



Name of meeting and date: Annual Council 26 May 2010

Title of report: Proposed amendments to the Council's Constitution

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected: All

Ward councillors consulted: All

Public or private: Public

1. Purpose of report

The Annual Council meeting is, as usual, required to review the Constitution in the light of its operation in the current municipal year. This report sets out all of the proposed changes that have previously been considered by members, officers, council committees/panels and, where required in accordance with the Constitution, by the Corporate Governance & Audit Committee. A number of the issues, particularly relating to executive responsibilities and delegations are for the approval of the Leader of the Council. They are referred to in this report for information and completeness. The Key Points section below sets out the Constitutional changes proposed in response to issues which have arisen over the past year through practical problems experienced, comments by members and/or officers, legislative change and changes in government guidance since the last annual council meeting or decisions of the Corporate Governance & Audit Committee arising from the foregoing.

Annual Council is asked to consider and determine whether the proposed amendments to the relevant parts of the Constitution as set out below should be approved. (Specific amendments to wordings are shown underlined).

Where any decisions are a matter for the Leader, these will be determined by him/her immediately after the Annual Council meeting or no later than five days thereafter.

2. Key points

Recommended changes

(i) Standards Committee

- (a) Article 9.2 of the Constitution should be amended to provide that the membership of the Standards Committee shall comprise of:
- Six councillors not including the Leader or more than one member of the Cabinet but including, so far as possible, representatives from at least four political groups on the Council;
 - Five persons who are not councillors or officers of the Council or any other body having a Standards Committee (external members);
 - Four persons who are members of a parish or town council wholly or mainly in the Council's area (parish members), but who are not also members of Kirklees Council

Currently the membership is five Kirklees councillors, four independent members and three parish representatives. No member may sit on more than one sub-committee considering a complaint. This has led to delays in the assessment, review, consideration and hearing of complaints. It is anticipated that the proposed increases in membership will assist in reducing the delays.

(Consequential changes to the details of the membership and role and function of the Standards Committee set out in Section B of Part 3 of the Constitution will also be required if the above change is approved).

- (b) Article 9.2b of the Constitution should be amended to provide that independent members of the Standards Committee may only serve for a maximum of two terms ie 8 years.

It is considered that this will maintain the public's confidence in the independence of those members of the committee.

- (c) The following wording should be included as Article 9.2g:

"A vice-chair of the Standards Committee shall be appointed on an annual basis from amongst the independent members."

This change is proposed to ensure that the business of the committee is conducted efficiently and effectively at all times.

- (d) Article 9.4.2.4 of the Constitution should be amended to read:

"Each sub-committee shall have three members consisting of one independent member who must be the Chair and two other members"

of the Standards Committee (subject to the requirements of Article 9.4.2.2 and 9.4.2.3 above). The quorum for a sub-committee shall be three members and if it is not possible to continue with the sub-committee because a member becomes unavailable then a fresh committee must be established to consider the complaint.”

This change is proposed to reflect the current legal requirements and for clarity.

Appendix (a) – Minutes of the Standards Committee held on 28 April 2010

(ii) Overview and Scrutiny

Following the independent review of the Overview and Scrutiny function in Kirklees, the following changes are proposed to Article 6 of the Constitution and the Overview and Scrutiny Procedure Rules:

(a) Membership

Set out at Article 6.1.2 is the revised membership of the Overview and Scrutiny Management Committee (OSMC). The Management Committee will comprise the Chair of Scrutiny and the Lead Members of the standing scrutiny panels. In order to maintain the cross party nature of the Management Committee, if a political group is not represented in the Chair of Scrutiny or Lead Members roles then an additional group nomination place will be made available. The reason for the proposed change is to strengthen the OSMC and ensure that Lead Members are part of agreeing strategic direction and process which they can then ensure is implemented in their scrutiny panels. The frequency of Management Committee meetings has been reduced to once a month in recognition of the capacity of Lead Members to undertake both panel and Management Committee duties.

The focus of OSMC will be on the strategic management of the scrutiny function and overseeing the work of the scrutiny panels. For this reason it is proposed that rule 2.1.1 (xxvii) of the Overview and Scrutiny Rules should be deleted (ie “Undertake overview and scrutiny work, in its own right, as deemed appropriate.”)

