

CONSTITUTION COMMITTEE AGENDA



9th June 2011

at 2.00 p.m.

in Committee Room 'A'

CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors Aiken, S Akers-Belcher, Cook, Fenwick, James, John W Marshall, Preece, Richardson, Simmons and Wells.

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

3.1 Minutes of the meeting of the Constitution Committee held on 25TH March 2011.

4. ITEMS REQUIRING DECISION

4.1 Review of Constitution/Work Programme for 2011/12 (*Chief Solicitor/Assistant Chief Executive*)

5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

25 March 2011

The meeting commenced at 12 noon in the Civic Centre, Hartlepool

Present:

Councillor: Marjorie James (In the Chair)

Councillors: Rob Cook, Steve Gibbon and Chris Simmons.

In accordance with Council Procedure Rule 4.2 (ii), Councillor Fleet was in attendance as substitute for Councillor Griffin, Councillor Wells was in attendance as substitute for Councillor Morris and Councillor Barclay was in attendance as substitute for Councillor Richardson

Officers: Alyson Caman, Legal Services Manager
Graham Frankland, Assistant Director, Resources
David Hart, Strategic Procurement Manager
Joanne Machers, Chief Workforce and Customer Services Officer
Alison Mawson, Assistant Director (Community Safety and Protection)
Kate Watchorn, Solicitor
Amanda Whitaker, Democratic Services Team Manager

37. Apologies for Absence

Apologies for absence were received from The Mayor, Stuart Drummond and Councillors Griffin, Morris, Preece and Richardson

38. Declarations of interest by Members

None

39. Confirmation of Minutes

- (i) Constitution Committee – 20 January 2011 – Agreed
- (ii) Constitution Committee Task and Finish Group – 2 February 2011 – Agreed

40. Business Report – Recorded Votes at Council (*Chief Solicitor*)

Members were reminded that at the meeting of Council on 24 February 2011 (minute 132 refers) Members had discussed the option of having recorded votes for all decisions taken at Council. Following the discussion,

Council had referred the issue to Constitution Committee for further consideration and to enable legal clarification to be provided.

Members were reminded that amendments to the Council Procedure Rules would need to stand adjourned without discussion to the next ordinary meeting of the Council. Relevant general considerations in terms of method of voting, meaning of present and voting and the relevant provisions in the Constitution relating to voting were set out in the report.

Members supported the view which had been expressed by Council in respect of the proposal for recorded votes being held for all 'Council decisions'.

In terms of amendment to the Constitution, it was highlighted that Council Procedure Rule 17 – Voting – would require amendment and subsequent approval by Council. It was agreed that the exact wording of the amendment to be proposed to Council should be drafted by the Legal Services Manager, for approval by the Chairman of this Committee prior to submission to Council.

Decision

It was agreed that the wording of the Constitution amendment to be proposed to Council should be drafted by the Legal Services Manager, for approval by the Chairman of this Committee prior to submission to Council.

41. Business Report – Annual Proportionality and Allocation of Positions to Independent Members (Chief Solicitor)

At the meeting of Council on 10 February 2011 (minute 124 refers), clarification was sought on the procedure in relation to Independent Members in the nomination process for Council committees and outside body appointments.

Members were reminded that as a general rule, all Independent Members who were not part of a political group were approached individually to ascertain if they had any preferences for positions on Council committees or Outside Bodies. Where Independent Members were part of a political group, all requests were submitted through the Group Leader/Co-ordinator. All nominations for positions on Committee seats and outside bodies were co-ordinated by the Democratic Services Team and submitted for consideration by Council. Should any position become available during the year, the same procedure would be followed. In addition to the above, when nominations were submitted to Council, Members also had the opportunity to submit nominations at the meeting.

Members expressed concern regarding the implications on Independent Members when other Independent Members constituted a political group in accordance with Regulation 7(i) of Local Government (Committees and Political Groups) Regulations 1990. Reference was made to the implications in terms of potential of misleading electorate and advice was sought from the Acting Returning Officer in terms of description of candidates on ballot forms. Concerns were expressed also in relation to acknowledgement as a political group and implications on proportionality in respect of allocation of seats on Committees, Forums etc.

Members were of the view that the issues raised highlighted an anomaly and there was a fundamental legal issue to be addressed. It was agreed, therefore, that a further report should be submitted to the Committee responding to the issues which had been raised by Members.

Decision

That a further report be submitted to this Committee on acknowledgement and implications of those candidates who stand for election as an Independent Members who subsequently form part of a group constituted in accordance with Regulation 7(i) of Local Government (Committees and Political Groups) Regulations 1990.

42. Business Report – Officer Employment Procedure Rules (*Chief Customer and Workforce Services Officer*)

At the Constitution Committee's Task and Finish Group on 20 January 2011 revised wording to the Constitution was considered and discussed in respect to the particular procedure rules relating to the appointment of chief officers.

Two key issues were identified:

- when reorganisation occurs and posts, and their postholders, are allocated additional duties and responsibilities which may result in a change to the grade of the post, and;
- when a vacant post is to be recruited to that a competitive recruitment process takes place as directed by an Appointment Panel determined by Council.

