

ITEM NO: 13

DECISION-MAKER:	FULL COUNCIL		
SUBJECT:	CHANGES TO THE CONSTITUTION		
DATE OF DECISION:	12 TH MAY 2010		
REPORT OF:	SOLICITOR TO THE COUNCIL		
AUTHOR:	Name:	MARK HEATH	Tel: 023 8083 2371
	E-mail:	mark.heath@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

None

SUMMARY

This report sets out 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 19th April 2010 in its governance role. Full Council is the ultimate decision-making body as to the Council's Constitution.

RECOMMENDATIONS:

- (i) to agree the changes to the Constitution as set out in this report;
- (ii) to approve the Petition Scheme set out in Appendix 8 and delegate authority to the Solicitor to the Council to amend the Scheme;
- (iii) 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
- (iv) to approve the City Council's Constitution, as amended, including the Officer Scheme of Delegation for the municipal year 2010/11.

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 was considered by Standards and Governance Committee on 19th April 2010. 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. 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 build upon the constitutional arrangements for the Council.

Executive arrangements

6. The legal responsibility for determining Executive arrangements, namely who are the Executive Members, the Portfolios and any Executive delegations to officers, lie in the hands of the Leader. The Leader will be elected by the Annual General Meeting (AGM), at which point s/he will determine this issue. This will have constitutional impact, since the arrangements will need to be incorporated within the Council's Constitution after the AGM.

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

7. The AGM 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.

Officer Scheme of Delegation

9. The major task undertaken this year has been a fundamental review of the Scheme of Delegation, the levels of delegations to officers and the appropriate balance between decisions to be made by Members and decisions made by officers.
10. The current Officer Scheme of Delegation has broadly evolved over time, and as a result of that contains something of a mixture of detailed delegations specifically and rightly needed to undertake specific functions, often of a regulatory-type nature, combined with some more typical broad and generic delegations to enable officers to undertake the managerial tasks expected of them in delivering services on a day-to-day basis.
11. This review has been undertaken for a number of reasons: the desire to reduce the bureaucratic burden on bringing forward unnecessary decisions to Members due to a lack of effective delegated powers has been one factor. In addition, the Executive

/ administration has made it clear that they regard it as appropriate for Members to take policy / strategy decisions, but would expect day-to-day functional decisions and operational decisions at a tactical level to be undertaken by officers.

12. As a result, the time has been taken to review the Scheme and ensure that it is not only fit for purpose but also is set at the correct levels.
13. The Executive Director for Resources has undertaken a review looking at comparable authorities to establish whether the financial levels delegated to officers, as well as the definition of “key decision” is comparable with other, similar, unitary authorities.
14. Southampton’s Officer Scheme of Delegation is currently set at a relatively low level. The thresholds are lower, in some cases significantly lower, than other comparable authorities.
15. Taking these points into account, it is proposed to make a number of changes:
 - a. the definition of a key decision will be revised, the principle change is the financial threshold (which is currently £200,000) will be raised to £500,000;
 - b. many of the existing delegated thresholds, which are also set at the same level, will also be comparably raised;
 - c. Policy Framework plans approved by Full Council will be implemented by officers without the need for further referral to the Executive;
 - d. day-to-day management and functional delivery of the services will be broadly delegated to Chief Officers; and.
 - e. a revision to the balancing arrangements for appropriate publicity for non key decisions made by officers to ensure that in governance terms, appropriate provisions relating to openness, accountability and transparency are built in to the new arrangements.
16. Each of these changes is examined below in more detail.

