

CONSTITUTION COMMITTEE AGENDA



Friday 11 July 2008

at 2.00 pm

in Committee Room A, Civic Centre, Hartlepool

MEMBERS: CONSTITUTION WORKING GROUP:

The Mayor, Stuart Drummond

Councillors R Cook, Fenwick, Flintoff, James, Laffey, A Marshall, Morris, Preece, Richardson, Simmons

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To receive the minutes of the Constitution Working Group of 3 June 2008 (*attached*) and 27 June 2008 (*to follow*).
 - 3.2 To confirm the minutes of the Constitution Committee of 6 June 2008.
- 4. ITEMS REQUIRING DECISION**
 - 4.1 Licensing Committee – Position of Substitutes – *Chief Solicitor*
 - 4.2 Budget and Policy Framework – *Chief Solicitor*
 - 4.3 Council Procedure Rules – Questions to Members – *Chief Solicitor*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

CONSTITUTION WORKING GROUP

3 June 2008

The meeting commenced at 5.00 pm in the Civic Centre, Hartlepool

Present:

Councillor: Councillor Carl Richardson (In the Chair)

Councillors: Sandra Fenwick, Marjorie James, Ann Marshall, George Morris and Arthur Preece.

In accordance with Council Procedure Rule 4.2 (ii) Councillor Christopher Simmons attended as substitute for Councillor Stephen Wallace.

Also Present: Councillor Jonathan Brash

Officers: Peter Devlin, Chief Solicitor
Amanda Whitaker, Democratic Services Team Manager
Angela Hunter, Principal Democratic Services Officer

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from The Mayor, Stuart Drummond and Councillor Stephen Wallace.

2. DECLARATIONS OF INTEREST

None.

3. MINUTES OF PREVIOUS MEETINGS

Minutes of the meetings held on 6 and 11 March and 3 April 2008 were confirmed.

4. MATTERS ARISING FROM THE MINUTES

Outside Bodies Review

It was noted that Tees Valley Community Foundation – Grant Giving Panel had been restored to the list of outside bodies following confirmation that this organisation was a grant giving body which benefited the residents of Hartlepool.

Resident Representative's Elections

Members were informed that the recent nominations for resident representatives had resulted in sufficient candidates being nominated for the available positions across the North, Central and South Forums. As there was no surplus nominations for the places available, elections did not have to be held and the nominees were automatically appointed. Councillor Simmons sought clarification on the amount of office time required to support the process of nominating and appointing resident representatives. This information to be provided to Councillor Simmons direct from the appropriate officer.

5. CONSTITUTION WORKING GROUP AND COMMITTEE – WORK PROGRAMME 2008/09 – *Chief Solicitor*

The Chief Solicitor presented a briefing paper which outlined the topics previously agreed by Members to be considered by the Constitution Working Group. A number of topics were highlighted as complete with the remaining either incomplete or not reached in the programme.

A discussion ensued in which Members considered that the review of the remit of the Contract Scrutiny Panel be examined as first priority as this was carried forward from the previous year and was nearing completion. The issue of Ward Surgeries, including the operation of the Purdah period prior to an election was also considered a priority by Members for consideration during this municipal year. It was noted that this issue only affected sitting councillors and due to the fact that there were no local elections planned for 2009/10, this would be an ideal opportunity to examine this issue in detail.

RECOMMENDATION

That the following items be submitted to the Constitution Committee to be agreed for inclusion within the Constitution Working Group Work Programme for 2008/09:

Approved Work Topic	Current position
Contract Scrutiny Panel	On-going – review of remit of CSP proposed. Members agreed to this topic being given high priority by CWG. Report to be submitted to next meeting of Working Group.
Council Procedure Rules - submission of late reports to Council	Incomplete – responses to invitation to groups to comment incomplete
Local Strategic Partnership	On-going – further report required
Reporting Mechanisms – Standards and General Purposes Committees	Further report required
Ward Surgeries, including the operation of the purdah period.	Not reached in programme
Member Questions at Council	Not considered following initial reference

Statement of Services	On-going further report required
Review of Delegated Authority Scheme	Incomplete – findings of Scrutiny Co-ordinating Committee to be incorporated into review.
Clarification of Access to Information Rules and distribution of confidential papers.	Incomplete – report to be submitted.

