

<b>DECISION-MAKER:</b>	FULL COUNCIL		
<b>SUBJECT:</b>	CHANGES TO THE CONSTITUTION		
<b>DATE OF DECISION:</b>	13 MAY 2009		
<b>REPORT OF:</b>	SOLICITOR TO THE COUNCIL		
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**STATEMENT OF CONFIDENTIALITY**

None

**SUMMARY**

The purpose of this report is to report to Full Council the annual review of the Constitution carried out by the Council's Monitoring Officer (the Solicitor to the Council). This was considered and discussed by Standards and Governance Committee on 20<sup>th</sup> April 2009 in its governance role. Full Council is the ultimate decision-making body as to the Council's Constitution and it is appropriate that Full Council reviews this on a regular basis.

**RECOMMENDATIONS:**

- (i) to agree the changes to the Constitution as set out in this report;
- (ii) to authorise the Solicitor to the Council to finalise the arrangements as approved by Full Council and make any further consequential or minor changes arising from the decision(s) of Full Council; and
- (iii) to reaffirm and approve the City Council's Constitution, as amended, including the Officer Scheme of Delegation for the municipal year 2009/10.

**REASONS FOR REPORT RECOMMENDATIONS**

- 1. It is appropriate for the Council to keep its Constitution under regular review and to amend it, both to reflect experience and changing circumstances.

**CONSULTATION**

- 2. This report has been the subject of consultation and discussion with Standards and Governance Committee who considered this report on 20th April 2009 and the committee's comments are embodied within this report.

**ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 3. The Council resolved in May 2002 to review its Constitution on an annual basis. Therefore, it is appropriate that this report is considered by Members. There are a range of recommendations set out within the report and Members have a range of options about various changes recommended to them, not least of which is to reject some or all of them.

## **DETAIL**

### **Background Information**

4. The Constitution of the Council describes the way in which the Council conducts its business. It contains not only the Articles of the Constitution, but also the various rules and procedures for decision-making, access to information, Overview and Scrutiny, the Codes of Conduct, the Officer / Member Protocol, as well as other specific rules relating to contracts and finance.
5. The Constitution forms the cornerstone of effective corporate governance. Whilst Southampton City Council's constitutional arrangements continue to be recognised as being of a high standard, Full Council agreed in May 2002, on the recommendation of the Solicitor to the Council, that it would on an annual basis robustly review the Constitution and its operation. The purpose of this report is to bring forward proposed changes to the Constitution, these having been considered by Standards and Governance Committee (in its governance role) with a view to building upon the constitutional arrangements for the Council.

### **Executive arrangements**

6. The legal responsibility for determining Executive arrangements, which is to say who the Executive Members are, the Scheme of Delegation and any Executive delegations to officers, lie in the hands of the Leader. The Leader will be elected at the Annual Meeting, at which point s/he will determine this issue. This will have constitutional impact, since the arrangements will need to be written up and incorporated within the Council's Constitution after the Annual Meeting. This matter should, for the purposes of this report, simply be noted as having already been addressed following the election of the Leader.

### **Appointment of Members to various bodies: Schedule 3 of Part 3 of the Constitution**

7. The Annual Meeting will determine the composition of the Committees and Sub-Committees, in terms of political proportionality, and it is then a matter for the Group Leaders to notify the Solicitor to the Council of their representation in accordance with that calculation upon the Council's committees and sub-committees. In addition, there will be non-Executive appointments to various bodies and organisations which will also be addressed. This will then be incorporated within Part 3 of the Constitution to reflect the decisions of Full Council.

### **Standards of Conduct: Members' Code of Conduct, the Constitution of the Standards and Governance Committee and Local Determination**

#### Members' Code of Conduct

8. In 2007 the Council adopted a revised Members' Code of Conduct. The Government, through the Local Government and Public Involvement in Health Act 2007 has amended primary legislation which impacts upon the wording of the Code of Conduct. The Government, therefore, intends to produce a further revised Code of Conduct for adoption by Members. This is likely to take place during the course of the municipal year at which stage it will be

brought before Full Council for an appropriate resolution.

### **Officer Code of Conduct**

9. Southampton City Council has adopted its own local officer Code of Conduct. The Government indicated on the introduction of a Members' Code of Conduct (in 2000) it would also legislate to provide a statutory Officers' Code of Conduct. This has still not happened. Members should, therefore, note that it is possible that the Government will in introducing a revised Members' Code of Conduct, also introduce an Officers' Code of Conduct at the same time, and this may require a revision to the Constitution in due course.