Key Decisions and Thresholds

17. As part of the establishment of the Executive Arrangements under the Local Government Act 2000, to underpin the principles of greater accountability and transparency, the Executive was required to set out its programme of work in the coming four months in a document known as the Forward Plan. The law required that the Executive set out within that document a short description of matters under consideration, when those Key Decisions were expected to be taken, who was responsible for taking those decisions, how they could be contacted, what relevant reports and background papers were available and how and when the decision-maker intended to involve local stakeholders in the decision-making process.
18. The definition of Key Decisions has not changed since 2000 and it is appropriate, taking into account the other proposals set out in this report, to revisit that definition to ensure that it is still fit for purpose.
19. The definition of a Key Decision as determined by the City Council (and it is a matter for local discretion as what that definition is) is currently set out in the Council’s Constitution in Article 12 and is set out in Appendix 1 to this report.
20. A review has been undertaken by the Executive Director for Resources as to the level of Key Decisions within comparable unitary authorities. The current financial limit of £200,000 is now considered too low and it is recommended that the limit is raised to £500,000.

21. In addition, it is proposed that the second limb of the definition should be revised to make it clear that the impact of a proposal on two or more wards must be significant in terms of its effect on communities. This, at times, has not been fully understood and has been interpreted as meaning any decision that has any impact on two or more wards. The intention was to differentiate between say, for example, a minor piece of highways work that just happened to straddle two wards and a proposal that has a significant impact on a community in two or more wards, ie that had a significant impact on more than a small area of the city. It is, therefore, proposed to amend this limb of the definition of Key Decisions as follows:

“To be significant in policy or strategic terms as regards its effect on communities living or working in an area comprising two or more wards or electoral divisions in the city; or”

22. Further, there is a need to exempt Treasury Management decisions from within the definition. This is addressed later in this report.
23. The proposed revised draft of the definition of a Key Decision is set out in Appendix 2.

Implementation of Policy Framework Plans

24. By law, every local authority is obliged to have a certain number of Policy Framework plans, prescribed by law, which Full Council approves (there are slightly different arrangements for partnership plans) which the Executive must then adhere to, subject to certain caveats.
25. These Policy Framework plans are also underpinned by the Council’s budget, which is also approved by Full Council.
26. Currently, once the Policy Framework plans are approved, individual implementation decisions need to be brought through the appropriate decision-making process. It is proposed that Policy Framework plans, once approved by Full Council, may be implemented by officers under delegated powers without the need for further referral to the Executive.

Day-to-day management and functional delivery of services

27. The current Officer Scheme of Delegation provides a range of delegated powers to Chief Officers to undertake the day-to-day management and delivery of services. The current arrangements have evolved over a period of time rather than being drafted with a view to achieving any objective. The proposed revised arrangements provide for Chief Officers to have delegated powers to undertake day-to-day management of and delivery of the services for which they are responsible. The new delegations have been broadly drafted (and should be interpreted in a similar manner).
28. Particular attention has been paid to revising Article 11 (set out in Appendix 3) which defines the management structure, functions and areas of responsibility of the Chief Officers. The revised Officer Scheme of Delegation (set out in Appendix 4) has revisited each of the functional areas in terms of their delegations and the generic managerial responsibilities devolved to both Chief Officers and Heads of Service, with a view to ensuring that they are appropriate and robust. In addition, the general powers of delegation that previously had evolved within the Constitution, have been completely rewritten to give an appropriate balance between managerial functions being discharged by senior officers and strategic / policy functions to be discharged by Members.

Openness, accountability and transparency and other appropriate checks and balances