6. ANY OTHER BUSINESS – LICENSING COMMITTEE

Members raised concerns in relation to the operation of the Licensing Committee and the sub-committees which it is responsible for including Hackney Carriage and Private Hire Sub-Committees and Licensing Act Sub-Committees. The main concerns were around the substitution arrangements for Members on the Sub-Committees whereby a Member could only substitute on a Sub-Committee if they were a Member of the main Licensing Committee and therefore had the appropriate training. It was noted that this was an issue in relation to political inclusion for smaller political groups and it was suggested that the Licensing Committee membership be increased to ensure more Members were trained and could therefore be nominated as a substitute where required to maintain the appropriate political balance. The Chief Solicitor indicated that the Licensing Act, provided for the maximum number of Members on a Licensing Committee to be 15, which the Council currently utilised.

RECOMMENDATION

That the issues referred to above be referred to the Constitution Committee for inclusion in the Constitution Working Group's Work Programme for 2008/09.

7. ANY OTHER BUSINESS – POLITICAL GROUPS

A Member sought clarification on the constitution and composition of political groups. The Chief Solicitor informed Members that the Local Government and Housing Act 1989 provided for individuals to form political groups and operate as a collective unit through the notification of a Leader and Deputy/Representative. Members noted that the composition of the Cleveland Police Authority recognised political parties but not political groups and clarification was sought on why this was the case. The Chief Solicitor indicated that the Police Authority operated under different statutory requirements which did not provide for the acknowledgement of political groups. Clarification was sought on the criticisms raised by the Audit Commission during its recent inspection and what, if any action had been taken to rectify these criticisms.

RECOMMENDATION

That the issues referred to above be generally included in the Work Programme for 2008/09.

8. ANY OTHER BUSINESS – WARD ISSUES

Concern was raised in relation to significant Council activities being undertaken in some areas without the Ward Councillor being informed. One example of this was that the Park Ward Councillors had not been informed that Ward Jackson Park was being awarded a Green Flag Award. It was suggested that this could form part of the Member/Officer protocol.

RECOMMENDATION

The Chief Solicitor to examine the possibility of including the above issue within the Member/Officer protocol within the Constitution.

CHAIRMAN

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

6 June 2008

The meeting commenced at 2.00 pm in the Civic Centre, Hartlepool

Present:

Councillor: Marjorie James (In the Chair)

Councillors : Sandra Fenwick, Bob Flintoff, Dr George Morris and Arthur Preece.

In accordance with Council Procedure Rule 4.2 (ii) Councillor Christopher Simmons attended as substitute for Councillor Stephen Wallace.

Officers: Tony MacNab, Solicitor
Amanda Whitaker, Democratic Services Team Manager
Angela Hunter, Principal Democratic Services Officer

1. Apologies for Absence

Apologies for absence were received from The Mayor, Stuart Drummond and Councillors Ann Marshall, Carl Richardson and Stephen Wallace.

2. Declarations of interest by Members

None.

3. Minutes

- (i) The minutes of the Constitution Working Group held on 6 March and 3 April 2008 were received.
- (ii) The minutes of the Constitution Committee held on 28 March and 3 April 2008 were confirmed.

4. CONSTITUTION WORKING GROUP/COMMITTEE – WORK PROGRAMME 2008/09 *(Chief Solicitor)*

At its meeting on 3 June 2008, the Constitution Working Group considered the outstanding topics from the 2007/08 Work Programme and a number of additional topics for inclusion within its Work Programme for 2008/09. The topics agreed by Members were set out within the Chief Solicitor's briefing paper and Members of the Committee were requested to consider and agree a priority order for the items listed.