### **Officer Scheme of Delegation**

10. Save as set out below, the only changes made to the Scheme of Delegation during the year and those intended to be made subsequent to this meeting reflect changes delegated to the Solicitor to the Council, namely no increase in delegations to officers, only changes brought about by restructurings or reorganisations and hence reallocation of existing delegated powers.
11. In 2008 the Neighbourhood Directorate implemented a revised management structure to take forward the Estate Regeneration Programme. The new post of Estate Regeneration Manager responsible for taking this programme forward requires sharing or assuming responsibility for certain powers within the Council's Scheme of Delegation. It is also requested that a further two new additional powers be given to the Executive Director of Neighbourhoods to enable negotiations on individual property acquisitions and disposals to implement the Estate Regeneration Programme.
12. An additional new delegation is required in respect of the Southampton's Tree Operational Risk Management System (STORMS). This system was approved by Cabinet on 24<sup>th</sup> May 2004, and it is requested that following consultation that the Head of Neighbourhood Services be given delegated authority to amend the system to ensure it meets current needs and remains fully effective.
13. Some minor amendments and transfer of certain delegations are requested, due to the internal restructure to the Estate Regeneration Programme and the transfer of the Stronger Communities and Safe Communities teams to the Neighbourhood Directorate. All these proposed delegations are contained in Appendix 1.

### **Deputations**

14. Members have previously expressed concern about the level and nature of deputations brought to Full Council, and in the last municipal year the Solicitor to the Council has been made aware of a number of concerns that Members have had on a number of occasions. It is clear that Members are, rightly, reluctant to deny public access to the Council's decision-making functions, but there have been a number of occasions when deputations have been received which have caused quite legitimate concerns about their validity and timing. In this context, the Solicitor to the Council recommends a slight variation to the deputation procedure to resolve those concerns. The timeframe for receipt of requests to make deputations should remain as is. Once a request to make a deputation is received it should be considered by

the Mayor. At that point, the Mayor will consider whether or not a deputation should or should not be received, and will take into account the views and advice of officers. Written into the Constitution will be the option for the Mayor to direct that a deputation would be better suited by being considered by:

- a. the Executive;
  - b. Overview and Scrutiny Management Committee; or
  - c. a quasi-judicial committee (though this is highly unlikely).
15. In addition, the Mayor will have the option of saying that a deputation is not appropriate to be received by the Council for any other reason that the Mayor deems appropriate. The Mayor may wish to discuss the issue with the Group Leaders before reaching a final decision.

### **Financial Procedure Rules in respect of Capital Programme**

16. The Financial Procedure Rules in respect of Capital Programmes have not been updated for some time and do not reflect some of the problems and issues that the Council has faced in managing and monitoring capital projects over the past three years or so.
17. During this time, following various overspends within capital projects, Capital Boards have been introduced which are chaired by the relevant chief officer to ensure that there are well-defined governance arrangements for the operation and performance of the Capital Programme.
18. The current Financial Procedure Rules have also caused operational problems for certain capital schemes, in that they are not flexible enough to allow quick decisions to be made where legitimate issues arise in a capital scheme. This can often mean significant time and cost delays whilst the democratic process is followed in order to approve further spending or variations in the programme.
19. As a result, the Chief Financial Officer has revised the Financial Procedure Rules and the proposed revisions are set out in Appendix 2. These seek to reflect the revised accountability arrangements vested in chief officers and provide a more flexible framework in which the Capital Programme can operate.

### **Partnerships**

20. Over the past year the Solicitor to the Council has, following various recommendations contained in Internal Audit reports, as well as best practice as espoused by the Audit Commission and other bodies, looked at the City Council's arrangements in terms of the governance of its partnerships. As a result, Appendix 3 contains a proposed Governance Protocol that the Solicitor to the Council recommends Full Council adopts and incorporates within the Council's Constitution. In support of this, there is also a toolkit which will not form part of the Constitution but will be posted on the intranet, providing an on-line series of checklists and other aids for officers contemplating entering into partnership arrangements.
21. These arrangements will ensure that when the Council is minded to enter into any formal partnership, officers will have clear guidance about what they must and must not do, how partnership agreements should be put together and

what best practice is in terms of partner working. The approach adopted is that the most significant partnerships have been identified ie those likely to carry most risk, those which have most impact, or those which are going to be responsible for the most significant amounts of public money, and these will be susceptible to higher degrees of scrutiny by way of this process. The less significant partnerships will be subject to far less activity through this process and indeed, the majority of the activity for the less significant partnerships will be by way of self-assessment activity utilising the online toolkit.

