

ISSUES / AMENDMENTS TO THE CONSTITUTION 2006

1. ARTICLES

1.1 Roles and Responsibilities (Article 2)

In the light of the revised roles and responsibilities of various members recently determined, it is proposed that the revised role and responsibility of ward members replace the roles of councillors as set out in Article 2.3(a); and the revised role and responsibility of cabinet members should replace the role profile for a cabinet member set out in Part 3 of the Constitution under Responsibility for Executive Functions.

1.2 Article 4 – Policy Framework

The Policy Framework sets out the list of plans and strategies which although prepared by the Cabinet, have to be finally approved by the Council. Since this was originally agreed there have been a number of changes to the plans and strategies which the Council is statutorily required to produce. Council Business Committee on 23rd March considered this issue and determined that the following plans and strategies should be recommended for inclusion in the revised policy framework. It should be noted that some are required by statute to be included; others are proposed to be included at the discretion of the Council:-

Plans and strategies that have to be included:-

- Best Value Performance Plan
- Children and Young People's Plan
- Community Safety Plan
- Community Strategy
- Education Development Plan
- Local Transport Plan
- Plans and strategies which together comprise the Development Plan
- Youth Justice Plan [included in the Children and Young People's Plan above]

Other plans/strategies of significance to be included:-

- The Council's Corporate Plan [currently incorporated in the Best Value Performance Plan above]
- Customer Service Strategy
- Environment Vision 2025
- Municipal Waste Management Strategy
- Perspective for Investment [Regeneration Strategy]

1.3 Article 6 – Joint Health Scrutiny

Since the new arrangements for joint health scrutiny were introduced, these now need to be incorporated in the Constitution. It is proposed that Article 6.1.3 should be redrafted as follows:-

“Panel, Joint Panels and Sub Committees

The Overview and Scrutiny Management Committee will appoint a number of permanent and short-term panels to carry out the overview and scrutiny function. All scrutiny panels will constitute formal subcommittees of the Overview and Scrutiny Management Committee. The Management Committee will also appoint members to joint panels with neighbouring authorities where required to carry out scrutiny of cross boundary health issues.”

Then there should be added at the end of paragraph 6.3 [to be re-titled “Adhoc Scrutiny Panels, Mini Adhocs and Joint Health Panels”, the following sub paragraph:-

“6.3.6 The Overview and Scrutiny Management Committee will appoint members to any Joint Health Scrutiny Panels which may be required with neighbouring authorities. Terms of reference and all connected matters may be agreed by the Overview and Scrutiny Management Committee. In arrangements with other West Yorkshire Authorities it is anticipated that this will be done in accordance with the protocol for such matters which has been agreed between all the West Yorkshire District Councils.”

1.4 Article 11

The Constitution needs to include reference to the new Local Public Service Boards. Because they do not form part of the strict constitution of the council and its decision making processes, it is best if they are not set out in detail in the Constitution – that would also ensure that they did not take on the level of inflexibility which that inevitably carries with it. Accordingly, it is suggested that, like the Kirklees Partnership, they should be referred to in Article 11.1 by adding at the end of Article 11 (which refers to the Local Strategic Partnership) “as at May 2006 this consists of the Kirklees Partnership Board and four Local Public Service Boards covering Safer Stronger Communities; Children and Young People; Adults and Healthier Communities; and Regeneration and Sustainable Development. Cabinet may vary these arrangements at any time in agreement with the partners concerned.”

1.5 Article 12 – Officers

While Part 7, at the end of the Constitution, sets out the management structure in diagrammatic form, article 12 provides, among other things, more detail about the functions and areas of responsibility of the Chief Executive and Directors etc. The current version is, following recent changes, now out of date and should be replaced with the format set out in appendix 1 to this paper.

This proposal was not included in the report which went to group leaders.

1.6 Article 14 – Finance, Contracts and Legal Matters

Article 14.4 headed “Authentication of Documents for Legal Proceedings” should be amended by deleting “for Legal Proceedings”, which does not in fact reflect the current content of the paragraph.

Secondly, the reference in the second part of that paragraph to contracts with a value exceeding £25,000 needing signature of at least two officers or the council’s seal, should be amended to read £50,000, to bring it into line with the amended Contract Procedure Rules.

There also needs to be added provision to allow the relevant responsibilities of the Solicitor to the Council to be undertaken by the Head of Legal Services in due course. It is, therefore, suggested that there be added at the end of Article 14:-

“14.6 – Head of Legal Services

Any reference to the Solicitor to the Council in this Article or in any other part of this Constitution (except in Article 12.1(c) – Designation of the Monitoring Officer) shall be interpreted as being a reference to either of the Solicitor to the Council or the Head of Legal Services.”

