been referred to relevant officers to consider and to report to members as appropriate. On the other hand, the Petition Scheme has not been significantly used in the past year and has not triggered wider debates. On one occasion, the availability of the Scheme has created an expectation that the County Council can achieve a resolution to an issue when a direct approach to a more relevant authority might have been more beneficial.
7. Council is asked to consider whether the Scheme should continue, having regard to the level of usage to date, the accessibility to the Council afforded by it, its low maintenance and subject to the implementation of Localism Act's repeal provisions.

**Councillor Call for Action:**

8. The Councillor Call for Action (Part 9.3, Annex 1 of the Constitution) allows a member of the Council to pursue a constituency matter by requesting a relevant scrutiny committee to consider the matter. This is effectively designed to be a means of last resort. The current process envisages that a preliminary meeting is held between the member and the relevant chairman in order to agree the outcomes expected and the key issues, information and witnesses required. The committee can then hear from the member and any witnesses and decide whether to take the matter up for example by including the issue as part of an ongoing programme of review or the holding of a separate meeting.
9. A question arises as to whether the calling and hearing of witnesses by the committee before it has decided to take on the issue is premature and sits better within the investigatory framework following a decision to pursue the

matter. Consequently, Council is asked to consider whether the procedures under the Councillor Call for Action should be amended such that a committee initially hears from the member concerned and then, should the matter be taken forward, the information and witnesses can be considered thereafter.

### **Administrative changes**

10. As mentioned above, the Monitoring Officer has delegated authority to make minor administrative changes to the Constitution to comply with the law, give effect to decisions of the Council or to correct or clarify matters for accuracy. A schedule of the administrative changes are annexed to this report. A track-change version of these are on deposit in the Members' Resource Centre, for information.

### **Communication of Changes**

11. Council on the 14 June 2011 determined that the number of hard copy Constitutions should be reduced and that the Constitution on the public website should be regarded as the definitive master copy. Any changes agreed by Full Council will be updated on the website and amended extracts provided to those Members that are already in receipt of hard copy Constitutions. In addition, an updated version will be placed in the Members Resource Centre for information.

### **RECOMMENDATION**

#### **12. Council is RECOMMENDED to:**

- (a) Approve the addition to the Protocol on Members' Rights and Responsibilities of explicit reference to Directors' responsibilities to report to the Monitoring Officer on a quarterly basis of their arrangements for keeping members informed of local issues;
- (b) Determine whether or not to maintain a Petition Scheme for Oxfordshire County Council;
- (c) Amend the Councillor Call for Action Rules (Part 9.3, Annex 1) so that the committee hears, in the first instance, from the member concerned and that the consideration of evidence and witnesses occurs if and when the committee agrees to pursue the relevant Councillor Call for Action.

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County Solicitor and Monitoring Officer

Contact Officer: Glenn Watson

December 2011

**Annex**

**Review of the Constitution**

**Full Council – 13 December 2011**

**Administrative Changes**

**December 2011**

The following is a list of administrative changes which the Monitoring Officer intends to make under his delegated authority under the Constitution to keep the Constitution up to date.

**Part 2 – Articles:**

*Article 4 – The Full Council*

2. Functions of full council

Delete 'j' about making and amending bylaws as this power has been delegated already to DOC.

4. Policy framework – various name changes of policies to update

5. Budget and policy framework:

This should cross-refer to Part 3.2 rather than 'the appendix to this article'.

*Article 8 – Appointments sub-committee*

1 (b) Delete reference to 'Deputy Directors'

**Part 3.1 – Council Procedure Rules**

13.4 – clarify that 13.5.1 (ii) (a) also applies as a rule that does not apply to a recommendation from the Cabinet, a committee of the Council or an officer (as a motion on notice)

13.5.1 (ii) – addition of the words 'except the February (or budget-setting) meeting:'

15.6.1 – clarify that an amendment should not have the effect of negating the 'whole' motion

**Part 3.2 – Budget and policy framework procedure rules**

(6) Call in of decision – add the word 'sent' on second line 'be **sent**' to the Cabinet with'

### **Part 7.1 – Management Structure**

Complete replacement of this section to update job titles following restructures under the Business Strategy.

### **Part 7.3 – Scheme of Delegation to Officers**

Amendment to 6.6 by adding a new 6.7 (delegation to directors) to clarify that the powers of the Director of E&E include “Jointly with the County Solicitor, determination of applications for certificates of lawfulness of existing or proposed use or development.”

### **Part 8.2 – Financial Procedure Rules**

Revised version consequent on the changes made at Council earlier in the year.

### **Part 8.3 – Contract Procedure Rules**

Various minor changes to give effect to updates and clarifications.

### **Part 8.4 – Officer Employment Procedure Rules**

(2) As regards the structure of directorates...

(a) Add clarification that this power (for directors to modify their directorate structures) is exercised ‘with the concurrence of the head of human resources (through the Strategic Human Resources Manager)’

(3) Salaries and remuneration

Add section to say that the Council’s Pay Policy, will apply to salaries and remuneration once it comes into force in April 2012

### **Appointment and Dismissal of Directors**

Clarification of Processes

### **Part 9.6 Officers’ code of conduct**

8. Values – amend acronym so that I equals ‘Innovation’

12 Fraud and corruption replace ‘their’ with ‘your official capacity’

FAQ section – *Human Rights section* amend to say ‘Emails that are private...should not be viewed by the employer’