

WIRRAL COUNCIL

Cabinet
18 APRIL 2013

SUBJECT:	Revisions to the Constitution
WARD/S AFFECTED:	All
REPORT OF:	The Chief Executive
RESPONSIBLE PORTFOLIO HOLDER:	The Leader
KEY DECISION	No

1.0 EXECUTIVE SUMMARY

- 1.1 This report sets out proposals for amending the Council's constitution to ensure that it remains both lawful and fit for purpose.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 The council's constitution was adopted in 2000, in the light of the changes introduced by the Local Government Act 2000. This introduced the Cabinet system of governance to local authorities.
- 2.2 This report does not explore whether or not the Cabinet system is the appropriate model for the council. It is written on the basis that the Council retains a cabinet form of government with significant changes to its scrutiny arrangements and area governance. A constitution legally consistent with those arrangements is proposed.
- 2.3 In the last year a number of failures of governance have been addressed by the Council. In the course of looking at those matters a commitment has been given, through the Council's Improvement Plan, to review the Council's constitution and scheme of delegation. The Peer Challenge also stressed the importance of the constitutional review and specifically a new scheme of delegation and member/officer protocols that clarify the demarcation between Member and Officer roles and responsibilities.
- 2.4 The revised constitution is attached with a summary of the amendments from the last version set out in Appendix 1. The principles underlying the review have been:
- To only make changes where necessary.
 - To ensure compliance with the legal requirements for a Cabinet and Leader model of government in the council.
 - To give effect to assurances given to the Improvement Board in relation to Delegations in particular.

- To follow the principles set out in article 1 of the constitution, (set out in detail in paragraph 2.23 below).

2.5 The legal framework for the constitutional arrangements is set out in detail below. There have been departures from the prescribed arrangements in the past, and the need to return to a legal position is explained.

The Executive

2.6 From 2000 the Council has operated executive arrangements. The form of executive arrangement is a "Leader and Cabinet executive". In the context of executive arrangements, the functions of a local authority are required to be divided into "executive" and "non-executive" (also known as "council") functions; the former being exercised by the leader, and the cabinet, the latter by full council or committees of the Council.

2.7 The division of functions is determined partly by statute, and partly by the authority itself, in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853).

- The "council" functions under the Regulations cover determination of the authority's "policy framework" (strategic policies and plans) and annual budget (albeit this can be shared with the Cabinet); the authority's constitution; matters concerning licences, approvals, or consents, and their enforcement; or, electoral arrangements. The most notable service provided by a council, rather than by the executive, is development control.
- The executive functions comprise all functions not allocated to the council by the regulations, and other functions where the authority has discretion and chooses to exercise them through the executive. The main provision of services (e.g. housing, adult social care, children's services, waste, roads and traffic, leisure services) will generally be executive functions.

2.8 The Leader is not directly-elected, but is chosen by the full council. He or she may be removed by the full council. The Leader formally discharges the executive functions of the council, by delegating them to councillors whom he or she appoints to the cabinet; or to committees of the cabinet, or (as in the case of the great majority of routine or professional functions) to officers.

The important issues to note are that:

- There is strict division of role and functions, defined by statute, between the Cabinet and Council.
- The Council appoints the Leader.
- The Leader appoints his/her cabinet members.
- The Leader determines the responsibilities of the cabinet members (portfolios).
- The Leader determines the level and nature of delegations to:
 - The Cabinet
 - Cabinet Members (Portfolio Holders)

- Officers
- Area Committees

2.9 In the current constitution this arrangement has become confused and the proposed amendments seek to restore the legal position. In particular it seeks to restore the nature of the Leader's responsibilities and accountability.

2.10 This does give a lot of power to a 'Leader and Cabinet'. However, strong scrutiny arrangements holding members of the cabinet to account combined with questions and answers at full council provide public accountability and checks and balances.

Scrutiny

2.11 Local authorities operating executive arrangements (otherwise known as a 'Leader and Cabinet'), must make provision for overview and scrutiny committees with the following powers to:

- review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive;
- make reports or recommendations to the authority (i.e. the full council) or the executive with respect to the discharge of any functions which are the responsibility of the executive;
- review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive;
- make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive; or
- make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area.