29. In order to ensure that the Executive, as most of these additional delegations are in relation to Executive functions, is fully aware of the proposals and consequences, the more significant of these new delegations will be exercised “following consultation with the relevant Executive Member”.
30. It is also important, in looking particularly at the expansion of the Officer Scheme of Delegation, to make sure that there are appropriate checks and balances, including appropriate openness, accountability and transparency of the decision-making in place.
31. Any Key Decisions, whether exercised by officers or Members, need to be on the Forward Plan (or follow the well-trodden regulation 15/16 procedure for proceeding with an urgent item of business that is not on the Forward Plan by way of seeking consent from the chair of Overview and Scrutiny Management Committee), and thereafter a report needs to be prepared and publicly available for five clear days, the decision has to be duly recorded in the appropriate legal form and thereafter the decision (unless it is an urgent one) may not be implemented for a further five clear days to allow Overview and Scrutiny to call-in the decision, should they wish to do so.
32. There is currently a process in place whereby non Key Decisions made by officers under existing delegated powers are given a degree of transparency so that the record of that decision is published and made publicly available. It is proposed that this approach is applied to the band of decisions that would previously have been exercised by Members, ie those above £200,000, but would now be exercised by officers but are not Key Decisions – as Key Decisions will continue to be recorded in the manner already indicated.
33. At the Standards and Governance Committee meeting on 19th April 2010, one issue that was raised was how back-bench Members get to know about major Officer delegated decisions being made in advance. The Solicitor to the Council proposes using the Forward Plan. As soon as a proposed officer delegation to which this new process would apply is known about, it will be entered on the Forward Plan. This will be for the purposes of giving advance warning that the decision is proposed to be made. That entry may be updated at any time, and the legal provisions applicable to statutory matters on the Forward Plan will not apply. In essence, the Forward Plan will become more than just a statutory document setting out Key Decisions that the Executive is likely to make in the next four months, and will also be used to provide a fuller view of proposed decisions, aiding transparency.
34. The effect of this is that Key Decisions will continue to be recorded in the way indicated, but the predominant number of new decisions to be exercised by officers, which will fall to be exercised by officers because they will be of a value between £200,000 and £500,000 will be advertised in advance in the Forward Plan and then recorded through the Delegated Decision Notice process. This will provide the necessary openness, accountability and transparency for Members and others to be aware of what those decisions are and all that flows from that.
35. It is recommended that this part of the changes, should the overall changes be approved by Full Council, be revisited during the course of the municipal year to ensure that they are effective, sound, robust and suitable.

36. The revised arrangements for Delegated Decision Notices are set out in Appendix 5.

Changes to the Financial Procedure Rules

37. In the light of the previous section of this report and the proposal to amend the nature and level of delegations to officers, the rules which contain detailed processes for the management of financial responsibilities between officers within the authority also need to have consequential changes to update them to reflect the changed approach as set out in the preceding section of this report. In addition, an opportunity has been taken to clarify and review the content of these rules, as well as review the internal procedures.
38. There have been a number of changes to the financial limits within the Financial Procedure Rules, which reflect the change in the key decision limit from £250,000 to £500,000. In summary, the majority of the limits have now been aligned to the following structure:
- changes or approvals up to £200,000 are delegated to Chief Officers and / or Heads of Service;
 - changes or approvals from £200,000 to £500,000 are delegated to Chief Officers following consultation with relevant Cabinet Members and the Chief Financial Officer; and
 - changes or approvals over £500,000 must be approved by Cabinet.
39. The revised Financial Procedure Rules are set out in Appendix 6.

Deputations

40. An issue has been raised by Members that some deputations need not have been made to Full Council as the deputees have subsequently indicated that they would have preferred that their issue or concern had been addressed in another way.
41. Under the existing rules, the Mayor has the discretion to refuse or re-direct any request for a deputation (Council Procedure Rule 10.2(a)).
42. No amendment to the rules is, therefore, required should Members wish to pursue this issue.
43. If Members do wish to pursue this, deputees will be asked whether they would wish their issue to be managed in another way. This could be by meeting with the relevant officers and/or Cabinet Member. If they say yes, this will be taken into account by the Mayor in reviewing their requests. If they say no, under current arrangements, providing their deputation is constitutional, it will be allowed.