Approved Work Topic	Current position
Contract Scrutiny Panel	On-going – review of remit of CSP proposed. Members agreed to this topic being given high priority by CWG. Report to be submitted to next meeting of Working Group.
Council Procedure Rules - submission of late reports to Council	Incomplete – responses to invitation to groups to comment incomplete
Local Strategic Partnership	On-going – further report required
Reporting Mechanisms – Standards and General Purposes Committees	Further report required
Ward Surgeries, including the operation of the purda period.	Not reached in programme
Member Questions at Council	Not considered following initial reference
Statement of Services	On-going further report required
Review of Delegated Authority Scheme	Incomplete – findings of Scrutiny Co-ordinating Committee to be incorporated into review.
Clarification of Access to Information Rules and distribution of confidential papers.	Incomplete – report to be submitted.
Licensing Committee	Report requested by CWG at its meeting on 3 June 2008.

Members reiterated the importance of an early completion to the review of the Contract Scrutiny Panel remit which had commenced in the previous municipal year but was nearing completion. Members considered that the issues in relation to the operation of the Licensing Committee and its sub-committees along with the Ward Surgery and Purda period issues be examined as the Working Group's first three priorities.

The priority order for the remaining topics included within the Work Programme would be considered as and when appropriate.

Decision

- (i) That the 2008/09 Work Programme for the Constitution Working Group be approved.
- (ii) That the Constitution Work Programme consider the following issues as first priority:

Contract Scrutiny Panel

On-going – review of remit of CSP proposed. Members agreed to this topic being given high priority by CWG. Report to be submitted to next meeting of Working Group.

Ward Surgeries, including the Report requested by CWG at its operation of the purda period. meeting on 3 June 2008.

Licensing Committee Report requested by CWG at its meeting on 3 June 2008.

CHAIRMAN

CONSTITUTION COMMITTEE

11 July 2008



Report of: Chief Solicitor

Subject: LICENSING COMMITTEE – POSITION OF
SUBSTITUTES

1. PURPOSE OF REPORT

- 1.1 At the meeting of the Constitution Working Group on 3rd June, 2008, Members requested a report surrounding the composition of the Licensing Committee and the position of substitute Members, thereon.

2. BACKGROUND

- 2.1 The Licensing Act, 2003, requires pursuant to Section 6 for each Licensing Authority to establish a Licensing Committee “consisting of at least ten, but not more than fifteen, Members of the authority”. Members will be aware, the general duties of a Licensing Committee in carrying out its functions under the applicable legislation is to promote the licensing objectives. These objectives are as follows;

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm

- 2.2 In carrying out these functions, the Licensing Authority must have regard to their statement of licensing policy and any guidance issued by the Secretary of State under Section 182 of the Act. Section 7(1) of the Act also prescribes;

“All matters relating to the discharge by a Licensing Authority of its licensing functions are, by virtue of this sub-section, referred to its Licensing Committee and, accordingly, that Committee must discharge those functions on behalf of the Authority.”

- 2.3 Pertinent to the consideration by Members of the Constitution Working Group and Constitution Committee on the issue of substitute Members is

Section 9(1) of the Act that *“a Licensing Committee may establish one or more Sub-Committees consisting of three Members of the Committee”*.

3. SUBSTITUTE MEMBERS

- 3.1 The Council's Procedure Rules, in relation to the appointment of substitute Members prescribes when an appointment is made;
- (i) by the Council, if so requested by the Member, or
 - (ii) by the Member, by written notification to the Chief Executive on 24 hours notice.
- 3.2 Again, it is noted, that different substitutes may be designated for different Committees. Where the appointment of a substitute is terminated, on the requisite notice being provided, the termination of the substitute's appointment is with immediate effect. Further, a substitute Member cannot exercise any special powers or duties such as that relating to the Chair and Vice-Chair of the relevant Committee/Sub-Committee. It is also a convention that at the commencement of a meeting, there is clear identification that a Member is substituting for another Member, which then entails that the principle Member is then excluded from participating in that particular meeting.

