

COUNCIL MEETING – 24 SEPTEMBER 2009

Recommendations to Council from Constitution Advisory Group: 21 July 2009 and 25 August 2009

1. OVERVIEW AND SCRUTINY CONSTITUTIONAL CHANGES

The Advisory Group considered a report from the Overview & Scrutiny Manager proposing amendments to the Constitution to accommodate Councillor Call for Action Guidance, Crime & Disorder Regulations and a change of name of the Overview & Scrutiny Management Panel (OSMP).

Members discussed the guidance relating to the Councillor Call for Action that had arisen out of the Local Government & Public Involvement in Health Act 2007 which introduced a mechanism whereby local ward Members could raise issues of significant community concern with a relevant overview & scrutiny committee. The regulations enacting this mechanism came into force on 1 April 2009 and the proposed Constitutional changes outlined in Appendices A & B to the report reflected best practice guidelines.

The Advisory Group then considered the Crime and Disorder Regulations. Members were advised that the Police & Justice Act 2006 provided similar overview & scrutiny powers to those contained within the Local Government & Public Involvement in Health Act 2007. Regulations enacting those powers came into force on 30 April 2009 and, whilst the Council's Constitution already took them into account, a specific change was required relating to the need for crime & disorder partners to respond within 28 days to a report or recommendation made by the relevant overview & scrutiny committee.

Members were advised that the proposed change of name of the Overview & Scrutiny Management Panel to Overview & Scrutiny Co-Ordination Panel had arisen out of a Member training event entitled 'Getting the most from Scrutiny'. It was noted that the suggestion was discussed at the first meeting of the OSMP where there was unanimous agreement to the change of name.

The Advisory Group in considering the proposed changes suggested a number of modifications to the guidance at Appendix D, including replacing any references to the crime and disorder committee by 'the Sustainable Communities Overview and Scrutiny Committee' and requested the Overview and Scrutiny Committee Manager to undertake the necessary amendments before submission to Council for approval.

RECOMMENDED:

1. that the Constitutional changes outlined in Appendices A and B now submitted, to accommodate Government Guidance pertaining to the Councillor Call for Action and the Crime & Disorder Regulations, be approved.
2. that all references to the “Overview & Scrutiny Management Panel” contained within the Council’s Constitution be amended to read the “Overview & Scrutiny Co-ordination Panel”.

2. SCHEME OF DELEGATION TO OFFICERS

The Advisory Group considered a report from the Head of Democratic Services seeking endorsement to changes to the scheme of delegation to officers.

Members were advised that subsequent to a number of changes to the Scheme of Delegation to Officers which had been reported to Council at the Annual meeting on 18 June 2009, the Director of Corporate Resources had advised that adjustments to the Scheme of Delegation were required to pick up certain functions which had been excluded or required amendment as follows:-

- (i) Tax and VAT matters

There was no specific delegation to permit the Director to manage tax and VAT matters. The following additional delegation was therefore requested:

<i>Delegation</i>	<i>Qualification</i>
<i>To manage all tax and VAT matters including arrangements made with HM Revenue and Customs.</i>	None

- (ii) Property Matters

The existing delegation in relation to property matters needed to be amended to include **surrender or termination of leases, tenancies, licences, easements** which were included in the Shadow Constitution but had been omitted from the current version as follows:-

<i>Delegation</i>	<i>Qualification</i>
<i>To authorise the development and appropriation of land and buildings, together with the granting or taking, assignment, surrender or termination of leases, tenancies, licences, easements, wayleaves and variations of rent, and, subject to a maximum value in any case of £200,000, to authorise the acquisition and disposal of land and buildings or any estate or interest in any land and buildings.</i>	<i>None</i>

The Advisory Group in supporting the proposed revisions noted that as both delegations were executive functions, it would also be necessary to seek the approval of the Leader of the Council to the proposed amendments. Power (ii) should be exercised in consultation with the relevant Portfolio Holder.

RECOMMENDED:

that, subject to the approval of the Leader of the Council, the proposed revisions to the scheme of delegation to officers detailed in the preamble above be approved, subject in amendment (ii) to the qualification ‘None’ being replaced by ‘Subject to consultation with the relevant Portfolio Holder’.

(Note: The Leader of the Council has approved the above delegations)

3. COMPOSITION OF THE AUDIT COMMITTEE

The Advisory Group considered a report from the Head of Democratic Services to review the current restriction within the Constitution on members of the overview and scrutiny committees (OSC) serving upon the Audit Committee.