Overview & Scrutiny

44. Under the current Constitutional arrangements, Full Council must consider an annual scrutiny reported, submitted in May to the AGM which includes the use of call-in and then there are quarterly reports on the use of call-in which have previously gone to the Council's meetings in September and January. With the removal of the January meeting, it is recommended that the annual report in May will include the call-in report and then instead of call-in reports being made on a quarterly basis, this is contained in the update reports presented to Full Council on a half yearly basis, ie in May and November.
45. It should also be noted that Overview and Scrutiny Management Committee considered a report on its structures and terms of reference for 2010/11 on the 25th March 2010. The revised structure for the Overview and Scrutiny Management

Committee and its Panels was approved. The report is set out in Appendix 7 and will need to be taken into account in determining the composition of the Committees and Sub-Committees as referred to in paragraph 7 of this report.

Treasury Management

46. Following the collapse of the Icelandic banks, treasury management in public sector organisations continues to be under the spotlight. Two national reports have been published, the Audit Commission's *Risk and Return* on local authority treasury management and the Communities and Local Government's Select Committees *Review of Local Authority Investments*.
47. The Chartered Institute of Public Finance has provided guidance and advice on ensuring best practice in treasury management and the Executive Director for Resources, in her statutory role as Chief Financial Officer, has considered this and has a number of recommendations to ensure that the authority's sound and robust practices on treasury management are maintained and, where possible, enhanced.
48. These recommendations are:
 - a. that, for the avoidance of doubt, the definition of a *key decision* should be amended to exclude treasury management decisions from within their ambit;
 - b. Audit Committee should receive frequent reports in relation to the implementation of the Treasury Management Strategy;
 - c. Audit Committee should receive appropriate training in order to ensure that it has the necessary skills to undertake this role; and
 - d. the Treasury Management Strategy should continue to be determined by Full Council as part of the overall budget decision. However, Audit Committee should maintain an overview and awareness, both of the implementation of the existing Treasury Management Strategy and also the evolution of any revised strategy or proposed variations to it, either during the course of the year or in relation to future year's strategies.

Petitions

49. The Local Democracy, Economic Development and Construction Act 2009 establishes a duty for local authorities to accept and respond to local petitions.
50. The Act places duties on principal local authorities in England to draw up a Petition Scheme which will give local people a right to a public response if they sign a petition. Petitions with a significant level of support will be able to trigger a debate of the full Council. Petitions will also be able to call a senior member of Council staff to attend a meeting of the appropriate Overview and Scrutiny Committee to answer questions about how they are delivering public services. Petition organisers will have the right to ask the Overview and Scrutiny Committee to review the Council's response to their petition, should they feel the response is inadequate. The core elements of the new duty will come into force on 15th June although there is also a requirement to provide a facility for e-petitions which will not be operational until the end of the year. The Council's decision making database, Mod Gov, provides a facility to handle e-petitions and this is currently being tested in other Local Authorities.
51. The Government has produced a draft model Petition Scheme which is aimed to set out the key principles and key requirements of the new duty, set a framework for local authorities to use when designing their Petition Scheme but allow for local determination where necessary. The model scheme is attached as Appendix 8. In

view of the need to adopt a scheme by the 15th June, it is recommended that the model scheme be adopted but that the Solicitor to the Council be granted delegated authority to finalise the arrangements and make any further consequential or minor changes that may be necessary to the Scheme and/or the Constitution.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

52. None.

Revenue

53. None.

Property

54. None.

Other

55. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

56. 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 2004. 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:

57. None.

POLICY FRAMEWORK IMPLICATIONS

58. None.

SUPPORTING DOCUMENTATION

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

1	Current Article 12
2	Revised Article 12
3	Revised Article 11
4	Revised Officer Scheme of Delegation
5	Revised Delegated Decision Notice guidance
6	Revised Financial Procedure Rules
7	Revised structure for the Overview and Scrutiny Management Committee and its Panels
8	Petition Scheme

Documents In Members' Rooms

1.	None.
----	-------

Documents In Members' Rooms

1.	None
----	------

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	
----	------	--

Background documents available for inspection at: N/A

KEY DECISION N/A

WARDS/COMMUNITIES AFFECTED:	All
------------------------------------	-----