22. It is important to understand that the Code (and the toolkit) is an internal document for SCC initiated partnerships and is designed to spell out the rules of engagement for City Council members and officers. It is a matter for partner agencies as to what approach they have, but they may well have similar internal approaches to their engagement with partnerships. It is, however, only an internal check and balance process for the City Council. It is about whether the City Council enters into a partnership and, if so, how, but there is nothing here that requires activity or changed arrangements with current or prospective partners. Any decisions that they make are entirely a matter for them.
23. The Code and toolkit have been subject to extensive consultation and dialogue within the City Council and the Audit Commission has also provided quality assurance to ensure that the documentation is fit for purpose. Nevertheless, it is recommended that after six months of operation, the Solicitor to the Council should carry out a review of these arrangements to ensure that they are fit for purpose and the balance between ensuring the appropriate and effective governance arrangements are put in place for the Council's partnerships as compared to unnecessary bureaucracy has been properly applied. In that context, it is recommended that the Solicitor to the Council should be given delegated authority to amend the Partnership Code after six months of operation to fine-tune it to reflect any learning experiences that the first six months have generated. Obviously, if there are significant changes after a year that need to be made, they can be picked up at the next Annual Meeting when the Constitution is again reviewed.

### **Presentation of Budget Proposals**

24. As part of the City Council's Budget and Policy Framework Procedure Rules, whilst not an obligation on opposition groups to prepare their budgets and make them available for dissemination prior to the meeting, it is recognised that that is usual practice and where that is done, such documentation is duly circulated. Whilst it is not formal Council documentation, it becomes (by virtue of the Council's Constitution) formal amendments to the Executive's budgetary proposals at the Full Council meeting in February when the Council Tax is set and the budget is considered.
25. In the interests of transparency and openness, it is recommended that the arrangements in the Budget and Policy Framework Procedure Rules are expanded so that both opposition groups' budget papers are made available on the City Council's webpages prior to the Council's budget meeting.

### **Policy Framework**

26. The Council's Policy Framework plans, as set out in the Council's

Constitution, are the fundamental policy documents of the Council which are recommended by the Executive to Full Council for approval (a slightly separate process exists where the plans are partnership plans).

27. A number of Policy Framework plans are required to be submitted by law, but the Council is also at liberty to add additional Policy Framework plans should it wish to do so, and has in the past done so. A review has been undertaken as to the appropriateness of the current Policy Framework and it is recommended that the Medium Term Plan is removed from the current Policy Framework with effect from the 31<sup>st</sup> March 2010. Removing the need to refresh the current three year plan will enable time for consultation with Scrutiny on the key medium term issues in the city for inclusion in a more broadly based Corporate Improvement Plan. This would remain part of the Policy Framework and be recommended to Full Council for approval in March 2010.
28. It is also recommended that the Economic Development, Health and Well-Being and 14-19 Strategy are included within the Policy Framework.
29. Finally, there are delays between some of the Government departments and their amendments to the Policy Framework plans (in terms of titles or format) as compared to the obligations set out in the relevant regulations. It is recommended that the Solicitor to the Council be given delegated authority to update the title of any Policy Framework plan to reflect any legal obligations as set out or amended during the course of the municipal year.

## **FINANCIAL/RESOURCE IMPLICATIONS**

### **Capital**

30. None.

### **Revenue**

31. None.

### **Property**

32. None.

### **Other**

33. None.

## **LEGAL IMPLICATIONS**

### **Statutory power to undertake proposals in the report:**

34. The Executive arrangements and Constitution are dealt with under the Local Government Act 2000. Other matters referred to in the report range from the Local Government Act 1972 through to the Local Government and Public Involvement in Health Act 2007. The statutory powers to undertake the proposals set out in this report are dealt with on a paragraph-by-paragraph basis, as stated within the report.

### **Other Legal Implications:**

35. None.

**POLICY FRAMEWORK IMPLICATIONS**

36. None.

**SUPPORTING DOCUMENTATION**

**Appendices**

**Non-confidential appendices are in the Members’ Rooms and can be accessed on-line**

1	Proposed additions to the Officer Scheme of Delegation relating to the Neighbourhoods Directorate
2	Proposed revisions to Financial Procedure Rules
3	Proposed Partnership Code

**Documents In Members’ Rooms**

1.	None.
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**Background Documents**

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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Background documents available for inspection at:

Email: @southampton.gov.uk

**FORWARD PLAN No:**

**KEY DECISION?**

**WARDS/COMMUNITIES AFFECTED**