(b) Standing Scrutiny Panels

Article 6.2.1 proposes a revised structure for the Scrutiny Standing Panels. The structure reduces the number of standing panels from six to four. The four panels reflect the new Directorate structure of council services. The four panels are; Well-being and Communities, Children and Young People, Development and Environment, and Resources. In reducing the number of standing panels resources will be made available to carry out additional Ad-Hoc scrutiny work.

(c) Mini Ad Hoc Panels

It is proposed that reference to mini ad hoc panels shall be deleted from Overview and Scrutiny Rule 2.3.1 as this practice has been superseded by the use of assigned tasks.

(d) Call In Procedure

It is proposed that an additional rule is inserted as Rule 19.8 of the Overview and Scrutiny Procedure Rules. This rule as set out below will include an additional provision in relation to Call In, which will allow for a short extension, in exceptional circumstances, of the period during which the Call In hearing must be held:

“The Assistant Director - Legal and Governance, in consultation with the Chief Executive, shall have discretion to extend the period during which the appropriate Overview and Scrutiny Panel must meet, where in his/her opinion, exceptional circumstances so require.”

Existing Rules 19.8 to 19.15 will then be renumbered accordingly.

Appendix (b) – Revised Overview and Scrutiny Procedure Rules and Article 6

(iii) Council Procedure Rules

- CPR 5(1)(f)

“To receive petitions (if any) and deputations (if any) pursuant to Rules 9 and 10”.

Reason – to reflect the true order of business at Council meetings.

- CPR 9

Re-number to CPR 10.

Reason – to reflect the true order of business at Council meetings.

- CPR 10

Re-number to CPR 9.

Reason – to reflect the true order of business at Council meetings.

- CPR 12(1)

“Any member of Council may put a written question to the Leader of the Council, a member of the Cabinet, Chair of a Committee, Sub-committee or Panel or a spokesperson of a Joint Committee or external body, as defined at Rule 13(4)”.

Reason – to provide clarity that written questions may also be asked of Chairs of Sub-committees and Panels.

- CPR 12(8)

“Where written questions are not addressed within the above timescale, then the question will be referred to the next relevant Cabinet/committee meeting for reply. Any such questions will only be responded to if the Member who put forward the original question to the Council meeting is in attendance at the Cabinet/Committee meeting to ask the question or if the Member, within 7 days of the Council meeting, has requested a written response to his/her question. Written questions to spokespersons of Joint Authorities not dealt with within the above timescale will be answered by means of a written reply within 7 days of the meeting and will be circulated to all Members of the Council.

Reason – to provide clarity that the Member who put the original question to the Council meeting will be required to attend the relevant Cabinet/Committee meeting to ask the question again or make a request for a written response within 7 days of the Council meeting.

- CPR 12(10)

“A written question must be relevant to the Terms of Reference or powers or duties of Cabinet, or of the relevant Committee, Sub-committee or Panel or affect the area of Kirklees.

Reason – to reflect the proposed change to CPR 12(1).

- CPR 13(1)(ii)

“Minutes of meetings of Cabinet and Committees shall be presented to Council meetings for information as a basis for questioning and comment. There shall be no need for any motion or vote to receive them. If the minutes are not considered due to lack of time they shall be deemed to have been presented to Council and will not, therefore, require re-submission”.

Reason – to ensure that Council business is conducted efficiently.

- CPR 36

1) Subject to paragraphs 3) and 4) below a Councillor who is not a Member of a Committee, Sub-committee, or Panel may attend any meeting as an observer. That Councillor shall have the same speaking rights as any Member of that Committee, sub-committee or Panel. The Councillor cannot:

