

Wolverhampton City Council

OPEN DECISION ITEM

Committee/ Panel	SPECIAL ADVISORY GROUP	4 May 2011
	STANDARDS COMMITTEE	4 May 2011
Originating Service Group(s)	DELIVERY	
Contact Officer(s)/	S KEMBREY/ P MAIN/ F DAVIS	
Telephone Number(s)	4910/ 4410/ 4932	
Title/Subject Matter	<u>ANNUAL REVIEW OF THE CONSTITUTION</u>	

1.0 **Recommendation**

- (i) That the proposed amendments to the Constitution detailed in the report be endorsed for consideration at the Annual Council meeting on 18 May 2011;
- (ii) That Members note that a comprehensive re-write of the Constitution will be undertaken in 2011/12 as part of the Council's Improvement Plan.

ANNUAL REVIEW OF THE CONSTITUTION

1.0 Purpose of the Report

- 1.1 To advise the Special Advisory Group and Standards Committee of proposed revisions to the Council's Constitution, to be incorporated in the May 2011 edition of the Constitution, to be submitted for approval by Annual Council on 18 May 2011, and to report on the Improvement Plan project which will oversee a re-write of the Constitution during 2011/12

2.0 Background

- 2.1 It is intended that reference will be made to revision of the Constitution in a report to the Annual meeting of the Council on the "Appointment of Executive, Scrutiny and Regulatory Bodies". The convention of previous years has been for draft copies of the revised Constitution to be placed in the Members' Rooms and it is proposed that this procedure is followed again this year.
- 2.2 During 2010/11 the Constitution Review Group comprising officers has continued to meet regularly to review the Constitution on an ongoing basis and thereby ensure all necessary amendments are made for the annual revision of the Constitution and to implement changes where necessary.
- 2.3 As a result of meetings of the Constitution Review Group and the restructuring of the senior management of the authority, "Leading for a Stronger City", the Constitution has been revised twice during 2010/11. Updated editions of the May 2010 Constitution were published in February 2011 and April 2011, following approval by Council on 15 December 2010 and 16 March 2011.
- 2.4 The Special Advisory Group has been delegated the task, amongst other things, of dealing with Governance and Constitutional arrangements. As an advisory body, the SAG, on Constitutional matters, makes recommendations to the Standards Committee before final approval by Council. The Standards Committee advises the Council generally on the revision of the Constitution and particularly the officers' code of conduct and the protocol on Member/officer relationships.
- 2.5 This report at Appendix 1 sets out proposed amendments to the Constitution to be incorporated into the May 2011 edition. They are minor amendments pending the Constitution being re-written during 2011/12 to incorporate recommendation in the Council's Improvement Plan.

3.0 Improvement Plan

- 3.1 The Improvement Plan project is systematically looking at recommendations for improvement and incorporating "Lessons Learnt" following recommendations/advice contained in:
- the report on the Constitution by Stewart Dobson,
 - the Wragge & Co Scoping Review concerning the proposed partnership with Axon Solutions Limited
 - advice on Governance from Leading Counsel relating to decision making concerning Victoria Halls.
 - the review by Patricia Hughes into the 2007/08 equal pay COT3 payments