Proposed wording for the Constitution for member consideration was set out in report as follows:

“Where Council proposes to recruit internally only or internally/externally to a vacant post of Chief Executive, Director or

other Chief Officer the Council will establish an Appointments Panel. This will not apply when the role, responsibilities, terms and conditions of an officer covered by the Officer Employment Procedure Rule are revised as a result of organisational change in accordance with the Council's reorganisation procedures". [The paragraph would go on to set out the current Appointments Panel procedure.]

Additionally, to address concerns of Members regarding the first key issue above, it was proposed that arrangements be made for all Elected Members to be briefed on new service arrangements whenever there were revisions to an occupied post which was covered by the Officer Employment Procedure Rule as a result of organisational change in accordance with the Council's reorganisation procedures.

Members reiterated concerns which had been expressed previously and considered that the wording proposed in the report did not fully reflect those concerns. Therefore, following discussion Members agreed the above wording subject to the insertion of the following sentence to the proposed amended wording to the Constitution:-

'There is a presumption that all staff are treated fairly and equally'.

Decision

That the following amendment to Officer Employment Procedure Rule 3.1 be recommended to Council:-

"Where Council proposes to recruit internally only or internally/externally to a vacant post of Chief Executive, Director or other Chief Officer the Council will establish an Appointments Panel. This will not apply when the role, responsibilities, terms and conditions of an officer covered by the Officer Employment Procedure Rule are revised as a result of organisational change in accordance with the Council's reorganisation procedures. There is a presumption that all staff are treated fairly and equally."

43. Business Report – Amendment to Outside Body Appointments – Safer Hartlepool Partnership *(Chief Solicitor)*

Members were advised that the Safer Hartlepool Partnership was listed under Schedule B1 'Leadership Bodies and Partnerships' where the Executive could appoint any Member to the body.

In May 2010 the Executive had appointed The Mayor and Councillor Payne and the Council appointed Councillors Ingham and Thomas to the Partnership with the Mayor being appointed to the Partnership Executive.

Changes have been made to the statutory operation of the Partnership and it now operated effectively only as an executive arrangement requiring only the executive appointment of the Mayor. However, it was highlighted that this did not mean that back bench Members were excluded from the Partnership's operation. The Partnership operated a consultative group, known as the Community Safety Forum, to which ALL Members of Council were invited together with representatives from a wide range of stakeholder and partner groups. Members were then through the Forum involved in the development of the Community Safety Strategy.

The Constitution Committee was therefore requested to note the change to the operation of the Partnership and the consequent change to the Outside Body Appointment under Schedule B1.

Members questioned who had instigated the proposed change. In response the Assistant Director explained the background to the proposals which although there was no legal requirement to adopt, the proposals would regularise the appointment process. The Assistant Director also clarified changes which had occurred in terms of the structure of the organisation and highlighted issues in respect of attendance at meetings. It was noted that there continued to be role for 'backbench' Members in the revised structure. However, Members were of the view that it was necessary to continue to have second executive Member to represent the Council while the Mayor was Chairing meetings. It was the view of Members therefore that the Constitution of the Executive Group should be amended, if necessary, to include the principle that whichever organisation is chairing the meeting, will be permitted second representative.

Decision

(i) That the Constitution of the Executive Group be amended to permit whichever organisation is chairing the meeting, will be permitted second representative.

(ii) That the Council's Outside Body list be updated to clarify the roles of the Executive Group and that of the Community Safety Forum

44. Business Report – Localism Bill Update (*Chief Solicitor*)

A copy of a report which had been considered at the Cabinet meeting on 21 March 2011 had been circulated to the Committee. The report provided a briefing on the Localism Bill and its potential impact on the Council.

Members raised a number of queries in terms of the changes and implications arising from the Bill. It was noted, however, that the level of

detail and range of issues addressed in the Bill made its longer term significance difficult to discern.

Decision

That the report be noted.

45. Proposed Amendments to Contract Procedure Rules

(Assistant Director, Resources and Chief Solicitor)

A report was presented which sought the Committee's endorsement of proposed changes to the Contract Procedure Rules (CPRs) and submission of those changes to Council for approval and implementation.

Members were advised that the Council's current Commissioning and Procurement Strategy contained a number of initiatives which were designed to improve the Council's procurement practices for both internal practitioners as well as the Council's supply base. Successful implementation of these initiatives would only be possible if appropriate changes could be made to the Council's CPR's. Details of what these required changes were and the initiatives they were designed to support were provided in the report. The following paragraphs were presented which outlined the initiatives which required support through amendments to the CPR's:

- i) **Changes to the current quotation/tender thresholds –**
There has been work carried out on a regional basis to harmonise, as far as possible, the quotation/tender thresholds used by the various north-east councils. The benefits and risks of increasing quotation thresholds were provided later in this report.
- ii) **Supporting local businesses –** The planned introduction of IT based quotation solutions provided the opportunity to support local businesses more effectively than can be achieved currently. The adoption of a requirement to offer opportunities to local businesses in the CPR's would ensure that quotation processes were configured in such a way as to ensure that this occurs.
- iii) **Quotation gathering processes –** To support the raising of tender thresholds as described in paragraph i) above, it would be necessary to introduce robust processes to support the quotation gathering activity which occurs for any sub-tender level procurement. IT based solutions were available however the introduction of these would require that certain activities be mandated. The inclusion of such mandates would be hugely important in ensuring that all procurement activities

were carried out in an appropriate and proportional manner.