Members were advised that Constitution and Governance Working Group at its meeting on 26 November 2008 concluded that the draft Constitution should specify that no member of the Executive and no member of the Corporate Resources Overview and Scrutiny Committee should be a member of the Audit Committee and that no member of the Executive should serve upon the Committee. However it had not been accurately captured in Part E2 of the Constitution which states:-

“7 members including no more than one member of an overview and scrutiny committee other than Corporate Resources Overview and Scrutiny Committee. A member of the Executive may not be a member of the Audit Committee.”

Members were advised that as a result of appointments to the Committee at the Council’s AGM, a number of members to the Audit Committee also sit upon overview and scrutiny committees. However, as there were 46 seats available on overview and scrutiny committees, avoiding overlap between overview and scrutiny and Audit committee would be difficult to achieve and a blanket restriction providing for just one overview and scrutiny member might not be practicable.

The Advisory Group in reviewing the current membership agreed it should have regard to CIPFA guidance in relation to Audit Committees having independence from both the overview and scrutiny and executive functions. For this reason the Advisory Group concluded that the Constitution should be amended to reflect Members’ original intention in that no member of the Corporate Resources OSC should sit upon Audit Committee. It was recognised that it would then be necessary to replace the one member of the Audit Committee who currently sits on both the Corporate Resources and Business Transformation OSCs. It was also agreed that whilst the Constitution was silent as to any restriction upon Assistants to the Portfolio Holders, they should not sit on the Audit Committee.

RECOMMENDED:

that the Constitution be amended to state that no member of the Executive, no Assistant to a Portfolio Holder and no member of the Corporate Resources Overview and Scrutiny Committee may sit upon the Audit Committee.

4. PETITIONS IN RELATION TO TRAFFIC REGULATION ORDERS ETC

The Advisory Group considered a report from the Head of Democratic Services in relation consideration of petitions relating to Traffic Regulation Orders and other highways-related matters.

Members were advised that the procedure within the Constitution currently provides for petitions to be presented to the Council, the Executive or a Committee. Given that the Leader of the Council had put separate arrangements in place for consideration of traffic regulation orders at meetings of the Safer and Stronger Communities Portfolio holder, it was proposed that petitions relating to road traffic regulation orders or other highways-related matters could be considered at these meetings.

The Advisory Group, in accepting the logic for such petitions being considered in greater detail at these meetings, felt that the agreed petition procedure in Part A4 of the Constitution should continue to apply i.e. Road traffic regulation and other highways-related petitions continue to be acknowledged by the Monitoring Officer and submitted to the next meeting of the Executive for public receipt, **but** then referred on to a public meeting of the Safer and Stronger Communities Portfolio holder. The petitioners and ward councillors would need to be advised of the date of the meeting and invited to make representations as currently set out in the petition procedure. Any particularly contentious matter should be referred back from the Portfolio Holder's meeting to Executive for decision.

RECOMMENDED:

that petitions relating to Traffic Regulation Orders and other highways-related matters continue to be submitted to the Executive for public receipt for onward referral to meetings of the Safer and Stronger Communities Portfolio holder when dealing with Traffic Regulation Orders, and that Annex 2 to Part A4 of the Constitution be amended accordingly.

(A copy of the revised Annex 2 to Part A4 is attached at Appendix C at pages 55 to 60)

5. DEVELOPMENT MANAGEMENT COMMITTEE

The Advisory Group considered a report of the Head of Development Management seeking endorsement to amendments to the Terms of Reference of the Development Management Committee (Part E2, Page 1) and the Scheme of Delegation with regards to the handling of Regulation 3 & 4 planning applications and applications for planning permission on Council owned land.

The proposal had originated from the Chairman and Vice-Chairman of the Development Management Committee with officers' support. The Advisory Group having considered the request at its meeting on 21 July agreed that the Development Management Committee and all members of the Council should be consulted before making a decision and agreed to defer making a decision on whether to recommend that Development Management Committee meetings should be held in one location on a three-weekly cycle to enable the consultation to be carried out.

The Advisory Group was reminded, however, that at the meeting on 21 July it had agreed a variation to the Scheme of Delegation to officers with regard to the handling of Regulation 3 & 4 Planning Applications. Regulation 3 applications being applications for planning permission by the Authority to develop any land of the authority either solely or jointly with another party. Regulation 4 applications being applications for planning permission to develop land of the authority where they do not intend to develop the land themselves or jointly with any person.

