

Meeting of: AUDIT COMMITTEE

Date: 19TH OCTOBER 2005

Report of: HEAD OF ADMINISTRATION SERVICES

Reference: GMN

Title: CONSTITUTIONAL REVIEW – PROPOSED AMENDMENTS

Members will require their copy of the Constitution to refer to in considering this report.

PUBLIC/EXEMPT ITEM

This item is for consideration in the public part of the meeting.

PURPOSE OF THE REPORT

To consider a number of proposed amendments to the constitution.

RECOMMENDATIONS

That Members consider the proposed amendments set out in paragraph 2 of the report for recommendation to Council.

REPORT

1. Introduction

- 1.1 Article 15 of the Constitution requires changes to the Constitution to be approved by full Council after hearing recommendations on a proposal from the Monitoring Officer and/or the Audit Committee with the exception of amendments to the Financial Regulations and Contract Procedure Rules which have been delegated to the Audit Committee and textual or factual amendments required to keep the document up to date or agreed consequential amendments as a result of Council decisions which may be implemented by the Monitoring Officer.
- 1.2 Members will be aware that a re-print of the Constitution was undertaken at the start of this Municipal Year which included a large number of changes agreed by Council during the previous year.
- 1.3 The opportunity was also taken at the same time to undertake a full cross-check to ensure that any consequential changes were identified and these were implemented by the Monitoring Officer.
- 1.4 In reading the Constitution in such detail a number of anomalies were also identified and further issues have been raised by both Members and officers during the course of the last year on which Members may wish to consider possible alternative procedures.

- 1.5 These are all listed below in the order in which they occur in the Constitution.

2. Issues for consideration

2.1 Part 2, Article 12 – Officers

The Chief Executive is not a Chief Officer and there should be a single designation of 'Head of Paid Service' in Article 12.01(b). Furthermore 12.01 (d) and 12.02 (b) are contradictory in relation to who determines the structure for the discharge of functions. Committee is requested to confirm the requirement for Members to agree the overall staffing structure of the Council.

2.2 Part 3, Section 1 - Council

There is no provision for the making of any urgent Council decisions and it is suggested that this section include delegation to the Chief Executive to sanction urgent decisions following consultation with Group Leaders.

2.3 Part 4, Section 1 – Council Procedure Rules

1. Council Procedure Rule 2 lists the order of items on Council agenda. Recent meetings have been re-ordered to take (x) questions on notice from Members before (viii) Cabinet Leader's report and question in order that questions on notice are not duplicated by questions from the floor during the Leader's report. It is suggested that this practice be formally adopted by amending Council Procedure Rule 2.
2. Council Procedure Rule 10 allows for questions from the public (on notice) to Members of the Cabinet and the Chairmen of Overview and Scrutiny Committee and Budget and Performance Panel, whereas Council Procedure Rule 11 allows for questions from Members (on notice) to the Chairmen of any other Committee in addition. This appears to be an anomaly which could be corrected by amending Rule 10 although it is recommended that Rule 10.5 be extended to include the rejection of any question relating to an individual planning application or licence.
3. Council Procedure Rule 14.6 does not include reference to friendly amendments. Whilst this process is covered by general law of meetings it may be clearer for Members if this is included explicitly in Council Procedure Rules.

2.4 Part 4, Section 1 – Council Procedure Rules – Addendum 2

Paragraph (6) limits the referral of any petition or address to Cabinet or Overview and Scrutiny Committee. On occasions it may be more appropriate to refer the matter to a Committee of Council and it is suggested that the wording be amended to substitute 'Cabinet or Overview and Scrutiny' with 'the relevant Council body'

2.5 Part 4, Section 2 – Access to Information Rules

Access to Information Procedure Rule 17 does not currently include provision for the Chairman of Overview and Scrutiny and other Committees to request that a report be placed on the Council agenda in accordance with Minute No. 68(2)(ix) as agreed by Council in October 2003 as included in Council Procedure Rule 2 (xiii).

2.6 Part 4, Section 3 – Budget and Policy Framework Procedure Rules and Part 4, Section 5 – Overview and Scrutiny Procedure Rules

Budget & Policy Framework Procedure Rule 4 and Overview & Scrutiny Procedure Rule 17 (a) contains provision for the Chairman of Overview & Scrutiny Committee to veto the implementation of an urgent business decision. This is a disproportionate level of power for an individual member and it is suggested that this be amended to the Chief Executive in consultation with the Chairman etc.

2.7 Part 4, Section 4 – Cabinet Procedure Rules

Cabinet Procedure Rule 1.3(a) allows the delegation of Executive functions. The amendment to this Rule included delegation to an individual Cabinet Member in addition to a Committee, an officer, etc. The Rule does not differentiate between executive decisions and Key Decisions. The delegation of Key Decisions is not permitted to individual Cabinet Members and this Rule should therefore be amended. Members need to consider whether they wish to allow the delegation of Key Decisions also to Cabinet Committees.