- contracting issues reported to Audit Committee in November 2010
 - PWC's Internal Audit Effectiveness Review reported to Audit Committee in April 2011
- 3.2 Proposals for the Annual revision of the Constitution 2011/12 were originally presented to the Special Advisory Group on 13 April 2011. The proposed revision relating to appointments to outside bodies and the contract procedure rules were endorsed for referral to Standard Committee and Annual Council. Other amendments were referred back for further consideration and for re-drafting into plain English.
- 3.3 Proposed amendments presented to Special Advisory Group on 13 April 2011 included amendments following the report of Stewart Dobson on the Constitution concerning Scrutiny and Call-in of executive decisions; authority to act between meetings and an amendment to the Code of Practice for Employees relating to travel, gifts and hospitality.
- 3.4 Special Advisory Group agreed that:
- (a) Call-in should be exercised by Members of the Call In Group acting alone rather than jointly in order to avoid giving the power of veto to any political group;
 - (b) Call-in could be exercised up to after 3 working days of an executive decision being made rather than prior to decision.
 - (c) Green Decisions to be made by individual Executive Members in accordance with criteria.
 - (d) The Constitution to comprise core documents with non core documents being contained in a Procedure Manual.
- 3.5 It is suggested that the matters referred to in (c) and (d) above are considered as part of the Council's Improvement Plan which will include a complete re-write of the Constitution during 2011/12. However, the amendments referred to in (a) and (b) above in addition to revisions authorised by Special Advisory Group on 13 April on Appointments to Outside Bodies, Contract Procedure Rules and Delegations to Officers which, for completeness, are referred to in the Appendix to this report, are endorsed for consideration at the Annual Council meeting on 18 May 2011
- 3.6 The structure of the Improvement Plan project, including appointment of a Programme Manager, is now in place. The inclusion of the re-write of the Constitution will enable key stakeholders including Members to be consulted and for the project to be co-ordinated.
- 3.7 The inaugural Improvement Plan Project Board comprising officers met on 19 April 2011 and will meet monthly to oversee the project with a view to completing a re-write of the Constitution incorporating all recommendation from documents which impact on governance in the Constitution during 2011/12. Members of the Special Advisory Group are requested to endorse this approach.

4.0 Amendments to the Constitution 2010/11

4.1. Appointments to Outside Bodies'

4.1.1 An amendment is required to Part 3/20 – Responsibility for Functions – Section 6 Functions which are reserved to the full Council to ensure consistency with the functions of full Council detailed at Part 2, Article 4 – Functions of the Full Council (see Appendix 1, paragraph (a)).

4.2 Outcome of the Wragge & Co Scoping Review of the Proposed Partnership with Axon Solutions Limited

4.2.1 Patricia Hughes is currently conducting the full “Lessons Learnt” review of the Council’s proposed partnership with Axon Solutions Limited. The recommended revision to the Contract Procedure Rules follows the outcome of the initial Scoping Review by Wragge and Co (see Appendix 1, paragraph (b))

4.3 Victoria Halls

4.3.1 The decision of the Council to grant planning permission for student accommodation flats involving Victoria Halls required the Council to consult with an expert third party consultee, the Health and Safety Executive. In the event that such a consultee advises a cause of action that differs from the view of the Council, consideration needs to be given as to what weight the decision maker gives to that evidence and whether the decision maker shall seek other independent evidence before making its decision. To accommodate this it is proposed to add a new delegation in the Delegations to Officers – Section F (see Appendix 1, paragraph (c)).

4.4 Authority to Act Between Meetings

4.4.1 Currently, reports are submitted to the Cabinet (Resources) Panel and Licensing Committee in July each year seeking authority from those individual bodies for urgent decisions to be made during the summer recess.

4.4.2 With regard to Cabinet (Resources) Panel, authority has traditionally been given to enable urgent Amber decisions to be taken during the summer period on the following basis:-

4.4.3 Any matters falling into this category would be dealt with as follows:

- (i) The appropriate Designated Officer (Directors or Chief Officers) would obtain the written agreement of the relevant Cabinet Member to the required course of action, unless there are exceptional circumstances that prevent them from being consulted
- (ii) The appropriate Designated Officer would then consult at least one Opposition Member of the Call-In group or the principal Opposition Spokesperson for the service area under consideration to obtain their written confirmation that they have no objection to the proposed decision.

- (iii) On receipt of written confirmation the decision will be treated as an amber decision which **has not** been called-in and is capable of being implemented.
- (iv) If no confirmation is received within five working days of the request or if an objection is received within the same time frame the decision will be treated as an amber decision which **has** been called-in. Special arrangements may then be necessary to deal with the matter.