2. RESPONSIBILITY FOR FUNCTIONS

2.1 Responsibility for Local Choice Functions

This section of the Constitution sets out all those functions which by statute, rather than being allocated specifically to the Cabinet or the Council, may be exercised by either of them. The reference at number 19 of this section, which refers to appointments of individuals to outside bodies and revocation of such appointments, indicates that these are all exercised by the Council, delegated to the Council Business Committee. This needs to be amended to make clear the fact that decisions on appointments to school governing bodies are in fact within the functions carried out by the Cabinet.

This item was not included in the report which went to group leaders.

2.2 Oversight of Joint Services

Although Part 3 of the Constitution, in the part headed “Responsibility for Executive Functions”, acknowledges at the end, under Delegations paragraph 9 that the Cabinet has responsibility for and has delegated all the functions of the West Yorkshire Joint Services Committee, the Yorkshire Purchasing Organisation and the Yorkshire and Humberside Broadband Consortium, there is no clear responsibility for overseeing those delegated functions (for which the cabinet is strictly speaking ultimately accountable) within the Constitution. It would be better if this was clearly referred to. A decision on this is a matter for the Cabinet, but it is proposed that this be included in the Leader’s portfolio.

2.3 Terms of Reference of Cabinet Committees

Since decision making on any matter arising from the housing and property portfolio is delegated to the Education and Peoples' Services Cabinet Committee, this has led to some misunderstanding that all cabinet decisions relating to acquisition and disposal of land should be made by that committee, thus leaving the Regeneration Cabinet Committee in a position of not being able to agree fully to any scheme which includes some acquisition or disposal of land. That, in my view, is not the true position and is clearly not the intention. It is proposed that, in order to clear up any lack of clarity on this point, the terms of reference of the Regeneration Cabinet Committee should be amended to read "to make decisions on any matter, *including any proposal to acquire or dispose of any interest in land*, arising within the following portfolios:-....."

2.4 Emergency Action

There is a provision at the very start of the officer delegations as follows:-

"The Chief Executive (or either of the Deputy Chief Executives) is empowered, in consultation with the Leader or relevant Committee Chair (unless the urgency makes this impractical) to make decisions on any issues in circumstances which he/she reasonably considered to be an emergency, reporting to the Cabinet or relevant Committee as soon as possible thereafter".

In the light of revised structures it is proposed that this be amended by deleting "either of the Deputy Chief Executives" and replacing with "any Director nominated from time to time by the Chief Executive, or if any such Director is not available or if no such nomination has been made, any Director."

2.5 Delegations to Officers

As usual Mike Butler will be bringing to the annual meeting a revised draft of officer delegations, taking into account all changes which have taken place over the last year.

3. COUNCIL PROCEDURE RULES

3.1 CPR 12 – Cabinet etc. Minutes and Oral Questions

It is proposed that CPR 12 (1) (i) (which currently lists the Cabinet Committee minutes to be considered at Council) be amended to allow flexibility if Cabinet Committees change, by saying “the minutes of Cabinet shall be submitted to ordinary meetings of the Council, followed by those of Cabinet Committees in alphabetical order”.

Also, Council Business Committee at a meeting held on the 5th January 2006 considered a briefing note by the Chief Executive in relation to the rules relating to comments on Cabinet minutes and oral questions to Cabinet members. As a consequence, the Committee agreed proposals to amend the existing rule to allow for a longer period of time at Council meetings for comments/questions on Cabinet minutes and a specific period of time for oral questions to Cabinet members on their portfolios together with an extended period of time on oral questions to chairs of other committees and oral questions to the spokespersons for KAL and KNH.

As a consequence it is proposed to amend CPR 12 (vi) to reflect these proposals as follows:-

“12 (vi) Up to 45 minutes will be devoted at each meeting to comments/questions on the minutes of Cabinet and Cabinet Committees and up to 15 minutes on oral questions to Cabinet members on their portfolios. Up to 30 minutes in total will be devoted at each meeting to comments/questions on the minutes or other committees, on oral questions to chairs of other committees on their terms of reference and on oral questions to the spoke persons from KAL and KNH.”

3.2 CPR 16 – 9.00 pm Guillotine

Council Business Committee on 9th February 2006 discussed provisions of CPR 16 (termination and adjournment of meetings) as a follow up to an issue raised at Council on 18th January 2006 as to recorded votes on motions considered after 9 pm. As a result of these discussions the Committee recommended a change to the wording of CPR 16 which is incorporated in appendix 2 to this paper.