2.12 Wirral's existing constitution confuses scrutiny committees with decision making committees. The proposed revisions simplify arrangements and allow members undertaking scrutiny to operate in whatever reasonable manner they feel appropriate, depending on the matter in hand.

2.13 The scrutiny function has been reviewed to ensure that it is a vital component of good governance. and that it harnesses the potential for significantly improving the quality of council decision-making, service provision and cost-effectiveness.

2.14 The proposal is to have three overview and scrutiny committees to be known as Policy and Performance Committees, to be aligned with the three strategic directorates. There is to be one Co-ordinating Committee responsible for overseeing arrangements and allocating cross cutting activities. There will be a team of three dedicated Scrutiny officers. It is further proposed that nominated senior officers will be assigned to support scrutiny proposals on a cross departmental basis.

Full Council

2.15 The majority of the council procedures are similar to most councils, there are however significant local variations. The council's procedure rules have clearly evolved over time to deal with the complexities of minority and coalition administrations, together with elections by thirds.

2.16 There are local provisions which set out arrangements for "objections, amendments and comments notified by political groups..." etc. Notices of motion, with a managed process of written amendments, have come to dominate the business of the council. There is very limited challenge to Council functions and no opportunity to hold the Cabinet to account.

2.17 The proposed changes to the council procedure are designed:

- To restore the power of members.
- To improve the spontaneity of questions and discussion:
- To ensure the Leader and Cabinet Members are accountable to the council.
- To help Council focus attention on the matters which are of most relevance to its responsibilities.
- Introduce a filtering process for notices of motion, modelled on good practice in other councils.
- Clarify the treatment of notices of motion, so that they are not mixed up with the other business of the Council.
- Restore proceedings at Full Council to the arrangements seen in most other councils.

2.18 The proposals are:

2.18.1 To introduce written reports to be presented by the Leader, Cabinet Members and Chairs of Policy and Performance Committees at the Council meeting. The respective lead member can then be questioned without notice on those reports by any other member. It is proposed that this will essentially be the first significant part of the meeting. The rights of minority groups to a fair share of the question time will be protected.

2.18.2 To clearly set out those matters which require an explicit Council decision, either by way of a recommendation from the Cabinet or Committee or which go directly to the council with a report from officers.

2.18.3 That the process for notifying amendments, comments etc on the minutes is substantially removed. Comments will come by way of questions. Amendments to minutes where a decision has already been taken under delegated power is not appropriate. There are other constitutional ways to challenge through scrutiny and call-in (in exceptional cases).

- 2.18.4 That notices of motion will be referred in the first instance to the responsible body. For example a notice relating to a cabinet matter will be referred to the Leader for him/her to respond and if necessary invite the individual member to address the Cabinet. Any subsequent debate at Council (if necessary) would then take place with a report from Cabinet. Notices will no longer be the primary business of Full Council. This process can be varied for matters of urgency.
- 2.18.5 That papers for Council will be simplified with only one set of papers supporting the summons, (as is usual in most councils).
- 2.18.6 That the Council meeting in the Autumn will be a 'Policy Council' to consider and approve the forward plan and the planning framework in preparation for the forthcoming budget proposals.
- 2.18.7 The order of business at a council meeting would then be:
- (a) to choose a person to preside if the Mayor and Deputy Mayor are absent;
 - (b) to receive the Mayor's announcements;
 - (c) to deal with any business required by statute to be done before any other business;
 - (d) to receive petitions without debate in accordance with Standing Order 21;
 - (e) to deal with questions from members of the public in accordance with the procedure set out in Appendix 1 to these standing orders;
 - (f) to approve as a correct record and sign the minutes of the last meeting of the Council;
 - (g) to dispose of business (if any) remaining from the previous meeting;
 - (h) To receive the written reports of the Leader and the Executive Members and the Chairs of the Policy & Performance Committees and receive questions and answers on any of those reports.
 - (i) To consider any recommendations of the Leader/Executive and committees which require the approval of the Council;
 - (j) To consider any other business specified in the summons;
 - (k) to deal with questions in accordance with Standing Order 11;

