

Wolverhampton City Council

**OPEN DECISION ITEM**

**SPECIAL ADVISORY GROUP**

16 July 2013

**STANDARDS COMMITTEE**

**25 July 2013**

Originating Service Group(s)

**DELIVERY**

Contact Officer(s)/

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Title

**REVIEW OF THE CONSTITUTION 2013/2014**

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**RECOMMENDATION**

1. That the changes set out in paragraphs three and four of the report including the incorporation of an Index to the Constitution be referred to Council on 18 September 2013, for approval.

## 1.0 PURPOSE

- 1.1 To consider revisions to the Constitution set out in the report and refer them to Council on 18 September 2013, for approval.

## 2.0 BACKGROUND

- 2.1 This report sets out changes to the Constitution required as at July 2013. The detailed changes set out paragraphs three and four of this report are required as part of the regular and on-going review of the Constitution to ensure it remains current, relevant and in line with Legislation and Best Practice.
- 2.2 The changes have been co-ordinated through the Constitution Review Group chaired by the Strategic Director for Delivery.
- 2.3 To enable Members to view the changes, marked up copies of the Constitution are available for review in the Member's area.

## 3.0 SUMMARY OF MINOR CHANGES TO THE CONSTITUTION – JULY 2013

- 3.1 The table below details the changes required to the Constitution as at July 2013.

Section	Description of change
Appendix 1, p15 – delegations to Cabinet (Resources) Panel	<ul style="list-style-type: none"><li>Replace 'Council Tax Benefit' with 'Localised Council Tax Support Scheme'. [multiple references]</li></ul>
Appendix 1, p93 – E31	<ul style="list-style-type: none"><li>Replace 'Independent Members of the Standards Committee' with 'Independent Persons'.</li></ul>
Appendix 2, p40 – Cabinet procedure rules	<ul style="list-style-type: none"><li>Reworded to reflect agreed decision-making arrangements (Cabinet member in consultation with officer'.</li></ul>
Appendix 2, p96 – financial procedure rules	<ul style="list-style-type: none"><li>Replace 'Head of Human resources Strategy' with 'Chief Human Resources Officer'.</li></ul>
Various but particularly sections on the Forward Plan and Access to Information Rules (appendix 2)	<ul style="list-style-type: none"><li>Amendments made to incorrect or defunct cross-references.</li></ul>

- 3.2 The Constitution is of necessity a large and complex document. An index would assist all users including the public, to navigate their way around it. Katherine Murray, a professional indexer appointed from the Society of Indexers has produced the index (available on request from the report authors). It is recommended this be incorporated into the Constitution.

## 4.0 OVERVIEW AND SCRUTINY RULES

- 4.1 Following the review of scrutiny undertaken last year, the scrutiny section of the Constitution has been reviewed, particularly in regard to the call-in provisions. The existing arrangements (for the exercise of call-in through a call-in group) have fallen into disuse, so the Constitution needed to be updated.

4.2 A marked-up copy of the proposed changes is attached as appendix 1 to the report. The particular changes are:

(1) A rewording around green decisions, to clarify that they are subject to review but not strict call-in (see sections 12.3/12.4).

(2) Details of who can effect a call-in (see paragraph 3.3), strengthening the provisions to allow the leader OR deputy leader of the main opposition group to effect a call-in, and separating out the role of vice-chair of the Scrutiny Board (in case, at some future point, that person is not the leader or deputy leader of the main opposition group.

## **5.0 FINANCIAL IMPLICATIONS**

5.1 The Index has been prepared in accordance with the rate recommended by the Society of Indexers at a total cost of just under £1,000. This can be accommodated within existing Governance budgets.

[GE/03072013/T] *Special Advisory Group*

[GE/03072013/R] *Standards Committee*

## **6.0 LEGAL IMPLICATIONS**

6.1 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.  
[FD/04072013/L]

## **7.0 EQUALITIES IMPLICATIONS**

7.1 The Constitution is an essential part of the Council's Corporate Governance Framework, and has a crucial role in ensuring that the Council fulfils 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

File held in Future Practice – Legal - GP30/21



2726.12 Scrutiny and Call-in

12.1 Scrutiny of ~~Cabinet~~ Executive decisions will be undertaken by the Scrutiny Board and Scrutiny Panels (NB: this does not include decisions made by regulatory committees, such as Licensing and Planning, which are not subject to the call-in provisions). It has two principal elements:

- (a) scrutiny consideration of forthcoming Cabinet decisions, known as pre-decision scrutiny, through which the Scrutiny Board or Panel can scrutinise a decision yet to be made and, if appropriate, shape the final decision through comment and advice to the Executive before they are implemented by means of a call-in mechanism;
- (b) scrutiny of Cabinet decisions after they are implemented consideration of Executive decisions already made, whether by the Cabinet or an individual Cabinet member, through call-in or post-implementation review.