4.4.4 Any decisions made under these proposals would be reported for information to the Cabinet (Resources) Panel.

4.4.5 With regard to the Licensing Committee, again authority has been given each year by the Committee to allow category 2 licensing matters i.e. applications for Private Hire Operators Licences, revocation of driver's licences which may include revocation with immediate effect and decisions to prosecute within the responsibility of the Committee, to be delegated to the Chair, Vice Chair and Shadow Chair or their nominees. Any decisions made through these arrangements are reported back for information to the next available meeting of the Committee.

4.4.6 Rather than presenting separate reports to individual bodies, it is proposed to add the following provision in the Constitution at Part 2, Article 13 – Decision Making:-

“Decision Making During the Summer Recess

(1) During the period of the summer recess, when there are no planned meetings, urgent decisions of -

(a) The Executive; or

(b) Regulatory and other Committees and Standing Bodies

will be taken by the Chief Executive, a Strategic Director or Assistant Director (designated Officer) in consultation with the relevant Cabinet Member or, in his/her absence, the Leader as respects (a) above; or with the Chair, Vice-Chair and Shadow Chair (or their nominees) of the relevant Committee or body as respects (b) above; subject to paragraph 2 below.

(2) The designated Officer must take the following steps:-

(i) When dealing with an urgent Amber Executive Decision, the designated officer must

Group also expressed the view that the current arrangements for call in by any one member of the Call In group should continue.

4.5.2 It is proposed that paragraph 12.5 of the Overview and Scrutiny Procedure Rules be amended as follows:-

12.5 Amber decisions and consideration by the Call-in Group

(a) The Cabinet/Cabinet Panel will consider items identified on the agenda as Amber business.

The Cabinet/Cabinet Panel will then make decisions each of which will be recorded by the Chief Executive as an Amber decision.

(b) The Call-in Group will consider the Cabinet/Cabinet Panel agenda prior to the meeting and consider each proposed Amber decision. The Call-in Group will notify the Chief Executive:

(i) of any issue which it wishes to be brought to the attention of the Cabinet/Cabinet Panel prior to its decision;

(ii) within 3 working days of any decision being made that it wishes to exercise the right to **call-in** of that report for scrutiny **prior to the implementation** of that decision giving reasons for its decision to call-in. It is anticipated that call-in will be exercised rarely as it will delay implementation of the decision;

(iii) any proposed decision which it wishes to be referred for **consideration** by the Scrutiny Board or appropriate Scrutiny Panel **after implementation the reason for the referral being given.**

(c) The Call-in Group may also attend meetings of the Cabinet/Cabinet Panel and, immediately following the meeting, may indicate to the Chief Executive that it wishes a decision to be called in prior to implementation or referred for consideration after implementation.

(d) In each case the Call-in Group will indicate whether additional oral or written information should be provided by the Cabinet/Cabinet Panel and Designated Officer(s).

(e) The Chief Executive will inform the Chair of the Cabinet/Cabinet Panel and appropriate Chief Officer(s) of any notification received from the Call-in Group.

(f) If the Call-in Group does not exercise its rights under 12.5 (b) (ii) or 12.5 (c) then the decision may not be called in subsequently and may be implemented forthwith.

5.0 Legal Implications

5.1 The Council is required by Section 37 of the Local Government Act 2000 to prepare and publish a Constitution which contains its standing orders relating

to decision making, finance and contracts. The Council is also required to keep its Constitution updated.

(SK/27042011/R)

(SK270420011/G)

6.0 Financial Implications

6.1 There are no direct financial implications arising from this report, although the revisions to the Constitution will strengthen the Councils Governance arrangements. The ultimate aim of this is to improve the Councils ability to secure the best possible outcomes from available resources, and to be able to demonstrate that it has done so.

[MT/28042011/M]

7.0 Equalities Implications

7.1 The Constitution is an essential part of the Councils Corporate Governance Framework, and in so being plays a crucial role in ensuring that the Council for fills its Equalities responsibilities.