The Advisory Group was reminded that the Constitution was currently unclear on the handling of these two types of regulations and needed to be amended. The Advisory Group on 21 July 2009 agreed the following:

- That the scheme of delegation for Regulation 3 applications be amended to allow delegation to officers unless an objection is received to the proposed development. Regulation 4 applications are specifically excluded from the delegations and have to be determined by the Committee.

The recommendation at the 21 July 2009 meeting that was agreed would be put to Council was as follows:

- Paragraph 4.3.93 of Part H3 of the Constitution remains as drafted but with an additional exception being created to exclude Regulation 3 applications where an objection has been received.
- Paragraph 4.3.93.5 of Part H3 of the Constitution be amended to concern itself solely with Regulation 4 applications which would be reported to, and determined by, Committee.

The suggested wording for this amendment was agreed as follows:-

Paragraph 4.3.93.5 The application is made on land owned by the Authority for development which the Authority does not intend to develop either themselves or jointly with any person in accordance with Regulation 4 of the Town and Country Planning (General) Regulations 1992.

Since the above endorsement a form of words had been drafted to cover the proposed variation, which the Advisory Group now endorsed, as follows:-

That Paragraph 4.3.93.5 of the Scheme of Delegation (Part H3) be varied to the following: –

“The application is made under Regulation 3 of the Town and Country Planning (General) Regulations 1992 or is for development on the Council’s own land and in either case a material planning representation(s) has been received in writing that is contrary to the Officer delegated decision otherwise to be made and in the case of objections these cannot be resolved through the imposition of conditions”

A new paragraph - 4.3.93.6 - had also been drafted to specifically deal with Regulation 4 applications with the following suggested wording:-

“The application is made under Regulation 4 of the Town and Country Planning (General) Regulations 1992”.

The Advisory Group then considered the proposal to change the Development Management Committee venue and cycle. It was noted that the issues were debated by the Development Management Committee at its meeting on 5 August where it endorsed future meetings being held at one location, namely Priory House, Chicksands, on a three-weekly cycle, subject to a video link being installed at the Council Offices, Dunstable so that interested parties could make representations without travelling to Chicksands. The Advisory Group also noted the result of consultation carried out with all members, attached as Appendix B to the submitted report, and that the Portfolio Holders for Sustainable Communities supported the proposed changes.

The Advisory Group discussed Development Management Committee’s suggestion about the use of a video link to broadcast proceedings. Recognising that such technology was both complex and costly but being anxious to support those interested in observing Council meetings the Advisory Group agreed that the Executive be asked to investigate and report back on proposals for increasing public involvement at meetings.

Members then considered the future venue and frequency of Development Management Committee meetings. In view of the complexity of changing the Council’s Committee Meeting Calendar to accommodate a move to 3-weekly meetings, the Advisory Group concurred with the suggestion that the 2009/10 dates currently scheduled for Development Management Committee at Chicksands be used on a four-weekly meeting cycle with the dates scheduled for Dunstable held as reserve dates. It was pointed out that should there be a major application the meeting would be held in a location appropriate to the application. Members’ view was that the wording in Part E2, Page 1 of the constitution should be kept flexible enough to accommodate any future changes in the frequency of meetings should the workload require it, on the clear understanding that all dates would be publicised in the Calendar of Meetings.

RECOMMENDED:

1. **that Paragraph 4.3.93.5 of the Scheme of Delegation (Part H3) referred to in the preamble above be varied to the following:-**

“The application is made under Regulation 3 of the Town and Country Planning (General) Regulations 1992 or is for development on the Council’s own land and in either case a material planning representation(s) has been received in writing that is contrary to the Officer delegated decision otherwise to be made and in the case of objections these cannot be resolved through the imposition of conditions”.

2. **the insertion of a new paragraph 4.3.93.6 of the Scheme of Delegation (Part H3) to specifically deal with Regulation 4 applications as follows:-**

“The application is made under Regulation 4 of the Town and Country Planning (General) Regulations 1992”.