2.8 Part 4, Section 5 – Overview and Scrutiny Procedure Rules

There are several clarifications with regard to the call-in procedure, which have either been agreed previously by Council or where custom and practice has been developed and therefore the constitution requires updating.

- Rule 16 c) should read “....if so requested in writing or by e-mail from a known or recognised source by exactly 5.....and shall then notify the decision maker of the Call-in. This can be a collective notification from two or more Councillors from the same political group.”

- In order to comply with Council Minute 68(2)(ii) of 8th October 2003, Rule 16 e) should read:

“If, having considered the decision, a majority of the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for further consideration, setting out in writing the nature of its concerns, or refer the matter to Council. In the case of Individual Cabinet Member decisions these will be referred to full Cabinet for reconsideration.”

- Furthermore the Overview and Scrutiny Committee passed the following resolution at its meeting on 2nd February 2005:

“That in future, all decisions subject to a recommendation following a Call-in (whether delegated to an Officer, Individual Cabinet Member or full Cabinet), be referred back to full Cabinet for reconsideration, in the first instance and that the Council’s Constitution be amended accordingly.”

The recommendation came about as the Committee had called-in a decision taken under delegated authority by the Head of Engineering Services. Members were concerned that according to the Constitution they were required to refer the decision back to the Officer for reconsideration and that this placed undue pressure on an officer, particularly when Council had agreed in October 2003 that individual Cabinet Members should not be placed in this position and in their case decisions would be referred to full Cabinet for reconsideration. Audit Committee is asked to consider this recommendation.

If agreed Rule 16 e) would require the following additional amendment:

“If, having considered the decision, a majority of the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for further consideration, setting out in writing the nature of its concerns, or refer the matter to Council. In the case of Individual Cabinet Member and officer delegated decisions these will be referred to full Cabinet for reconsideration.”

- Rule 18 should read:

“At the discretion of the Chairman, other Members present may have the opportunity to question the decision-maker;

Before forming a decision, the Chairman may decide to adjourn the meeting in order to allow the Call-in signatories to reflect on the evidence received and to consider any recommendations they wish the Committee to consider.

The meeting then moves to forming a decision in accordance with the Council Procedure Rules.”

2.9 Part 5, Section 1 – Employees’ Code of Conduct

Employees Code of Conduct paragraph 4.1.3 should include reference to officers writing to the media.

3. Proposed amendments

- 3.1 Attached at Appendix A for Members’ guidance is suggested wording to incorporate each of the above options for amendment.

FINANCIAL IMPLICATIONS

There are no financial implications as a direct result of this report. Amendments approved by Council will require revised pages to be printed and circulated to Members and Officers. The cost of printing can be contained within existing budgets for Democratic Representation.

LEGAL IMPLICATIONS

Article 15 of the Constitution requires any amendments such as those included in this report to be considered by Audit Committee for recommendation to Council.

COMMUNITY SAFETY IMPLICATIONS

None.

HUMAN RIGHTS ACT IMPLICATIONS

None.

RACIAL EQUALITY AND EQUAL OPPORTUNITIES IMPLICATIONS

All Council meetings must be held in a manner which allows equal access to all sectors of the community.

SUSTAINABILITY IMPLICATIONS

None.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no comments to add.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no comments to add.

BACKGROUND PAPERS

Lancaster City Council Constitution

PROPOSED CONSTITUTIONAL AMENDMENTS

1. Part 2, Article 12 – Officers

12.01 Management Structure

- (a) **General** – The Council may engage such staff (referred to as Officers) as it considers necessary to carry out its functions.
- (b) **Head of Paid Service** – the Council will appoint a Chief Executive as Head of Paid Service. The Chief Executive will be appointed by the Council, having regard to recommendations made from an Appointments Panel. Corporate Directors will be appointed by an Appointments Panel.
- (c) **Chief Officers** – The Council will engage persons for the following posts. These posts will be designated Chief Officers:
 - Corporate Director (Central Services)
 - Corporate Director (Community Services)
 - Corporate Director (Regeneration)together with Monitoring Officer and Chief Financial Officer (Section 151) where these functions are not performed by the posts above.
- (d) **Chief Executive, Monitoring Officer and Chief Financial Officer (Section 151)** - Will have the functions described in Article 12.02-12.04 below.
- (e) **Structure** - The Chief Executive will publicise a description of the overall departmental structure of the Council showing the management structure and deployment of Officers. This is set out at Part 7 of this Constitution.
- (f) **Restrictions on functions** – The Chief Executive may not be the Monitoring Officer. The Monitoring Officer cannot be the Chief Executive or Chief Financial Officer (Section 151). The Chief Financial Officer cannot be the Monitoring Officer.