This issue has also drawn attention to a possible misunderstanding which may arise under Rule 24(1) which says “voting at council meetings shall be by a show of hands unless a ballot is agreed under paragraph (5)”. Rule 24(3) then indicates that the purpose of a recorded vote is “to record how each member present at the meeting intended or decided to vote”. This means that the vote is actually the show of hands, while the recorded vote is merely a record of that. Since the result of the vote is announced on the basis of the recorded vote, if anyone had either changed their vote or left the meeting between the show of hands and the recorded vote, it could lead to a dispute over what the actual decision was. In order to avoid this admittedly unlikely circumstance, it is proposed that the following sentence be added at the end of Rule 24(1):-

“Where a recorded vote is taken under paragraphs (3) and (4) below, then the result of the vote shall be that recorded by the process under paragraph (4) below.”

4. ACCESS TO INFORMATION PROCEDURE RULES

Rule 10.4 sets out the meaning of “exempt information” –i.e. information which may be considered by the Council, Cabinet or Committees in private session. The rule simply sets out the legislation and therefore needs to be amended to comply with the recent change in that legislation. The proposed revised rule is attached at appendix 3, which also sets out a proposed consequential amendment to rule 25.1.

This item was not included in the report to the group leaders.

5. CABINET PROCEDURE RULES

Rule 1.5 specifies: “The Cabinet will meet at least 12 times per year at times to be agreed by the Leader”. Although that has continued to be complied with, the existence of the various cabinet committees makes it unnecessary and it is proposed that the words “at least 12 times per year” be deleted.

6. OTHER CHANGES

Other changes to reflect decisions elsewhere include the revised Members' allowances scheme, to replace the old one in Part 6, and the revised management structures to replace the one in Part 7.

John Emms

13.4.06

APPENDIX 1

ARTICLE 12.1 – Management Structure

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- b. **Chief Officers.** The Council will engage persons for the following posts, who will be designated chief officers. They will have the responsibilities specified, but will also have the management responsibilities set out in the management structures contained in Part 7 of this Constitution. N.B. the following list of functions and responsibilities is still under consideration in the light of recent changes and may be subject to minor variations. The details of responsibilities of individual officers may be amended at any time by the Chief Executive.

Post	Functions and areas of responsibility
Chief Executive	<p>Overall corporate management and operational responsibility (and Head of Paid Service) (including overall management responsibility for all officers)</p> <p>Provision of professional advice to all parties in the decision making process</p> <p>Together with the monitoring officer, responsibility for a system of record keeping for all the Council's decisions</p> <p>Corporate Improvement Priorities</p> <p>Developing and pursuing shared priorities with local, regional and national parties</p> <p>Member/Officer relations</p> <p>The Chief Executive is also the Returning Officer for local elections and the Council's Electoral Registration Officer though these arrangements may be changed by the Council Business Committee</p>
Director of Finance	<p>Strategic financial support to the Cabinet and Scrutiny, including advice on budgets and issues of probity and financial accounting</p> <p>Coordination of audit activity</p> <p>Risk assessment</p> <p>Budget and service planning policies</p>

Post
cont'd

Functions and areas of responsibility
cont'd

Director for Corporate Services

Policy support to Cabinet and Scrutiny and all political parties

Decision making processes

Democratic services to members

Best Value

Performance management

Information technology and information management

Local area agreements and public service agreements

Kirklees local strategic partnership

Internal and external communications

Community leadership

Vision and community strategies

Equality in service delivery and employment

Legal Services

Director for Children and Young People

Implementation and management of children's services

Schools, development of children's centres and extended schools

Safeguarding of children

Partnerships for children

Work within her portfolio on local area agreements

Director for Adults and Communities

Implementation and management of strategies for adults and older people

Housing

The Council's approach to asylum seekers

Post
cont'd

Functions and areas of responsibility
cont'd

Neighbourhood renewal

Community engagement

Community cohesion

Community safety

Devolution and local area structures

Community and voluntary organisations

Local area agreements – work on healthier communities and older people and safer, stronger communities

Director for Environment
Transportation and Property

Environment

Health and Safety

Emergency Planning

Highways and Transportation

Bereavement Services

Customer Services Strategy

Building Services

Design and Property Services

Catering and Cleaning Services

Asset management

21st century working

Local transport plan

Transport strategies

Capital project review group

Director for Regeneration

Coordinated sustainable investment strategies

Regeneration strategies

Post
cont'd

Functions and areas of responsibility
cont'd

Local development framework and land use
planning

Town centre management

Rural strategies

Service delivery partnerships

Procurement policy [including work on Gershon
and efficiencies and savings]

