

# CONSTITUTION COMMITTEE AGENDA



**Thursday 20 January 2011**

**At 1.00 pm**

**in Committee Room 'C', Civic Centre, Hartlepool**

**MEMBERS: CONSTITUTION COMMITTEE:**

The Mayor, Stuart Drummond

Councillors: Aiken, C Akers-Belcher, Cook, Gibbon, Griffin, James, Morris, Preece, Richardson, Simmons.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
  - 3.1 To confirm the minutes of the meeting held on 19 November 2010.
- 4. ITEMS FOR CONSIDERATION**
  - 4.1 Business Report – *Chief Solicitor*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

# CONSTITUTION COMMITTEE

## MINUTES AND DECISION RECORD

19 November 2010

The meeting commenced at 2.00 p.m. in the Civic Centre, Hartlepool.

### Present:

Councillor Richardson (In the Chair)

Councillors: Cook, Gibbon, James, Morris, Preece and Simmons.

Officers: Paul Walker, Chief Executive  
 Joanne Machers, Chief Customer and Workforce Services Officer  
 Kate Watchorn, Commercial Solicitor  
 Amanda Whitaker, Democratic Services Team Manager

### 24. Apologies for Absence

Councillors Aiken and Griffin.

### 25. Declarations of interest by Members

None

### 26. Confirmation of Minutes

The minutes of the meeting held on 8 October 2010 were confirmed. subject to minute 21 – Scheme of Delegation – being amended to insert 'prior to 1989' in second sentence, sixth paragraph as follows:-  
 ...'Some Authorities did include Members in the interviewing for posts of a much lower grade, prior to 1989, and while there may be justification for certain departures for specific posts it was not always a useful use of Members' time.....

Referring to minute 19, Members were updated on implementation of e petition scheme. It was agreed that arrangements be made for a demonstration of the system prior to implementation on 15<sup>th</sup> December 2010.

### 27. Review of the Scheme of Delegated Authority *(Chief Solicitor)*

Further to minute 21 of the meeting of the Committee held on 8<sup>th</sup> October 2010, the Chief Solicitor submitted the revised 'highlighted' version of the

Scheme of delegation and 'Proper Officer' functions, which included additional comments received from Council Departments. Those revisions primarily incorporated the updating of delegations in line with statutory changes but also those structural changes introduced through the Business Transformation Programme.

Members were asked to again consider the revisions suggested to the scheme of delegation. However, Members noted that a raft of legislation is proposed in relation to local government, particularly in relation to the 'localism' theme, as well as an ongoing further electoral review and therefore the scheme of delegation would need to be further reviewed in the light of such changes.

Members were advised that the overall intention of the appended document was to address delegations in a way that provided a degree of certainty to those who undertake such roles and functions, but also to provide an easier reference source, as part of the overall governance of the Council.

Consequently, the responsibilities reflected changes made under the Business Transformation programme but also those statutory changes since the implementation and adoption of this particular part of the Council's Constitution back in 2002. Members noted that there was specific mention for 'consultation' by those individuals exercising delegated authority as well as a power "to act generally" which allows for a 'sub-delegation' of authority as described within the appended document.

### **Decision**

It was agreed that the appended revisions to Part 3 of the Constitution, Responsibility for Functions, be submitted to Council for approval.

## **28. Officer Employment Procedure Rules** *(Chief Customer and Workforce Services Officer and Chief Solicitor)*

With reference to minute 21 of the meeting of the Committee held on 8<sup>th</sup> October 2010, Members had requested a report be provided on the particular procedure rules relating to the employment of Chief Officers with emphasis upon appointments which did not strictly require Member involvement, where 'internal circumstances' dictated otherwise (see generally below).

Members were advised that the Secretary of State had made regulations imposing a duty to adopt certain requirements with respect to the appointment of Chief Officers. The Local Authorities (Standing Orders) Regulations, 1993, required Authorities who propose to appoint a Chief Officer and who do not propose that the appointment be made exclusively from existing Officers, to provide a statement specifying the duties and the qualifications sought and for appropriate advertisement. Every appointment should be made on merit and must be made by the authority. The Regulations provide that the various steps in a recruitment process can be undertaken either by a Committee, Sub-Committee or Chief Officer of the

authority, or in the case of a 'joint appointment', by the authorities concerned. The relevant Standing Orders/Procedure Rules could therefore prescribe as to how an appointment should be made. The authority should make the appointment (other than in the case of joint appointments with another local authority) and as indicated the appointment should also be made on merit.