3. **that the Development Management Committee’s Terms of Reference be amended so that future meetings of the Committee be held in one location at Priory House, Chicksands on a four-weekly cycle using the dates currently scheduled for Chicksands in the Committee meetings calendar with the dates scheduled for meetings of the Committee in Dunstable held as reserve dates.**

(The Constitution Advisory Group also agreed that the Executive be asked to investigate and report back on proposals for increasing public involvement at meetings).

6. TOWN CENTRE MANAGEMENT COMMITTEES – CHAIRMANSHIP

The Advisory Group considered a report from the Head of Democratic Services seeking to clarify the provision at Part J2, page 6, paragraph 9.2 of the Constitution regarding the chairmanship of joint committees.

Members were advised that at a recent meeting of the Leighton-Linslade Town Centre Management Committee a point of contention arose among members over the correct interpretation of Part J2, paragraph 9.2 of the constitution which sets out the Joint Committee’s terms of reference and states that “a Central Bedfordshire Councillor will take on the role of Chairman and a Town Councillor will take on the role of Vice-Chairman”.

Members’ attention was drawn to Leighton-Linslade Town Centre Management Committee which comprised 5 councillors appointed by Central Bedfordshire Council and 5 councillors appointed by Leighton-Linslade Town Council. The 5 Central Bedfordshire members were appointed at the Council’s annual meeting on 18 June 2009.

The Advisory Group noted that the point of contention at the recent meeting of Leighton-Linslade Town Centre Management Committee was whether a member who had been appointed by the Town Council, but was also a Central Bedfordshire councillor, was permitted to take the role of Chairman. Officers had been asked prior to the meeting for their interpretation of paragraph 9.2 and advised that, in their view, the intention was that only one of the five councillors appointed to the Joint Committee by Central Bedfordshire Council could take the role of Chairman. However, that advice was contested at the meeting.

The Advisory Group then considered the interpretation of the wording of the chairmanship in the Council's Constitution. Members were in agreement that the wording in the Constitution meant a councillor appointed by Central Bedfordshire Council would take on the role of Chairman and a councillor appointed by the Town Council would take on the role of Vice-Chairman.

Members then discussed the membership of the committee and agreed that paragraph 7 of the terms of reference should be amended to read 5 Councillors appointed by Central Bedfordshire Council and 5 Councillors appointed by Leighton-Linslade Town Council. The Advisory Group agreed that the Constitution does not, and should not, preclude dual-hatted councillors but that their role was to represent the appointing authority at meetings.

RECOMMENDED:

- 1. that the wording of paragraph 9.2 of the terms of reference of the Leighton-Linslade Town Centre Management Committee, as set out in Part J2 of the Constitution be interpreted as meaning "A councillor appointed by Central Bedfordshire Council will take on the role of Chairman and a councillor appointed by the Town Council will take on the role of Vice-Chairman" and that the wording in the Constitution be amended accordingly.**
- 2. that paragraph 7 of the terms of reference of Leighton Linslade Town Council be amended to read as follows:-**

"Membership:

- 5 Councillors appointed by Central Bedfordshire Council**
- 5 Councillors appointed by Leighton-Linslade Town Council"**

3. **that parallel amendments be made to clarify the wording of the provisions relating to the chairmanship and membership in the terms of reference of both the Dunstable Town Centre Management Committee (Part J2, paragraphs 9.2 and 7) and the Houghton Regis Town Centre Management Committee (Part J2, paragraphs 6.3 and 4) as detailed in Recommendation 1 above.**

7. **DELEGATION – CHILDREN’S SERVICES**

The Advisory Group considered how the constitution should provide for the requirement in S.19(1) of the Children Act 2004 that the Council must designate one of their members as their 'Lead Member for Children's Services'.

A particular point had been raised as to whether responsibility for 14-19 commissioning could be delegated to the Portfolio holder for Culture and Skills, while the Portfolio holder for Children's Services retained ultimate accountability, and whether the constitution needed to reflect this. While this point could not yet be resolved as legal issues needed more detailed consideration, the Advisory Group considered that that the constitution should at least refer to the statutory duty under S.19, given that this is the only circumstance in which an elected councillor carries a statutory role.

RECOMMENDED:

that the constitution be amended to confirm that the Leader is required to designate an Executive member as the Council’s ‘Lead Member for Children’s Services’ under section 19(1) of the Children Act 2004.

(The Constitution Advisory Group also asked officers to report to the next meeting on the issue of delegating responsibility for 14-19 commissioning).

(Note: Amendments to the original constitution are shown in **BOLD** text in the appendices attached)