12.2 Pre-decision scrutiny

2.1 Although decisions made by the Executive must be open to scrutiny, the Council wishes the primary focus of its scrutiny process to be on shaping and informing decisions through pre-decision scrutiny.

2.2 The Scrutiny Board and Scrutiny Panels will have access to the Executive's schedule of forthcoming decisions and proposals for consultation. Often, the provision of additional or explanatory data and information can avoid the need for formal consideration of a decision or issue. The initial emphasis, therefore, will be on the free flow of information from Council employees in response to requests for clarification or elaboration from Councillors.

2.3 Thereafter, as part of its work programme, the Board or an individual Panel may request a report on any forthcoming decision that falls within its purview, in advance of its consideration by the Executive. Having considered a particular issue, the Board or Panel may require the decision-maker to have regard to its views as part of the decision-making process.

2.4 Subject to the proposals considered by the decision-maker being substantially the same as the information previously presented to the Scrutiny Board or Panel, matters that have been considered through pre-decision scrutiny may not be called in for post-decision scrutiny under the provisions outlined in paragraph 12.3.

### 12.3 Parameters for post-decision scrutiny (call-in or review)

3.1 An amber decision, made by the Cabinet or a Cabinet Panel, may be called in for scrutiny prior to its implementation. A green decision, made by an individual Cabinet member in consultation with an employee, can be reviewed by the Scrutiny Board or the relevant Scrutiny Panel, although this may be after implementation.

3.2 The following decisions may not be called in:

- (a) a red decision, made by the Council;
- (b) a red decision, approved by the Cabinet for consideration by the Council;
- (c) a decision made by an employee under delegated authority;
- (d) a green or amber decision made under the urgency provisions outlined in paragraph 26.13;
- (e) a green or amber decision, where it has previously been subject to pre-decision scrutiny (as outlined in paragraph 2.4).

3.3 The decision to effect a call-in can be made by any of the following:

- (a) the Chair of the Scrutiny Board;
- (b) the Vice-chair of the Scrutiny Board;
- (c) the Leader or Deputy Leader of the main opposition group.

### 12.4 Review of green decisions

4.1 Any decision to be made by an individual Cabinet member in consultation with an employee (known as a green decision) must be the subject of a written report, to which both the Cabinet member and employee should be signatories.

4.2 A copy of the report, including details of the decision made, will be posted on the Council's website and a schedule of such decisions reported at each meeting of the Cabinet (Resources) Panel.

4.3 The Scrutiny Board or relevant Scrutiny Panel can decide to review a green decision, considering whether it should have been made as a green decision, as well as reviewing the merits of the decision itself. Such reviews must be notified to the accountable Cabinet member and employee within three working days of the decision being reported to the Cabinet (Resources) Panel and will be incorporated into the Board or Panel's work programme.

## 12.5 Scrutiny of amber decisions

5.1 Decisions made by the Cabinet or a Cabinet Panel (known as amber decisions) will be summarised in the minutes of the relevant meeting and published on the Council's website, normally within five working days of the meeting occurring.

5.2 Within the parameters outlined in paragraph 12.3, call-in of an amber decision can be made within three working days of the decision being published. Once this period has expired, and if no call-in has been received, the decision can be implemented.

## 12.6 Arrangements for considering call-ins

6.1 If an amber decision has been formally called in under paragraph 12.5, the Scrutiny Board or appropriate Scrutiny Panel should convene to consider the matter within ten working days of the call-in being received. In the event that the relevant Scrutiny Panel cannot be convened within ten working days, or if the Councillor calling in the decision so requests, the Chair of the Scrutiny Board can determine that the call-in will be considered by the Board and convene a meeting accordingly. The Board meeting should still take place within ten working days of the call-in being received.

6.2 An amber decision that has been called in, may not be implemented until the call-in process is complete.

6.3 The Scrutiny Board or Panel will consider the called-in decision and supporting information, including receiving oral and written comments from both the appropriate Cabinet member(s) and Chief Officer(s). The Board or Panel will exercise one of the following options:

- (i) note the decision, which can then be implemented immediately;
- (ii) ask the Cabinet or Cabinet Panel to reconsider the decision (a decision can only be reconsidered once);

(iii) refer the decision to the Council's next meeting to see if it wishes the decision to be reconsidered.

6.4 The relevant Cabinet member(s) and Chief Officer(s), given reasonable notice, have a duty to attend the Scrutiny meeting to respond to questions and provide information about the call-in. In the event that they are unable to attend, they should ensure a nominated substitute (for Cabinet members) or appropriate representative (for Chief Officers) is able to attend in their place.

6.5 If the decision is referred to Council and the Council does not object to the decision, it can be implemented immediately. The Council may not substitute its own decision unless the original decision is contrary to the policy framework or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer the matter back to the next meeting of the Cabinet or Cabinet panel, detailing the Council's views on the decision. The Cabinet or Cabinet Panel will then choose whether to amend the decision or not, before reaching a final decision and implementing it.