Reproduced in the report was an extract from Part 4 of the Council's Constitution, "Rules of Procedure" relating to the Officer Employment Procedure Rules, so far as they relate to Recruitment of Head of Paid Service and directors, and chief officers reporting directly to them. It was highlighted that other than those appointments described in the submitted extract, the appointment of other Officers was generally the responsibility of the Head of Paid Service or his/her nominee. The Officer Employment Procedure Rules also covered the statutory requirements contained in the Local Authorities (Standing Orders) (England) Regulations, 2001, as to disciplinary action relating to the Head of Paid Service, Monitoring Officer and Chief Financial Officer. Disciplinary action against other Officers therefore related to their conditions of service and the Council's disciplinary procedure.

The Council had operated a Change Protocol for a number of years which was reviewed and discussed with Trade Unions last summer in anticipation of wide ranging restructuring across the whole organisation, particularly across the various tiers of management. The Procedure for Managing Reorganisation, Redeployment and Redundancy was subsequently approved by the Finance and Performance Portfolio Holder and applied to all staffing changes arising from the corporate and departmental restructuring exercises. The revised procedure incorporated a number of policies and procedures into one single document, incorporated best practice and clarified local arrangements which had evolved from the original Change Protocol. The procedure specified the arrangements which would apply to employees who were affected by restructuring and referred to a number of different processes which aimed to protect employees from unnecessary competition from other employees who may not be at risk, other employees who are at risk but may be on a lower grade, recognises where additional duties may be undertaken and re-grading and re-designation takes place, etc. The procedure also includes references to staff being at risk, slotting in, ring-fencing, selection pools, etc. The way these procedures are implemented by the Workforce Services Team is subject to Trade Union monitoring across the organisation for consistency and fairness.

In 2009 when Cabinet considered restructuring proposals which directly affected chief officer posts, recommendations were also made regarding the implementation of those restructuring proposals based on the procedure for reorganisation, redeployment and redundancy. Each Chief Officer was identified and the implementation arrangements specified for Cabinet approval. As a result of the implementation proposals all remaining employees i.e. excluding those who volunteered for early retirement/redundancy, were confirmed in post or slotted in, in accordance

with the procedure.

Although no competitive ring-fences arose as a result of this particular exercise the current practice of establishing an Appointments Panel to appoint to any vacant post covered by the Officer Employment Procedure Rules would apply. Appointments Panels have always been established to determine appointments to vacant Chief Executive/Chief Officer posts whether advertised internally only in the first instance or open to external competition. The wording of the Constitution as outlined earlier in the report does not explicitly state that competitive recruitment situations for posts covered by Officer Employment Procedure Rules will be subject to an Appointments Panel process and therefore this wording could be amended for future clarity.

Members highlighted that an issue which had caused concern related to officers being slotted-in posts, without any Member involvement. It was questioned as to whether the report addressed those concerns. Officers responded to the concerns expressed by Members and clarified the difference between those situations where slotting-in was appropriate and those posts which were ring-fenced and subject to competitive process. Discussion followed on the background to a post being subject to slotting in

Members questioned the slotting-in process further, particularly when they considered that there could have been competition for posts. Officers clarified that in the majority of the Assistant Director positions, there was only a change in post title and the addition of responsibilities. In any event, during the review the posts were ring-fenced and when one post-holder decided to retire, the process became one of slotting individuals into post. Members did feel that even this process needed some Member input, even if it was only a single candidate interview for individuals to present/introduce themselves to Members.

The Chief Executive reminded Members that the cases being referred to were not promotions. The issue of designated deputies also seemed to have caused some confusion, the posts had been designated as deputies to Directors prior to the review; there were no changes. Members acknowledged the process, but did consider that communication with Members in these situations needed to be enhanced. Members also expressed concern at the changes further down the structure resulting from the review earlier in the year and the changes that would now arise from the changes currently proposed. Members sought updated departmental structures which it was agreed would be provided in the new year once the revisions from the budget had been finalised.

## **Decision**

That the current wording in the Constitution be reviewed and considered at the next meeting of Committee, to clarify that competitive recruitment situations for posts covered by Officer Employment Procedure Rules would be subject to an Appointments Panel process whether internal or external.

**29. Any Other Items which the Chairman Considers are Urgent**

No items

The meeting concluded at 2.55 p.m.

