

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY AND FINANCE COMMITTEE

Agenda Item No.

meeting date: TUESDAY 27 SEPTEMBER 2011
title: AMENDMENTS TO PARTS OF THE COUNCIL'S CONSTITUTION
submitted by: SOLICITOR
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1 PURPOSE

1.1 To revise various parts of the Council's Constitution to reflect recent changes of personnel, committee membership and of practice, and to ensure that the suite of documents form a unified whole and remain up-to-date.

1.2 Relevance to the Council's ambitions and priorities:

- Council's Ambitions – N/A
- Community Objectives - N/A
- Corporate Priorities – To be a well-managed Council.
- Other considerations – It is important that our constitution is kept up-to-date.

2 BACKGROUND

2.1 Section 37 of the Local Government Act 2000 provides that every Council must have a constitution. The Local Government Act 2000 (Constitutions) (England) Direction 2000 explains what this constitution must contain.

2.2 The Council's constitution is very much a living document. It has been divided into parts and these parts are accessible on the Council's website at: http://www.ribblevalley.gov.uk/info/200213/conduct_and_the_constitution/1062/constitution_and_code_of_conduct_etc.

2.3 The Council's Head of Legal and Democratic Services, in her role as Monitoring Officer, requested that the Council's Solicitor carry out a review of the constitution as a whole. This review was to incorporate changes suggested by the Council's Senior Auditor in her March 2011 review of the constitution.

2.4 As part of the ongoing process of keeping all of the parts of the constitution up-to-date the Council's Solicitor has identified minor discrepancies in the constitution and other issues which this report seeks to remedy. Proposed changes to parts of the constitution, to remedy these matters, are set out below on a part-by-part basis.

3 PARTS ONE AND TWO OF THE CONSTITUTION, THE SUMMARY& ARTICLES

3.1 Part One of the constitution is an introductory summary. This needs to be updated to reflect the fact that the Council is no longer part of PLACE.

- 3.2 Part Two of the constitution sets out the basic rules on how the Council operates (“the Articles”).
- 3.3 On 29 March 2011 Committee considered and referred suggested changes to the Articles of the Council's Constitution to Full Council with their recommendation for approval. Full Council approved these amendments on 26 April 2011 (version 2, May 2011 of the Articles). The following changes are therefore proposed to (“version 2” of) the Articles.

3.3.1 The Articles explain what is found in the other parts of the constitution. However, some of these references were out of date (e.g. referencing documents which did not exist, or which were found in other parts to those stated). It is therefore proposed that the parts of the constitution will be as follows:

- Part 1: Introduction and Summary;
- Part 2: the Articles;
- Part 3: Delegation:
 - 3(1) matters reserved to full council and delegation to committees; and
 - 3(2) delegation to officers;
- Part 4: Standing Orders;
- Part 5: Access to Information Procedure Rules (members will note that these were missing from the Constitution, even though the Articles previously referenced them. Proposed new rules are the subject of another report to this Committee/Full Council);
- Part 6: Financial Regulations and Contract Procedure Rules; and
- Part 7: Procedures for Members and Staff.

The Council's Solicitor proposes this arrangement after reviewing the arrangement of documents in other fourth option authorities' constitutions. She has arranged the documents on the Council's website in accordance with this proposed division. Provided that members have no objection to this arrangement, the Articles now need to be changed so that references to other parts of the Constitution cross-refer to the correct part.

- 3.3.2 Article 4.3(a) of the Articles refers to the policy framework. Some of the documents referred to in this section have been replaced or updated and the references therefore need to be updated.
- 3.3.3 The table in Article 6.1 has been updated to reflect the fact that this Council is no longer in PLACE Joint Committee and also to reflect changes made by the June 2010 petition scheme (discussed below). Article 6.1 has been updated to remove the reference to PLACE.
- 3.3.4 Article 9.3 referred to (non-existent) Access to Information Procedure Rules. This has been updated to refer to the newly created rules.
- 3.3.5 Article 10.7 referred to the “Officer Employment Rules.” As these rules do not exist, the reference has been amended as appropriate.