4. EXERCISE AND DELEGATION OF FUNCTIONS

- 4.1 The 2003 Act provides the functions of the Licensing Authority including those relating to its determinations, which are to be taken or carried out by its Licensing Committee except for certain matters, e.g. those matters relating to the making of a statement of a licensing policy. A Licensing Committee may in turn delegate functions to Sub-Committees or in appropriate cases, to officers supporting the Licensing Authority. The guidance issued through the Secretary of State for Culture, Media and Sport under Section 182, indicates that *“where licensing functions are not automatically transferred to Licensing Committees, the functions must be carried out by the Licensing Authority as a whole and not by its executive”*. Further, some decisions and functions by their purely administrative nature, would ordinarily fall within the scheme of delegation in the interests of “speed, efficiency and cost effectiveness”. Other than those requirements of specific delegation, it is a statutory requirement that the Licensing Committee may form one or more Sub-Committees, each comprising three Members of the parent Committee. Accordingly, by virtue of the statutory requirements, there is an obvious limitation upon the qualification of a Member in exercising the functions associated with a Licensing Committee. Such an appointment to that Committee must be through the Licensing Authority and in turn that “parent” Committee from amongst its number, making appointments to the relevant Sub-Committees.

5. ISSUES DISCUSSED AT CONSTITUTION WORKING GROUP

- 5.1 At the meeting of the Constitution Working Group, the membership of the sub-committees was discussed. The current structure of the sub-committees is as follows:
- 5.2 Licensing Act Sub-Committees – 5 sub-committees of 3 members
Hackney Carriage and Private Hire Sub-Committees – 3 committees of 5 members
- 5.3 It was noted that the 5 Licensing Act Sub-committees of 3 members were created to deal with the implementation of the Licensing Act 2003 and the volume of applications received at that time. It was considered that as the workload of the Licensing Act Sub-committees had since reduced, it may be worthwhile reconfiguring the membership to 5-member Licensing Act Sub-committees with the quorum to remain at 3. It was felt that this would lessen the possibility of meetings being inquorate and create a consistent approach across all Licensing Sub-Committees.
- 5.4 The 2003 Act is, however, clear in stating that Licensing Act functions can only be carried out by a sub committee of three members. The Licensing Committee at its meeting on 2 July considered the appointment of its sub committees. During that debate this issue was raised and discussed by Members. One of the options considered by the Licensing Committee was to call one or two additional members for each Licensing Act Sub Committee meeting to ensure that three members were always present. The Licensing Act Committee requested a further report on this and other possible options to take into account the comments of members, which closely echo the concerns raised at the Constitution Working Group. Members would need to acknowledge that any 'substitute' members would not be eligible for any allowances under the current scheme if they did not form part of the formal sub committee meeting. Such substitute members would also remove individual members control over who they appointed as a substitute for the meeting. This may be an issue that the political groups may wish to consider further.
- 5.5 A further consideration is the need to appoint five Licensing Act Sub Committees. This was considered essential when the Act took force but recent experience would suggest that the need for five sub committees no longer exists and potentially two or three sub committees would suffice. Drawing together the membership of fewer sub committees may give an opportunity to lessen the concerns over individual non-attendance.
- 5.6 The Working Group recommended that the "Licensing Committee re-configure the Licensing Act Sub Committees to three sub-committees of five Members, with the quorum remaining at three." The Licensing Act is quite clear in that sub committees must only have three members and that all three must be present for a hearing to commence; appointing sub committees of five members would not therefore be permissible.

- 5.7 Members may feel that the options raised by the Licensing Committee, including the request for a further report, may have the potential to alleviate the concerns raised at the Working Group.