CHAIR

**Report of:** Chief Solicitor

**Subject:** BUSINESS REPORT

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**1. SUSPENSION OF CONSTITUTION WORKING GROUP**

At the meeting of the Constitution Working Group on 24 September 2010, Members agreed to suspend the operation of the Working Group for at least two Council meeting cycles. It was noted that the Constitution Committee would continue to operate as scheduled, with Task and Finish Groups comprising the same membership as the Committee, arranged on an ad hoc basis to consider particular issues on a time-specific basis. To date, there have been no Task and Finish Groups required.

It is timely for this arrangement to be reviewed and Members' views are sought.

**RECOMMENDATION**

Members' views are sought.

**2. PETITION SCHEME**

A letter has been received, from the Department for Communities and Local Government, to inform of the withdrawal of the statutory guidance on the duty to respond to petitions under the Local Democracy, Economic Development and Construction Act 2009. In that letter, it was explained that the petitions requirements in Chapter 2, Part 1 of the Local Democracy, Economic Development and Construction Act 2009 remained in force unless or until repealed by fresh primary legislation. There is the legislative opportunity to seek to remove these requirements through the Localism Bill which was introduced to Parliament on 13 December.

The requirements of the petitions legislation remain in force as their repeal is debated during the passage of the Localism Bill, and local authorities are required to meet these. In considering the approach to doing so, it is expected that Local Authorities will wish to have regard to both the Government's commitment to remove unnecessary prescription for local authorities and the priority of cutting out all wasteful spending.

A report will be submitted to Members when further information is received. In the meantime, Members are requested to note the updated position.

## RECOMMENDATION

To be noted.

### 3. REFERENDUM RE MAYORAL ARRANGEMENTS

At the meeting of the Constitution Committee on 8 October 2010, the Chairman asked for clarification around the protocol for mayoral referendums.

Members are reminded of previous reports to the Constitution Committee on Executive Arrangements and changing governance arrangements, in particular the report of 23 January 2009 refers (attached at **Appendix 1**).

By way of background, the Local Government Act 2000 introduced 3 distinct forms of executive arrangements:-

- Mayor and Cabinet Executive
- Leader and Cabinet Executive and
- Mayor and Council Manager Executive

As a result of the Local Government and Public Involvement in Health Act 2007 these were reduced to two –

- Mayor and Cabinet Executive
- Leader and Cabinet Executive

The 2007 Act provides for a council to change its governance arrangements by resolution approved by a two-thirds majority, without the need for a referendum. The Council must undertake local consultation and it may make the decision subject to endorsement by referendum if it chooses to. Local people can still demand a referendum by petition further to new sub-section 1(A) which was inserted into section 34 of the 2000 Act. This allows for a petition to trigger a referendum on a move to either form of executive. Relevant to this Council, it should be noted that, where a mayoral arrangement system was introduced following a referendum, a further referendum must be held, should that authority wish to move to a non-mayoral system. Further, the time between referendums was extended by the 2007 Act, so that there can be no more than one referendum in any period of 10 years. The 10 year period would need to elapse before a change in governance could take place and if a new model adopted. Additionally, any new model i.e. Leader and cabinet, would only take effect at the expiry of the term of office of the elected Mayor, namely the expiry of the 4 year term.

The general procedure for changing governance arrangements is as follows:-



- (i) The drawing up of proposals for change (taking account of best value requirements) including a timetable dealing with such changes for the governance of the authority.
- (ii) An authority may subject such proposals to a referendum, most particularly, where the authority wished to operate a different form of executive arrangements, but would not be bound to do so, unless the authorities existing arrangements were approved by a referendum or a petition is received. Regulations set out detailed rules for the conduct of referendums including the wording of the questions, restrictions on publicity, expense limits and so on.
- (iii) Take reasonable steps to consult ‘local government electors and other interested persons’
- (iv) Proceed through a resolution of Council.

Members should also note that these procedures are subject to any proposed changes made by the new government through the Localism Bill as it makes its passage through the Houses of Parliament and is finally enacted. The Bill proposes a new Part 1A to the Local Government Act 2000 (clause 10 and schedule 2) reforming the law applying to local authority governance. Such reforms include allowing authorities to operate either by an executive or a committee structure and giving enhanced powers to elected Mayors.

## **RECOMMENDATION**

To note and discuss.