~~Although every Cabinet decision must be open to scrutiny it would be detrimental to efficient decision-making if every individual decision has to be referred to the Scrutiny Board or a Panel before it can be implemented. These Rules seek to achieve a reasonable balance by categorising decisions into:~~

~~(a) those which can only be scrutinised **after** implementation i.e. **Green decisions** which are those decisions taken by a Designated Officer in consultation with a Cabinet Member;~~

~~(b) those which may be called in to allow scrutiny **before** implementation i.e. **Amber**. Amber decisions are those decisions which are delegated to the Cabinet or a Cabinet Panel.~~

~~12.3 There will be five Councillors drawn from the Scrutiny Board to be known as the Call-in Group. Political balance of Call-in Group will be in favour of the opposition. Any one Member of the Group may exercise the call-in and referral rights set out in paragraph 12.5. The role of the Call-in Group is to give consideration to decisions made by the Cabinet and to decide whether to refer them to the Scrutiny Board or a Scrutiny Panel for detailed consideration and debate.~~

~~The Call-in Group will assist the Scrutiny Board and Scrutiny Panel to discharge its scrutiny function in two ways:~~

~~(a) it will examine **Green decisions** after implementation and decide which, if any, should be referred to the Scrutiny Board or a~~

~~Scrutiny Panel and whether written or oral justification for the decision is necessary~~

~~(b) it will act as a filter by considering which Amber decisions need to be called in and scrutinised **before** implementation and which need only be scrutinised after implementation.~~

#### ~~12.4 Green decisions and consideration by the Scrutiny Board and Scrutiny Panels~~

~~A Schedule of **Green decision notices** is included for information on the agenda of the next available Cabinet (Resources) Panel. The reports referred to in the Schedule will be available in the Members' Room(s). The Call-in Group will consider the Schedule prior to the Cabinet Panel and decide whether to refer any Green decision for debate at the next Scrutiny Board or appropriate Scrutiny Panel. The Call-in Group will indicate whether additional oral or written justification for the decision should be provided by the Cabinet Member and Designated Officer(s).~~

~~**N.B.** A **Green decision** cannot be blocked and can be implemented in advance of any scrutiny consideration.~~

#### ~~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.~~
- ~~(g) No Amber report which has been the subject of pre-decision scrutiny by any Scrutiny Panel, may be subsequently 'called in' for further consideration by the Scrutiny Board except where the decision of the Cabinet differs significantly from the recommendations of the Scrutiny Panel.~~

#### ~~12.6 Consideration of Amber decisions by the Scrutiny Board or Scrutiny Panels and re-consideration by the Cabinet/Cabinet Panels~~

- ~~(a) If the decision has been formally called in under 12.5(b) (ii) or 12.5 (c) then the Scrutiny Board or appropriate Scrutiny Panel will consider all the information before it including receiving oral and written information from the appropriate Cabinet Members and Directors or Chief Officers. The Board or Panel will exercise one of the following options:
  - ~~(i) note the decision which can then be implemented immediately~~
  - ~~(ii) ask the Cabinet/Cabinet Panel to reconsider the decision (a decision can only be reconsidered once)~~
  - ~~(iii) refer the decision to Full Council to see if it wishes the decision to be reconsidered.~~~~
- ~~(b) If the decision has been referred for consideration under 12.5 (b) (iii) or 12.5 (c) then the Scrutiny Board or Panel will receive the Cabinet/Cabinet Panel's Amber decision for information and debate together with any further information sought on its behalf by the Call-in Group.~~

~~(c) That when required relevant Cabinet Members and senior officers will attend the Scrutiny Board to present oral and written information relevant to the call-in.~~

#### ~~12.7 Consideration of Amber decisions by the Council~~

~~If the decision is referred to the Full Council and the Council does not object to the decision then it can be implemented immediately.~~

~~If the Council does object to the decision then it cannot substitute its own decision unless the decision is contrary to the policy framework or contrary to or not wholly consistent with the budget. Unless that is the case the Council will refer the matter back to the Cabinet/Cabinet Panel together with the Council's views on the decision.~~

~~The Cabinet/Cabinet Panel will then choose whether to amend the decision or not before reaching a final decision and implementing it.~~

#### ~~12.8 Meeting of the Cabinet or a Cabinet Panel to consider items of Red business~~

~~The Cabinet or Cabinet Panel will meet and consider items of Red business i.e. the budget and policy framework which requires consideration by the Full Council in accordance with Article 4 and Appendix 2. The procedure set out in the Budget and Policy Framework Procedure Rules will be followed.~~

### 26.13 Call-In and Urgency

The call-in procedure set out above shall not apply where the decision being taken by the Cabinet or Cabinet Panel is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Monitoring Officer must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Monitoring Officer, the Deputy Monitoring Officer's consent shall be required. In the absence of both, the Head of Paid Service or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.