12.02 Functions of the Chief Executive

- (a) **Functions**
 - (i) The Chief Executive is the Council's Head of the Paid Service
 - (ii) Overall corporate management and operational responsibility (including overall management responsibility for all Officers).
 - (iii) Provision of professional advice to all parties in the decision making process.
 - (iv) Together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions.
 - (v) Representing the Council on partnership and external bodies (as required by statute or the Council).

- (b) **Discharge of functions by the Council** – The Chief Executive will report to full Council and/or the Cabinet and any Committees or Overview and Scrutiny meeting on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.

2 Part 3, Section 1 - Council

DELEGATIONS TO OFFICERS

The following functions are delegated to the Officers of the City Council subject to each and every delegation being undertaken within:

- The policies and strategies of the Council within the policy framework; and
- Any legal constraints imposed on the Council; and
- The financial provision authorised by the Cabinet and the Council
- Any other relevant section of the Constitution.

To the Chief Executive

To sanction emergency action, as set out in the rules of procedure for urgent business.

Part 4, Section 2 – Access to Information

15.01 If a matter, other than a Key Decision, requires an urgent decision, the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until the next appropriate meeting of the decision making body;
- (b) the proper officer has informed the Chairman of the relevant decision-making body and in the case of the Cabinet, the Cabinet Member with special interest for the area of responsibility; where the decision is one for full Council the Leader of each of the political groups must be informed.
- (c) any decision taken under this rule is reported into the next ordinary meeting of the decision making body; and

3 Part 4, Section 1 – Council Procedure Rules

2. ORDINARY MEETINGS

Ordinary meetings of the Council will take place in accordance with a programme decided by the Council. Ordinary meetings will:

- (i) elect a person to preside if the Mayor and Deputy Mayor are not present;
- (ii) approve the Minutes of the last meeting of the Council (whether Ordinary or Annual);
- (iii) items of urgent business authorised by the Mayor;
- (iv) receive any declarations of interest from Members;
- (v) receive any announcements from the Mayor or Chief Executive, or any Member with the permission of the Mayor;
- (vi) receive questions from, and provide answers to, the public in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the meeting;
- (vii) deal with any business from the last Council meeting;
- (viii) receive written questions on notice from members of the Council and subsequent answers;
- (ix) receive a report from the Cabinet Leader and subsequent questions and on an annual basis from each Cabinet Member and Overview and Scrutiny Committee;
- (x) receive reports and referred items from Cabinet, Council Committees and Overview and Scrutiny;
- (xi) receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- (xii) consider motions on notice;
- (xiii) receive reports from the Council's Statutory Officers or any other Officer with the permission of the Chief Executive or at the request of the Chairman of Overview and Scrutiny or a Committee of Council.
- (xiv) consider any other business specified in the summons to the meeting, including appointments to Committees, Overview and Scrutiny and outside bodies;
- (xv) the last Ordinary meeting preceding the Annual Meeting will approve a programme of Ordinary meetings for Council for the next year;
- (xvi) receive Cabinet minutes.

10. QUESTIONS BY THE PUBLIC

10.1 General

Members of the public may ask questions of Members of the Cabinet or the Chairman of a Committee or Overview and Scrutiny meeting at ordinary meetings of the Council.

10.3 Notice of Questions

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Chief Executive no later than midday 3 days before the day of the meeting. Each question must give the name and address of the questioner and must name the Member of the Cabinet or Chairman to whom it is to be put.

10.5 Scope of Questions

The Chief Executive may reject a question if it:

- (a) is not about a matter for which the Local Authority has a responsibility or which affects the District;
- (c) is defamatory, frivolous or offensive;
- (d) refers to applications for or objections to planning permission or any licence, notice or order issued, served or made by the Council
- (c) is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- (a) requires the disclosure of confidential or exempt information.

Notice will be given of the reason for rejecting questions.

14.6 Amendments to Motions

- (a) An amendment to a motion must be relevant to the motion and will either be:
 - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
 - (ii) to leave out words;
 - (iii) to leave out words and insert or add others; or
 - (iv) to insert or add words

as long as the effect of (ii) to (iv) is not to negate the motion.

- (b) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (c) If the proposer and seconder of a motion are in agreement, an amendment may be accepted as a 'friendly' amendment and be incorporated in the original motion as an alteration in accordance with Council Procedure Rule 14.7(b)

- (d) If an amendment is not carried, other amendments to the original motion may be moved.
- (e) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (f) After an amendment has been carried, the Chairman will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

14.7 Alteration of Motion

- (a) A Member may alter a motion of which they have given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- (b) A Member may alter a motion which they have moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

4 Part 4, Section 1 – Council Procedure Rules – Addendum 2

- (6) Where the subject matter of a petition or address received is within the terms of reference of Council , it shall be referred to the next convenient meeting of the relevant Council body within whose terms of reference it falls.
- (7) Where a petition or address is referred to a meeting of a Council body , that meeting shall either report upon the subject matter to the next meeting of the Council or committee, or include their views upon the subject matter in their next report to the Council or committee.