- (a) Speak on any item considered in the private session of the meeting.
 - (b) Attend for any item of business if he or she has a prejudicial interest as defined in the Council's Code of Conduct ("the Code") unless attending for the sole purpose of making representations, answering questions or giving evidence relating to that business and members of the public are also allowed to attend the meeting for the same purpose (in accordance with paragraph 12(2) of the Code).
 - (c) Attend for any item of business on the Committee, Sub-committee or Panel agenda which personally relates to them as a Councillor or otherwise.
 - (d) Remain in a meeting of the Committee, Sub-committee, or Panel after receiving advice from the Assistant Director – Legal and Governance, that he or she should be excluded from the meeting.
 - (e) Retire with a Committee, Sub-committee or Panel which is exercising a quasi judicial or administrative function when it is considering its decision.
- 2) Any Member attending a meeting of a Committee, Sub-committee or Panels shall under the agenda item of "Membership of Committees, sub-committees etc" identify themselves as an observer.
- 3) Councillors who attend a Planning Committee or Sub-committee but who:
- a) Are not members of that Planning Committee or Sub-committee; or
 - b) Are members of that Planning Committee or Sub-committee but who have indicated that they will not be voting on an application because, for example, they have previously expressed a view on the application or wish to make representations rather than participate in the determination of the application
- shall be entitled to speak once for a maximum of five minutes unless, in exceptional circumstances, the Chair allows any of those members to make further representations on any wholly new issues that arise or to correct information that is clearly incorrect .
- 4) Councillors who have a prejudicial interest in a planning application and who attend a Planning Committee or Sub-committee in accordance with the provisions of paragraph 12(2) of the Code shall be entitled to speak once for a maximum of three minutes.

Reason – CPR 36 currently provides that a Councillor who attends a Committee, Sub-committee or Panel as an observer will have the same speaking rights as any member of that Committee, Sub-committee or Panel. However, the current Public Speaking Protocol for Planning Committees, which is applied consistently by all Planning Chairs, specifies a time limit of three minutes for all oral presentations including those made by elected members who are not members of the Committee or substitutes but who attend for eg as ward members.

This inconsistency between the CPRs and the Public Speaking Protocol has created confusion for Councillors, officers and members of the public and has, in some instances, resulted in motions being passed for the three minute time limit to be extended to five minutes for ward members to ensure that they can adequately represent their constituents' views at the meetings.

This lack of clarity for all those involved in the planning process is unsatisfactory and needs to be resolved. It is considered that a five minute time limit is appropriate and provides proper recognition of the ward Councillor's valuable role in representing the community.

- CPR 42(5)

“At any meeting of a Planning Committee or Sub-committee, the chair may propose that a recorded vote is taken on an item to record how each Member present at the meeting intended or decided to vote. This proposal for a recorded vote will only be effective if it is supported by at least two other Members of the Committee or Sub-committee and is made before any votes have been cast”.

Reason – CPR 42 currently provides that voting at all Committees and Sub-committees of the Council is by a show of hands. A member may require that his or her individual vote (or abstention) is recorded in the minutes of the meeting but there is currently no requirement that the vote of each member of the Committee or Sub-committee is recorded.

It is considered that the recording of votes/abstentions at Planning Committees and Sub-committees would be beneficial to the planning process in the following ways:

- Will ensure that there is a clear record of how each member voted in relation to a particular application
 - Will increase transparency in the decision making process (the voting record will be available to the public in the Committee/Sub-committee minutes)
 - Increase members individual and collective responsibility in relation to the decisions that they make
 - May deter block voting (where this is perceived to be an issue)
- Substitute all references to “the Head of Policy and Governance” with “the Acting Assistant Director – Legal and Governance”.

Reason – to reflect the recent senior management structure changes.

Appendix (c) – Revised Council Procedure Rules

(iv) Corporate Governance & Audit Committee

- (a) It is proposed that the details of the membership the Corporate Governance & Audit Committee set out in Section B of Part 3 of the Constitution should be amended as follows:

Seven members, two from each of the three largest parties on the Council and one from the minority party.

Four ex-officio members with rights to speak but not vote:

- Member of the Cabinet with responsibility for Corporate Governance
- Chair of the Overview Scrutiny Management Committee
- Chair of the Standards Committee
- Person having specialist knowledge of treasury management (to be appointed and attend as required)

No leaders of any group shall be a member of the Committee.

Proportionality need not apply to this Committee.

Currently the membership of this Committee is four members of the Council, one member from each of the four political groups and three ex-officio members. It is considered that four Council members is too small a number to allow the Committee effectively to carry out its responsibilities for governance and internal controls. It is also considered appropriate to allow for the appointment of an additional ex-officio member with specialist treasury management expertise, as and when required, having regard to the extension of the Committee's terms of reference to include the challenging and review of treasury management activities.

(v) Adoption of a revised Councillors' Protocol for Planning Committees and Sub-Committees

- (a) It is proposed that a revised and updated Councillors' Protocol for Planning Committees and Sub-Committees is approved and adopted by Council. It is essential that the Council's planning process operates properly, lawfully and effectively and is seen by all parties involved in the process to do so. Decisions must be made fairly, openly, impartially and for justifiable planning reasons. It is considered that the proposed amendments to the current Planning Protocol will assist in ensuring that appropriate standards are achieved in relation to the Council's planning decision making processes.