Cultural and leisure strategies

Director for Organisation and
Development

Workforce development

Leadership and management development

Leadership academy

Change management and organisational
development

Learning and development

Preparations for comprehensive performance
assessments

Solicitor to the Council

Legal, procedural and standards advice to
members and the corporate centre

Constitutional and corporate governance issues

Corporate, structural and procedural matters

Ethical standards and propriety issues

Head of Human Resources

Overall responsibility for human resources and
industrial relations

Strategic direction, policy and procedure in HR
issues

APPENDIX 2

16. Termination and Adjournment of Meeting

- (1) The Mayor, in consultation with the Chief Executive, may adjourn the meeting at any time. [*existing wording*]
- (2) A meeting of the Council (except the Annual Meeting) shall terminate at 9.00 p.m. unless a Member moves a motion that the meeting shall continue until (i) a later time (to be specified in the motion) or (ii) the conclusion of the business of the meeting. If the motion is seconded it shall be put to the meeting without comment. [*existing wording*]
- (3) If the motion is passed the meeting shall continue until the time specified or until the conclusion of the business of the meeting. [*existing wording*]
- (4) At 9.00 p.m. or such later time as the Council has agreed, the Mayor shall have discretion to grant an additional period of time to allow the item under consideration at that time to be concluded. Otherwise, the Mayor shall:-
 - (a) allow no further points of order to be raised by any other Member;
 - (b) interrupt the discussion of the item then being considered by the meeting;
 - (c) allow the proposer of the motion then under consideration a maximum of five minutes to reply to the debate unless he/she seeks leave to withdraw the motion;
 - (d) put (without discussion) all of the questions necessary to dispose of that motion; unless the motion is withdrawn;
 - (e) put (without discussion) all of the questions necessary to complete the consideration of any reports of Cabinet or any Committee, which are on the Agenda for the meeting, unless the Member appointed to preside in any such body (or a person on his/her behalf) indicates a wish to the contrary.
- (5) Any motion given under rule 14 not considered due to time constraints shall automatically be rolled over for consideration at the next ordinary Council meeting unless the motion is subsequently withdrawn by notification to the Head of Democratic Support Service by the member or group submitting the motion.
- (6) Where proceedings are in the course of being wound up as above either at 9.00 p.m. or at a later time specifically agreed by the Council in accordance with a motion to that effect, the provisions of rule 24 (3) as to recorded votes shall not apply to any matter considered by the Council in the course of such process.

- (7) Following any processes outlined above, the Mayor shall finally close the meeting.

APPENDIX 3

10.4. Meaning of exempt information

Exempt information means information falling within the following 10 categories, (subject to any relevant conditions specified below).

NB The numbering of the categories reflects that which is set out in schedule 12A to the Local Government Act 1972, as currently amended.

Categories

1. Information relating to any individual
2. Information which is likely to reveal the identify of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the crown and employees of, or office holders under, the authority
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
6. Information which reveals that the authority proposes:-
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment
7. Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime

The following categories relate only to meetings of the Standards Committee or one of its sub committees in the circumstances set out in condition 4 below.

- 7A. Information which is subject to any obligation of confidentiality
- 7B. Information which relates in any way to matters concerning national security
- 7C. The deliberations of the Standards Committee or a sub committee of the Standards Committee in reaching any findings in a matter referred under the provisions of section 60(2) or (3) and 64(2) of the Local Government Act 2000.

Conditions

1. Information falling within category 3 above is not exempt information if it is required to be registered under:-
 - (a) the Companies Act 1985
 - (b) the Friendly Societies Act 1974
 - (c) the Friendly Societies Act 1992
 - (d) the Industrial and Providence Societies Act 1965 – 1978
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1992
2. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992
3. Information which:-

- (a) falls within any of paragraphs 1 – 7 above; and
 - (b) is not prevented from being exempt by virtue of conditions 1 or 2 above; is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information [the public interest test];
- 4 Categories 7A – 7C shall apply only to meetings of the Standards Committee or one of its sub committees which are convened to consider a matter referred under the provisions of sections 60(2) or (3) and 64(2) of the Local Government Act 2000

Rule 25.1 gives members the right for the purposes of their duty as a councillor, to inspect documents in the possession of the Cabinet containing material relating to business previously transacted at a private meeting – NB in KMC, of course, we do not have private meetings of the Cabinet.

Within that rule, para 25.1(a) specifies the types of exempt information which are not included in that right. As a consequence of the above legislative changes that paragraph needs to be amended to refer to “exempt information other than information within category 6 set out in rule 10.4 of these rules or within category 3 other than information relating to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract”.