- 3.3.6 Article 12.1 and 12.2 have been updated to refer to the Financial Regulations and the Contract Procedure Rules.
- 3.4 Article 13.2(2) provided that the Monitoring Officer might “undertake an audit trail of a sample of decisions.” The requirement to produce a decision notice every time an officer made a delegated decision was removed from the delegation scheme. Given this, it also makes sense to remove this sentence and renumber those following it.
- 3.5 Article 13.3 of the Council’s Constitution has been amended so that minor typographic changes could be made by the monitoring officer or on his/her direction (i.e. full council’s authority would not be needed in order to correct a spelling mistake).
- 3.6 The Council’s audit department have also identified other minor changes which have been included in the proposed updated Articles.
- 3.7 The proposed new Summary and Articles (version 3) is included at Appendix 1 to this report.
- 4 PART THREE (ONE): DELEGATION TO COMMITTEES
- 4.1 Section 101 of the Local Government Act 1972 provides that a Council can arrange for the discharge of its functions through a committee, sub-committee or officer of the authority.
- 4.2 On 26 July 2011, Committee considered and referred suggested changes to the terms of reference for committees to Full Council with their recommendation for approval. Full Council approved these amendments on 30 August 2011 (version 3 of the terms of Reference).
- 4.3 At the end of July 2011 the Council’s membership of the PLACE Joint Committee terminated. Following this, changes are required to the terms of reference for committees. These proposed changes effectively reverse the changes that were required when the Council elected to become a member of the PLACE Joint Committee.
- 4.4 Changes proposed to the Council’s Standing Orders (discussed below) include reference to the Petitions Scheme which was approved by this Committee on 8 June 2010. Part of this approved Petition Scheme provides that petitions with enough support will trigger one of the Council’s senior officers to give evidence at a meeting of the Council’s Overview and Scrutiny Committee. Another part of the same Scheme provides that petition organisers have the right to request that the Council’s Overview and Scrutiny Committee review the steps that the Council has taken in response to the petition organiser’s petition. The terms of reference for the Council’s Overview and Scrutiny Committee have been amended to expressly include such powers.
- 4.5 Councillors may wish to note that the Statutory Guidance to Local Authorities on the Duty to Respond to Petitions was withdrawn from effect from 24 September 2010. However, the underlying legislation, and the Council’s own Petition Scheme, remains in force. The Council’s Solicitor will add a link to the Council’s Petition Scheme on the Council’s Constitution webpages.

- 4.6 The reference to the call-in procedure in the Scheme of Delegation to Committees replicates one of the Council's Standing Orders (13.1-13.7) and is unnecessary. It is proposed that this be deleted from the Terms of Reference of Committees.
- 4.7 The Council's Standing Orders (20.8) provide for an emergency committee. Suggested terms of Reference for this Committee are therefore proposed. These are based on the terms of reference for emergency committees at other Councils and aims to find the balance between being flexible yet restrained.
- 4.8 The Council's audit department have identified changes which they, and the Director of Resources, consider should be made to:
- 4.8.1 paragraphs 5 and 12 of the terms of reference for the Accounts and Audit Committee;
- 4.8.2 paragraph 2 of the terms of reference for the Policy and Finance Committee; and
- 4.8.3 the "matters reserved to meetings of the Full Council".
- 4.9 The proposed new terms of reference to committees Part 3(1)(version 4) and the proposed new "matters reserved to meetings of the full council" (amended as described in the next paragraph) are included at Appendix 2 to this report.
- 4.10 It is further proposed that the two documents referred to above be consolidated into one document with the political structures chart. The "matters reserved to meetings of the full council" at Appendix 2 has been amended to illustrate this proposal. An introductory section would be included, a contents page, and the diagram showing political structure (currently on the website within this part of the constitution).
- 4.11 The chart showing political structures currently contains a reference to PLACE. It is proposed that this box is therefore also removed.

5 PART FOUR: STANDING ORDERS

- 5.1 The Council's Standing Orders are the rules which govern the conduct and proceedings of the Council's meetings (including those of its committees and subcommittees). The last amendments to the Council's Standing Orders were approved by this Council on 23 September 2008.
- 5.2 Changes are proposed to these Standing Orders (September 2008) as follows:
- 5.2.1 Amend numbering so that it is clear to which Standing Order each paragraph refers;
- 5.2.2 Amend references to the "Legal Services Manager" to "Head of Legal and Democratic Services";
- 5.2.3 Reformat and amend unnecessary breaks;
- 5.2.4 Make the following changes to the following Standing Orders:
- 5.2.4.1 **5.1** - amend to refer to the Access to Information Procedure Rules;
- 5.2.4.2 **5.1(h)** –wording added to reflect the fact that the occurrence of such an meeting is at the Council's discretion;

- 5.2.4.3 **6.1** – update to reflect the Council’s petition scheme;
- 5.2.4.4 **8.2(a)** – remove obligation to enter motions in a book and number them as this is no longer standard practice;
- 5.2.4.5 **13.2** – provide for more flexibility for the time by which decisions will be sent to members to reflect current practice;
- 5.2.4.6 **20.7** – amend so that it is clear that when Standing Orders are used for committees, the reference to the Mayor should be read as a reference to the Chair of that committee;
- 5.2.4.7 **20.8** - include a reference to the number of members to be appointed to the Emergency Committee, add some prescription as to membership, and amend so that this Standing Order matches the proposed terms of reference for this Committee;
- 5.2.4.8 **21** and **25** – minor amendments to wording to tie in with other Standing Orders; and
- 5.2.4.9 **27** – refer to Access to Information Procedure Rules (discussed in a separate report to this Committee) and delete information in the Schedule as this would be rendered superfluous if the Rules were adopted.