- (b) The main changes proposed are set out in paragraph 2 of Item 9 of the Corporate Governance & Audit Committee agenda for 28 April 2010.

Appendix (d) – Revised Councillors’ Protocol for Planning Committees and Sub-committees

(vi) Adoption of a revised Protocol for Speaking at Planning Committees and Sub-Committees

- (a) It is proposed that a revised and updated Protocol for Speaking at Planning Committees and Sub-committees is approved and adopted by Council. It is essential that the Council's planning committee and sub-committee meetings operate properly, lawfully and effectively and are seen by all parties involved in the process to do so. This is particularly important as these meetings are open to the public and are often highly charged with emotion. It is considered that the proposed amendments to the current Public Speaking Protocol will assist in ensuring that the rules of natural justice are observed and are seen to be observed by all those involved in the committee/sub-committee meetings and that appropriate standards of behaviour are maintained by members, officers and the public.
- (b) The main changes proposed are set out in paragraph 2 of Item 10 of the Corporate Governance & Audit Committee agenda for 28 April 2010.

Appendix (e) – Revised Protocol for Speaking at Planning Committees and Sub-committees

(vii) Adoption of a Protocol for Licensing Committee Members

- (a) It is proposed that a Protocol for Licensing Committee Members is approved and adopted by Council. It is considered that the Council should have an appropriate Protocol in place to ensure that its licensing processes are robust and that, as far as possible, its decisions are not susceptible to legal challenge.

Appendix (f) – Protocol for Licensing Committee Members

Appendix (g) – Minutes of Corporate Governance & Audit Committee held on 28 April 2010

(viii) Responsibilities for Functions

- (a) Part 3 of the Constitution has been re-ordered and revised to reflect:
- The anticipated arrangements for the new Cabinet Portfolios and the roles for the Leader and Deputy Leader (to be confirmed by Leader)
 - The anticipated arrangements for the discharge of executive functions including the proposed introduction of a Cabinet Committee for Local Issues (to be confirmed by the Leader)

- The proposed changes to the membership of the Standards Committee and Corporate Governance & Audit Committee
- The new directorates and senior management structure and the proposed revised arrangements for the discharge of executive and non-executive functions by officers (executive functions to be confirmed by Leader). In particular, a revised draft scheme of officer delegations is included in Appendix (h). It is founded on the principle of delegation “by exception”. That means that the delegating body or individual delegates everything that can lawfully be delegated (both executive and non-executive functions) to a Director, or in appropriate circumstances, to the Assistant Director – Legal & Governance, save for exceptions which are listed.

The revised draft scheme separates non-executive functions from executive functions in order to provide a distinction between the functions that are the responsibility of the new ‘strong’ leader and those that remain the responsibility of the Council and its committees. The areas of the delegated powers have also been separated out to reflect the new directorates and senior management structure.

Appendix (h) – Revised Part 3 of the Constitution – Responsibility for Functions

3. Implications for the Council

It is essential that the Council's Constitution is regularly reviewed and updated to ensure that it remains fit for purpose and allows for all Council business to be conducted in a fair, businesslike, lawful and effective manner. This is particularly significant this year having regard to the imminent appointment of the 'strong' leader and the senior management restructure of the Council.

4. Consultees and their opinions

Various officers in Legal Services, Planning and Building Control and the Policy and Governance Service (as they were known until recently) have been involved in discussions regarding the proposed changes detailed in this report. The proposed changes have been reported (as appropriate) to the Standards Committee, Planning and Highways Committee and the Corporate Governance and Audit Committee. The Leaders of the political groups have all been consulted on the significant proposed changes.

5. Officer recommendations and reasons

That Annual Council consider and approve the proposed changes to the Constitution (apart from those that relate to executive functions) referred to in paragraph 2 of this report and delegate authority to the Council’s Monitoring Officer to make all of the necessary amendments.

6. Cabinet portfolio holder recommendation

Not applicable.

7. Next steps

The Council's Constitution to be amended in accordance with the resolution of Annual Council.

8. Contact officer and relevant papers

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Background papers

Relevant papers are annexed to this report.