8.0 Environmental Implications

8.1 There are no direct environmental implications arising from this report.

Schedule of Background Papers

The Constitution May 2010

Minutes of the Constitution Review Group

File Reference; GP30/21 held by Assistant Director Governance – Legal Services

CONSTITUTION REVISED VERSION		<i>CONSTITUTION CURRENT VERSION</i>	
New Para Ref		<i>Current Para Ref</i>	
(a) Part 2, Article 13 – Decision Making	<p>“Decision Making During the Summer Recess (1) During the period of the summer recess, when there are no planned meetings, urgent decisions of – (a) The Executive; or (b) Regulatory and other Committees and Standing Bodies (c) will be taken by the Chief Executive, a Strategic Director or Assistant Director (designated Officer) in consultation with the relevant Cabinet Member or, in his/her absence, the Leader as respects (a) above; or with the Chair, Vice-Chair and Shadow Chair (or their nominees) of the relevant Committee or body as respects (b) above; subject to paragraph 2 below. (2) The designated Officer must take the following steps:- (i) When dealing with an urgent Amber Executive Decision, the designated officer must (a) obtain the written agreement of the relevant Cabinet Member or in his/her absence the Leader to the required course of action, unless there are exceptional circumstances that prevent him/her from being consulted</p>		

CONSTITUTION REVISED VERSION		<i>CONSTITUTION CURRENT VERSION</i>	
	<p>(b) consult at least one opposition Member of the Call In Group or the principal opposition spokesperson for the service area under consideration to obtain his/her written approval to the proposed decision.</p> <p>(ii) On receipt of written approval in accordance with paragraph (i) above, the decision shall be treated as an amber decision which has not been called-in for scrutiny and is capable of being implemented.</p> <p>(iii) If, within three working days of it being sought, the Designated Officer has either not received approval of or has received an objection from the opposition Member of the Call In Group or the principal opposition spokesperson to the proposed decision, the decision shall be treated as having been called-in for scrutiny.</p> <p>(3) Decisions made in accordance with this paragraph shall be :-</p> <p>(a) in accordance with a report format approved by the Monitoring Officer; and</p> <p>(b) formally recorded and reported by the Monitoring Officer for information to the next available meeting of the Executive, Regulatory, other Committee or Standing Body.</p>		

CONSTITUTION REVISED VERSION		CONSTITUTION CURRENT VERSION	
(b) Part 3/20	<u>APPOINTMENTS TO OUTSIDE BODIES</u>	<i>Part 3/20</i>	
6.	FUNCTIONS WHICH ARE RESERVED TO FULL COUNCIL.	6.	<i>FUNCTIONS WHICH ARE RESERVED TO FULL COUNCIL</i>
6.	Appointing representatives to outside bodies unless the appointment is an executive function or has been delegated by the Council.	6.	<i>Appointing representatives to outside bodies unless the appointment has been delegated by the Council.</i>
(c) SECTION A	<u>REVISION TO THE CONTRACT PROCEDURE RULES FOLLOWING THE WRAGGE & CO SCOPING REVIEW (RE PROPOSED PARTNERSHIP WITH AXON SOLUTIONS LIMITED)</u>	SECTION A	
3.1	(a) No goods or services shall be acquired or procured by the Council and no Council premises or facilities shall be made available to third party suppliers until the Council has entered into a legal contract in accordance with these Rules.	3.1	<i>Every contract “must” comply with these Rules unless Cabinet Panel (Resources) or the Council has given specific or general dispensation to depart from the rules.</i>
	(b) Cabinet Panel (Resources) or the Council may authorise exceptions to this rule on the presentation of a report which details the circumstances and the risks and consequences of non compliance with these rules; and		
	(c) every contract arrangement <i>*must*</i> comply with these rules unless the Cabinet Panel (Resources) or the Council has authorised non compliance.		