5.2.5 The proposed new Standing Orders are included at Appendix 3 to this Report. If these Standing Orders and the Access to Information Procedure Rules were adopted, it is proposed that these be printed in the same document for members’ ease of reference.

6 PART FIVE: ACCESS TO INFORMATION PROCEDURE RULES

6.1 This is the subject of a separate report to this Committee meeting. As explained in that report, the rules, if approved will form part of this Council’s suite of constitutional documents.

7 EMERGENCY COMMITTEE

7.1 The Council’s Constitution (Standing Order 20.8) provides for the calling of an emergency committee. However, there are no protocols or rules on when such a meeting should be called.

7.2 The Council’s Solicitor has considered a request from its Corporate Management Team (Minute 6.1, 27 October 2010) to create such a protocol.

7.3 The Council’s Solicitor has consequently proposed amendments (outlined above) to Standing Order 20.8 and to the Terms of Reference for committees to deal with the Emergency Committee. She does not consider it appropriate, at this time, to create a “protocol”. The disadvantage of tightly prescribing how and when such a committee should be called is the risk that a committee will not be able to be formed (without breaching the protocol) in an emergency.

8 CHANGES TO OTHER KEY COUNCIL DOCUMENTS

8.1 The Council’s Senior Auditor suggested other minor changes should be made to other documents forming part of the Council’s Constitution. Although the Council’s Monitoring Officer does not have primary responsibility for these documents, she has asked the Council’s Solicitor to propose these changes in this report so that Committee can consider them, along with the other amendments discussed above, and so that all documents can therefore be brought up-to-date.

- 8.2 The proposed changes are as follows (most relate to the recent restructure):
- 8.2.1 Reference to Director of Planning to be removed from paragraph 4.5 of the Whistle Blowing Policy;
 - 8.2.2 References to the Director of Development Services within the “Scheme of delegation of development control and countryside matters” to be amended;
 - 8.2.3 Amend “Legal Services Manager” to “Head of Legal and Democratic Services” in the Protocol for Member/Officer relations, the Financial regulations and the Contract Procedure Rules;
 - 8.2.4 Amend “Financial Services Manager” to “Head of Financial Services” in the Contract Procedure Rules, the Corporate Write-off Policy” and the “Scheme of Members Allowances”;
 - 8.2.5 Amend “Services Managers” to “Heads of Service” in the Contract Procedure Rules, the Corporate Write-off Policy” and the “Code of Conduct for Staff”; and
 - 8.2.6 Amend “Human Resources Manager” to “Head of Human Resources” in any Constitutional documents which use this term.

9 LEGAL REQUIREMENTS

- 9.1 Article 13.3 of the Council’s Constitution (as it stands at present) provides that changes to the Constitution will only be approved by the Council after consideration of the proposal by the monitoring officer.
- 9.2 The Council’s Head of Legal and Democratic Services, in her role as monitoring officer, has considered the proposed changes set out in the appendices to this Report, and supports them.

10 RISK ASSESSMENT

- 10.1 The approval of this report may have the following implications:
 - Resources – The Council’s Solicitor will make any necessary changes and put new documents onto the website.
 - Technical, Environment and Legal – The amendments will ensure the Council can deal with legal and technical matters more effectively.
 - Political – None.
 - Reputation – None.

11 RECOMMENDED THAT COMMITTEE

- 11.1 Approve the changes outlined in the report above and shown in the Appendices to this report.
- 11.2 Approve all other proposals outlined above.
- 11.3 Refer the suggested changes to the full Council with a recommendation for their approval.

SOLICITOR

BACKGROUND PAPERS

- 1 Constitutional documents which are set out on the Council's website at: http://www.ribblevalley.gov.uk/info/200213/conduct_and_the_constitution/1062/constitution_and_code_of_conduct_etc.
- 2 Report to this Committee on the Scheme of Officer Delegation and Terms of Reference of Committees dated 26 July 2011 and appendices to that report.

For further information please ask for Debbie Nuttall on extension 4403.