5 Part 4, Section 2 – Access to Information Rules

17. REPORT TO COUNCIL

17.02 Requests for Reports to Council

The Chairman of Overview and Scrutiny or any other Committees may request that a report be placed on the Council agenda in accordance with Council Procedure Rule 2 (xiii).

Renumber Rules 17.02 and 17.03

6 Part 4, Section 3 – Budget and Policy Framework Procedure Rules and Part 4, Section 5 – Overview and Scrutiny Procedure Rules

4. Urgent Decisions Outside the Budget or Policy Framework

The Cabinet or any of its Committees, Officers, or joint arrangements discharging executive functions may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by Council if the decision is a matter of urgency. However, the decision may only be taken:

- (i) if it is not practical in the opinion of the Chief Executive to convene a quorate meeting of the Council; and
- (ii) the Chief Executive after consultation with the Chairman of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency.

The reasons why it is not practical to convene a quorate meeting of the Council and the reasons for the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the Chairman of the Overview and Scrutiny Committee, consultation with the Vice-Chairman, and in the absence of both, the Mayor will be sufficient.

7 Part 4, Section 4 – Cabinet Procedure Rules

1.3 Delegation of Executive Functions

- (a) Where the Cabinet is responsible for an Executive function, they may, with the exception of Key Decisions, collectively delegate further to an individual Cabinet member, a Committee of Cabinet, an Area Committee, joint arrangements or an Officer, unless the Council directs otherwise.
- (b) Unless the Cabinet directs otherwise, a Committee of the Cabinet to whom functions have been delegated by the Cabinet may delegate further to an Officer.
- (c) Even where Executive functions have been delegated, that fact does not prevent the discharge of these delegated functions by the Cabinet or Committee of the Cabinet who delegated, if appropriate.

8 Part 4, Section 5 – Overview and Scrutiny Procedure Rules

16. Call-In Arrangements

- (c) During that period, the Chief Executive shall call-in a decision for scrutiny by the Overview and Scrutiny Committee if so requested in writing or by e-mail from a known or recognised source, by exactly 5 non-Cabinet Councillors, not all of the same political group, of which two must be members of the Overview and Scrutiny Committee and shall then notify the decision-maker of the Call-in. The decision shall be considered by the Overview and Scrutiny Committee within 10 days of the decision to Call-in, and, if necessary, this may be dealt with as an item of urgent business at a scheduled meeting of the Overview and Scrutiny Committee within that period. This can be a collective notification from two or more Councillors of the same political group.
- (e) If, having considered the decision, a majority of the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the decision making person or body for further consideration, setting out in writing the nature of its concerns, or refer the matter to Council. In the case of Individual Cabinet Member **and officer delegated** decisions these will be referred to full Cabinet for reconsideration.

18. CALL-IN PROCEDURE

In considering a Call-in decision the following procedure will be followed:

- The Councillors who have made the Call-in request (who shall be seated together) will outline the reasons for the Call-in;
- The relevant decision-maker(s), with support from the appropriate officer(s) (who shall be seated together), will outline the reasons for their decision and the issues that they took into account;
- Councillors who are signatories to the Call-in request will have the opportunity to question the decision-maker;
- Other Members of the Overview and Scrutiny Committee will have the opportunity to question the decision-maker;
- At the discretion of the Chairman, other Members present may have the opportunity to question the decision-maker;
- Before forming a decision, the Chairman may decide to adjourn the meeting in order to allow the Call-in signatories to reflect on the evidence received and to consider any recommendations they wish the Committee to consider.
- The meeting then moves to forming a decision in accordance with the Council Procedure Rules.

9 Part 5, Section 1 – Employees' Code of Conduct

4.1.3 How To Comply With The Standard

- (a) Services should only act on decisions made by the Council, the Cabinet or Regulatory Committees convened and minuted by the Chief Executive or by an officer authorised to act on behalf of the Chief Executive, and should not act on the instruction of a Member acting individually.
- (b) You should only act on decisions under the direction or instruction of your Service Head or Director, and not that of individual Members.
- (c) If you are in any doubt as to the legitimacy of a decision of a Member meeting, you should seek the advice of the Administration Service, Financial Service or Legal Service before acting on that decision.
- (d) Do not allow your own personal or political opinions to interfere with your work, or to bias your approach to dealings with any Member, of whatever party.

Officers should not challenge the Council as an employer by writing to the media.

- (f) Officers must not give political advice.
- (g) You should not advise political groups unless specifically required to do so by the Chief Executive, or by an officer authorised to act on behalf of the Chief Executive.

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