## **4. OFFICER EMPLOYMENT PROCEDURE RULES**

At a meeting of the Constitution Committee on 19 November 2009, Members considered a report on the particular procedure rules relating to the employment of Chief Officers with emphasis on appointments which did not strictly require Member involvement, where ‘internal circumstances’ dictated otherwise. It was decided that the current wording of the Constitution be reviewed and considered at the next meeting of the Committee to clarify that competitive recruitment situations for posts covered by Officer Employment Procedure Rules would be subject to an Appointments Panel process whether internal or external.

The current wording of the Constitution is:

- “Where the Council proposes to appoint the Head of Paid Service, a Director or a Chief Officer reporting directly to them, and it is not proposed that the appointment be made exclusively from among their existing officers as a result of internal circumstances, the Council will ....”.

The paragraph goes on to set out the Appointments Panel procedure. (Part 4 – Officer Employment Procedure Rules – paragraph 3.1).

Proposed wording for Member consideration is given below with key changes in italics for the purposes of discussion; it is not proposed that italics would be used in the Constitution document.

- “Where the Council proposes to appoint the Head of Paid Service, a Director or a Chief Officer reporting directly to them, and it is not proposed that the appointment be made *as a result of implementing reorganisation procedures applying to one officer*, the Council will .....”. The paragraph would then go on to set out the Appointments Panel procedure as above.

## RECOMMENDATION

Member's views are sought.

**SUBMITTED TO CONSTITUTION CTTEE – 23 JANUARY 2009**

**Report of:** Chief Solicitor

**Subject:** EXECUTIVE ARRANGEMENTS

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**1. BACKGROUND**

- 1.1 Members are requested to note that this report replicates that submitted to the Constitution Working Group for their meeting on 15<sup>th</sup> January, 2009, in order to comply with the Access to Information provisions. Members are therefore requested to essentially “cross reference” this report with the discussions as reflected in the minutes of that meeting.
- 1.2 The Local Government and Public Involvement in Health Act, 2007, continues a reform of local government through structural arrangements as well as for patient and public involvement in the provision of health and social care services. The Act, builds upon the executive arrangements which came through the provisions of the Local Government Act 2000 and builds upon the themes introduced through the ODPM document “The Future of Local Government – Developing a 10 Year Vision” (2004) and the White Paper: “Strong and Prosperous Communities” (2006).
- 1.3 The Local Government Act 2000 had introduced three distinct forms of executive arrangements (although some District Councils could adopt “alternative arrangements”) as follows;
- Mayor and Cabinet Executive
  - Leader and Cabinet Executive
  - Mayor and Council Manager Executive
- 1.4 The 2007 Act provides for two forms of executive arrangements namely the Elected Mayor and Cabinet Executive and a “new form” of Leader and Cabinet Executive. Of note, the Elected Mayor will serve a four year term, as will the ‘new style’ Leader (see further below). This is clearly indicative of the Government’s formula for Local Government with a strong emphasis on leadership, seen as “the single and most important drive for and improvement for local authorities” (para 3.18 White Paper refers).
- 1.5 The Local Government Act 2000 had also introduced a new decision making framework with a clear separation between decision making and scrutiny of those decisions. The policy objectives of such new arrangements were as follows;
- To achieve greater efficiency
  - Greater transparency

- Greater accountability of decisions and scrutiny thereof

## **2. CONSTITUTIONAL ISSUES**

- 2.1 The 2007 Act retains the model of Mayor and Cabinet, wherein a directly elected Mayor functions with a Cabinet comprising more than two but no more than 10 Executive Members. The other model, relates to an Executive Leader who will be elected by Council and who would appoint a Cabinet again comprising of more than two Cabinet Members but no more than 10 Members. Where a local authority operates “whole” elections then a Leader would potentially be the Leader through appointment by Council for a four year term or until his/her term of office expires. Where an authority operated an electoral scheme on a rotational basis ie by thirds then such an appointment would take place at the Annual General Meeting or until his/her term of office expires. Such a Leader would be responsible for the appointment of Cabinet Members.
- 2.2 The 2007 Act, as indicated, retains the Government’s favoured option of an Elected Mayor and Cabinet Executive. However, over three hundred local authorities operate a Leader and Cabinet Executive and will accordingly be required to decide between the elected Mayor and Cabinet model or the ‘new style’ Leader and Cabinet. The Act provides for a process of changing an authority’s governance arrangements, subject to DCLG guidance, which is awaited.
- 2.3 Under the ‘new style’ Leader and Cabinet model, the Council appoints the Leader, but who then appoints the Cabinet including the size of the Cabinet (more than two, but not exceeding ten). A Deputy Leader, appointed (and who may be removed) by the Leader, would have power to act in the Leader’s absence. The crucial difference in the ‘new style’ Leader model is the fixed term of office of the Leader, of four years (or until his/her term of office expires), although the Council will have power to remove him or her during their term of office. Again, and by an analogy with the Elected Mayor the ‘new style’ Leader would determine and exercise the executive functions and powers of the authority.