- iv) **Collaborative procurement** – The current CPR's refer to the use of existing collaborative contracts, however the wording was such that it didn't allow procurers to easily make use of the wide range of collaborative procurement arrangements which currently existed and which had been developed to provide efficient options in terms of process and value for money.
- v) **Completion/review of contract documents** – There were a number of contract documents developed by Council staff which had not been issued to the Legal Department for review and completion. In order to ensure that all supply, service and works contracts to which Hartlepool Borough Council were a party were appropriately drafted and executed it was essential that this documentation was routed through the appropriate department.
There was currently no requirement in the CPR's that such a referral take place and as a result this was considered an ideal opportunity to implement such a requirement.
- vi) **Various clarification issues** – Provide confirmation of and changes to procedures to improve procurement processes.

The proposals had been drawn up in conjunction with a CPR subgroup, formed from members of all Council Departments. Following this the proposals were documented and presented to a number of committee's and groups for comment and debate, as set out in the report.

The finalised CPRs were appended to the report, with all additions underlined and all deletions struck out. As the CPRs were "Contract Standing Orders" within the Constitution, they were a non-executive function and therefore needed to be considered by the Constitution Committee. Constitution Committee's views were sought and if the proposals were acceptable, Members were advised that they would then go to the next meeting of Council for endorsement with the Committee's views incorporated.

Decision

That the submission of the draft Contract Procedure Rules to Council, for final approval and implementation, be endorsed.

The meeting concluded at 2.15 p.m.

CHAIR

CHAIR

Report of: Joint Report of Chief Solicitor and Assistant Chief Executive

Subject: REVIEW OF CONSTITUTION/WORK PROGRAMME FOR 2011/12

1. PURPOSE OF REPORT

- 1.1 To consider the requirement to review the Constitution to reflect general changes, changes as a result in the reduction in the number of Councillors and to reflect recommendations arising from the review of Community Involvement and Engagement (including LSP Review). Other considerations including those relating to the Independent Remuneration Panel are also likely to result in changes to the Constitution. The changes that are required as part of the constitution need to be put in place to have a working constitution in time for the next municipal year.

2. BACKGROUND

- 2.1 Members will recall that at the Council meeting held on 16th September 2010 it was noted that in respect of the Council size for Hartlepool, the Local Government Boundary Commission were minded to recommend a Council of 33 Members. The reduction in the number of Members will have an impact on the Constitution.
- 2.2 New Legislation, for example, the Localism Bill due to be enacted by the end of 2011 and currently the Bribery Act 2010 will require consideration as to the affect they will have on the Constitution and any subsequent changes required to give effect to the legislative provisions.
- 2.3 The review of Community Involvement and Engagement (including LSP Review) will also potentially result in Constitutional changes which need to be considered as part of an overall review of Constitution. Other considerations including those relating to the Independent Remuneration Panel are also likely to result in changes to the Constitution.
- 2.3 In considering the work programme for the Committee in respect of the forthcoming Municipal year, the potential major changes required to all sections of the Constitution need to be factored against the requirement to have all changes approved and in place in time for the next municipal year.

3. ISSUES TO BE CONSIDERED

- 3.1 At the first meeting of the Committee each Municipal year, it is usual for the Committee to consider a work programme for the coming year. When considering the work programme for this Municipal year, it is appropriate to highlight the volume of work which will be generated by the review of the

Constitution and that it is essential to have the amended Constitution agreed in time for the next Municipal year. In addition if there are any areas of the Constitution which Members of the Committee consider should be reviewed, then they could be picked up as part of the review of that appropriate section of the Constitution.

In addition, as Members may be aware an issue in relation to the breach of the constitution has been referred, by the Scrutiny Co-ordinating Committee, to this Committee for consideration (minute 192, Scrutiny Co-ordinating Committee refers).

3. PROPOSALS

- 3.1 It is important to deal with all the issues highlighted in this report and to have clear work programme and timetable to ensure working Constitution in place for the next Municipal year. Officers will work up timetable to reflect the review of the 16 articles that set out the basic rules governing the Council's business and the more detailed procedures set out in the Constitution. It is suggested that in view of the importance of the Constitution, the amount of work involved and the time constraints, a Task and Finish Group be set up to consider the review of the Constitution

4. RECOMMENDATIONS

- (i) That a Task and Finish Group be convened for the purpose of reviewing all Sections of the Constitution, required to be completed and in place for the start of the next Municipal year.
- (ii) That the Committee formally receives the Scrutiny Co-ordinating Committee referral.