CONSTITUTION REVISED VERSION		<i>CONSTITUTION CURRENT VERSION</i>	
<p>(d)</p> <p>Part 4 - paragraph 12.5 of the Overview and Scrutiny Procedure Rules</p>	<p>Delegations to Officers – Delegation to Strategic Director for Education</p> <p>To make arrangements for comments and views of statutory and other consultees to be made in applications for planning permission including independent expert advice on behalf of the local planning authority, as appropriate.</p> <p>12.5 Amber decisions and consideration by the Call-in Group</p> <p>(a) The Cabinet/Cabinet Panel will consider items identified on the agenda as Amber business.</p> <p>The Cabinet/Cabinet Panel will then make decisions each of which will be recorded by the Chief Executive as an Amber decision.</p> <p>(b) The Call-in Group will consider the Cabinet/Cabinet Panel agenda prior to the meeting and consider each proposed Amber decision. The Call-in Group will notify the Chief Executive:</p> <p>(i) of any issue which it wishes to be brought to the attention of the Cabinet/Cabinet Panel prior to its decision;</p> <p>(ii) within 3 working days of any decision being made that it wishes to exercise</p>	<p>New Clause</p>	<p>12.5 Amber decisions and consideration by the Call-in Group</p> <p>(a) The Cabinet/Cabinet Panel will consider items identified on the agenda as Amber business.</p> <p>The Cabinet/Cabinet Panel will then make decisions each of which will be recorded by the Chief Executive as an Amber decision.</p> <p>(b) The Call-in Group will consider the Cabinet/Cabinet Panel agenda prior to the meeting and consider each proposed Amber decision. The Call-in Group will notify the Chief Executive of:</p> <p>(i) any issue which it wishes to be brought to the attention of the Cabinet/Cabinet Panel prior to its decision;</p> <p>(ii) any proposed decision in respect of which it wishes to exercise the right to</p>

CONSTITUTION REVISED VERSION		<i>CONSTITUTION CURRENT VERSION</i>	
	<p>the right to call-in of that report for scrutiny prior to the implementation of that decision giving reasons for its decision to call-in. It is anticipated that call-in will be exercised rarely as it will delay implementation of the decision;</p> <p>(iii) any proposed decision which it wishes to be referred for consideration by the Scrutiny Board or appropriate Scrutiny Panel after implementation the reason for the referral being given.</p> <p>(c) The Call-in Group may also attend meetings of the Cabinet/Cabinet Panel and, immediately following the meeting, may indicate to the Chief Executive that it wishes a decision to be called in prior to implementation or referred for consideration after implementation.</p> <p>(d) In each case the Call-in Group will indicate whether additional oral or written information should be provided by the Cabinet/Cabinet Panel and Designated Officer(s).</p> <p>(e) The Chief Executive will inform the Chair of the Cabinet/Cabinet Panel and appropriate Chief Officer(s) of any notification received from the Call-in Group.</p>		<p>call-in for scrutiny prior to the implementation of that decision giving reasons for its decision to call-in. It is anticipated that call-in will be exercised rarely as it will delay implementation of the decision;</p> <p>(iii) any proposed decision which it wishes to be referred for consideration by the Scrutiny Board or appropriate Scrutiny Panel after implementation the reason for the referral being given.</p> <p>(c) The Call-in Group may also attend meetings of the Cabinet/Cabinet Panel and, immediately following the meeting, may indicate to the Chief Executive that it wishes a decision to be called in prior to implementation or referred for consideration after implementation.</p> <p>(d) In each case the Call-in Group will indicate whether additional oral or written information should be provided by the Cabinet/Cabinet Panel and Designated Officer(s).</p> <p>(e) The Chief Executive will inform the Chair of the Cabinet/Cabinet Panel and appropriate Chief Officer(s) of any notification received from the Call-in Group.</p>

CONSTITUTION REVISED VERSION		<i>CONSTITUTION CURRENT VERSION</i>	
	(f) If the Call-in Group does not exercise its rights under 12.5 (b) (ii) or 12.5 (c) then the decision may not be called in subsequently and may be implemented forthwith.		(f) If the Call-in Group does not exercise its rights under 12.5 (b) (ii) or 12.5 (c) then the decision may not be called in subsequently and may be implemented forthwith.