6. RECOMMENDATIONS

That the Licensing Committee be allowed to further consider the options discussed at its meeting on 2 July 2008 in relation to the management of its Licensing Act Sub Committees and that those considerations be reported to a future meeting of the Constitution Working Group. Members may also desire the attendance of the Chair and Vice Chair of the Licensing Committee to progress this initiative.

7. CONTACT OFFICERS

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CONSTITUTION COMMITTEE

11 July 2008



Report of: Chief Solicitor

Subject: BUDGET AND POLICY FRAMEWORK UPDATE

1. PURPOSE OF REPORT

To report the proposed amended changes to the Budget and Policy Framework documents as considered by the Constitution Working Group at its meeting on 23 June 2008.

2. PROPOSED AMENDMENTS

(a) Policy Framework

The policy framework means the following plans and strategies:-

~~Adult Learning Plan;~~ (no longer exists)

~~Annual Library Plan;~~ (no longer a requirement)

~~Best Value Performance Plan;~~ (now Corporate Plan)

~~Children's Services Plan;~~ (incorporated into Children and Young People's Plan)

Children and Young People's Plan; (new plan)

~~Community Care Plan;~~ (incorporated within Commissioning Strategies for Vulnerable People)

Commissioning Strategies for Vulnerable People; (new plan)

Sustainable Community Strategy;

Corporate Plan; (new plan)

Crime and Disorder Reduction Strategy;

The plans and strategies which together comprise the Development Plan;

~~Early Years Development Plan;~~ (embedded in the Children and Young People's Plan)

~~Education Development Plan;~~ (embedded in the Children and Young People's Plan)

Food Law Enforcement Service Plan;

The plan and strategy which comprise the Housing Investment Programme;

~~Local Agenda 21 Strategy;~~ (incorporated into Sustainable Community Strategy);

Local Transport Plan;

Quality Protects Management Action Plan;

Tees Valley Joint Waste Management Strategy; (new plan)
Youth Justice Plan.

RECOMMENDATION

As a result of the changes proposed above, it is recommended that Part 2 – Articles, Policy Framework be amended as follows;

(a) Policy Framework

The policy framework means the following plans and strategies:-

Children and Young People's Plan;
Commissioning Strategies for Vulnerable People'
Sustainable Community Strategy;
Corporate Plan;
Crime and Disorder Reduction Strategy;
The plans and strategies which together comprise the Development
Plan;
Food Law Enforcement Service Plan;
The plan and strategy which comprise the Housing Investment
Programme;
Local Transport Plan;
Quality Protects Management Action Plan;
Tees Valley Joint Waste Management Strategy;
Youth Justice Plan.

CONSTITUTION COMMITTEE

11 July 2008



Report of: Chief Solicitor

Subject: COUNCIL PROCEDURE RULES –
QUESTIONS TO MEMBERS

1. PURPOSE OF REPORT

To report the proposed amended changes to the Council Procedure Rules – Questions to Members as considered by the Constitution Working Group at its meeting on 23 June 2008.

2. PROPOSED AMENDMENTS

2 ORDINARY MEETINGS OF THE COUNCIL

2.1 Order of Business at Ordinary Meetings

EXTRACT:

viii) To answer questions of Members of the Council under Rule 11

- a) Questions to Members of the Executive about recent decisions of the Executive (without notice)
- b) Questions to Members of the Executive and Chairs of Committees and Forums
- c) Questions on Police and Fire Authority issues to the appropriate Members

EXTRACT:

11.2 Questions on notice at full Council

i) A Member of the Council may ask:

- the Chair;
- a Member of the executive; or

- the chair of any committee or sub-committee

PROPOSED AMENDMENT

11.2 Questions on notice at full Council

- i) A Member of the Council may ask:
- the Chair;
 - a Member of the executive; or
 - the chair of any committee, ~~sub-committee~~ *or Forums*

RECOMMENDATION

That Part 4 – Council Procedure Rules, para 11.2 be amended as above.