## **3. CHANGING GOVERNANCE ARRANGEMENTS**

- 3.1 Through Section 64 of the 2007 Act a local authority is allowed to change its governance arrangements where such an authority “wishes to make a change” in those arrangements. In order for an authority to proceed, the following process and procedures would need to be initiated;
- (i) The drawing up of proposals for change (taking account of best value requirements) including a timetable dealing with such changes for the governance of the authority.

- (ii) An authority may subject such proposals to a referendum, most particularly, where the authority wished to operate a different form of executive arrangements, but would not be bound to do so, unless the authorities existing arrangements were approved by a referendum or a petition is received.
  - (iii) Take reasonable steps to consult “local government electors and other interested persons”.
  - (iv) Proceed through a resolution of Council.
- 3.2 Through an amendment to the provisions of the Local Government Act 2000 various prescribed periods are provided for, in relation to changing an authority’s governance arrangements.
- 3.3 As Members will note, a move to a new form of executive arrangements is predicated by a resolution being passed. It is also further prescribed, that from the third day following the relevant elections, the local authority will cease operating the old form of executive and start operating the new arrangements. With particular reference to this authority, the following is pertinent;

*“If the local authority is currently operating a Mayor and Cabinet Executive the “appropriate election of Councillors” are the ordinary election of Councillors of the local authority held on the day on which the next ordinary election of a Mayor was expected to be held when the resolution to make the change in governance arrangements was passed”.*

In the absence of compliance with this ‘statutory’ timetable it does not appear permissible for a local authority to change its governance arrangements. The timetable for the “permitted resolution period “ is as follows

<b>Type of local authority</b>	<b>Permitted Resolution Period</b>
Metropolitan District	Period ending 31st December, 2009
County	Period ending 31st December, 2008
London Borough	Period ending 31st December, 2009
Non-Metropolitan District	Period ending 31st December, 2010

- 3.4 The new legislation in repealing the Mayor and Council Manager model, entails that in particular Stoke City Council are required to adopt a new form of executive model. Members may be aware that following a referendum that Council is moving to the ‘new style’ Leader and Cabinet model. Such a change needs to be effected in 2009, in that particular Council’s case, otherwise the Secretary of State has power to impose new arrangements by order. Similarly, those authorities operating ‘alternative arrangements’ with a resident population exceeding 85,000 on 30th June, 1999, (namely Brighton

and Hove Council) are required to change to the new style Leader and Cabinet model no later than their annual general meeting in 2009. Again, the Secretary of State has power to impose such executive arrangements in default. For this Council, it should be noted that any change would need to be approved through a referendum. Section 45 of the Local Government Act, 2000, did prescribe that “a local authority may not hold more than one referendum in any period of five years”. However, this statutory provision was altered through Section 69(1) of the 2007 Act, wherein a local authority “may not hold more than one referendum in any period of ten years”. Consequently, as this Council proceeded with a referendum on 18 October, 2001, the ten year period would need to elapse before a change in governance could take place. Accordingly, the initial “permitted resolution period” for this Council, would be that ending on the 31 December, 2014, should a referendum be undertaken in the period prior (ie., after 18 October 2011) . Any new model ie., Leader and Cabinet., would also therefore only take effect at the expiry of the term of office of the elected Mayor, namely the expiry of their four year term.

#### **4. SUMMARY**

- 4.1 This report therefore provides general information upon the changes that could be adopted to the governance arrangements by local authorities under the provisions of the 2007 Act. The proposals associated with such a change should also incorporate a timetable and where relevant, transitional arrangements to implement the proposed changes. If a local authority proceeds by way of a referendum, the result of that referendum would then be binding upon the local authority. With the exception of those authorities who are presently operating alternative arrangements and where arrangements relate to the model of a Mayor and Council Manager Executive wherein changes are required in 2009, the majority of authorities would operate their confirmed new governance arrangements to have application at the elections following the defined “permitted resolution periods”, as more particularly detailed herein.

#### **5. RECOMMENDATION**

- 5.1 That the report and its contents be noted.

#### **6. CONTACT OFFICER**

Peter Devlin, Chief Solicitor