- (l) to deal with any references from the Policy and Performance Committees;
- (m) to consider and decide upon active petitions referred to Council for debate under Standing Order 34(1); on a motion to be formally moved by the Mayor and duly seconded to note the contents of the petition.
- (n) to deal with any other business, if any, specified in the Summons.
- (o) to consider any notices of motion submitted in accordance with Standing Order 7 which the Council agrees should be debated rather than being referred to the Leader or the appropriate committee(s),

Delegations

2.19 The current scheme of delegation has arisen over time and comprises a long list of matters which officers can do. Broadly speaking if it is not in the list an officer needs authority to proceed. The thresholds vary from delegation to delegation with no apparent consistency. Small matters can be reserved exclusively to members while on the other hand large issues can be delegated to officers. The various differences are difficult to reconcile, and would often seem to be ad hoc decisions taken in the past to deal with a particular concern.

2.20 The somewhat haphazard nature of the delegations and lack of consistency make it difficult for officers to conduct their business effectively and efficiently. Perhaps more importantly it makes it difficult to hold officers to effective account.

The proposal is to:

- Clearly separate the executive and council delegations.
- The Leader will decide from time to time what to delegate to whom in the way of executive functions, these will be exercised by officers as executive functions and recorded as necessary in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- The Council will delegate non regulatory matters, other than those expressly reserved to council, to officers.
- Regulatory matters such as licensing, planning and trading standards and environmental health will remain substantially unchanged.
- Officers will be accountable to the Policy and Performance Committees and the Leader and Cabinet for how they exercise the council and executive delegations.

Constituency Committees

2.21 The Council is currently considering future arrangements for Constituency Committees co-terminus with constituency boundaries. The revisions in the

constitution reflect this proposal. These would be statutory area committees, which are committees established to discharge functions in respect of part of the local authority area and whose members are elected for divisions or wards falling wholly or part within that part. They will each be supported by a Strategic Director assisted by dedicated officers.

2.22 In relation to area committees the Leader and Cabinet and Council have power to delegate executive and council functions respectively to area committees. The constitution is written to allow this mechanism to be used to delegate functions, as appropriate, when the area Constituency Committee arrangement is established.

2.23 When the detail of this arrangement is settled and agreed the constitution may need to be amended to reflect any additional changes.

Keeping Under Review

2.24 The constitution is a living document which needs to be kept under review to reflect changes in the council and changes in the way the council delivers services and does business. In order to ensure:

- Any changes agreed work as anticipated;
- Minor changes can be agreed and reflected in the document;
- The effective working of constitutional arrangements is kept under review.

It is recommended that the Standards Committee is renamed the Standards and Constitutional Oversight Committee and terms of reference are extended to include:

1. To keep the councils constitutional arrangements under review and to make such recommendations to the council as it considers appropriate for ways in which it should be amended in order to better achieve the purposes set out in Article 1, (set out below at paragraph 2.23).
2. To oversee and agree such minor changes to the council's constitutional arrangements as are recommended by the Monitoring Officer from time to time.

It is further proposed that the Leader's Board keep the effectiveness of the changes under review at their regular meetings.

Relevant Considerations

2.25 The current constitution states at Article 1 that its purpose is to:

- (1) enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
- (2) support the active involvement of citizens in the process of local authority decision making;
- (3) help Councillors represent their constituents more effectively;

- (4) enable decisions to be taken efficiently and effectively;
- (5) create a powerful and effective means of holding decision-makers to public account;
- (6) ensure that no one will review or scrutinise a decision in which they were directly involved;
- (7) ensure that those responsible for decision making are clearly identified to local people and that they explain the reasons for decisions; and
- (8) provide a means of improving the delivery of services to the community.

When considering these proposals this list of objectives should be borne in mind.

3.0 RELEVANT RISKS

- 3.1 The current constitution has provisions which are inconsistent with the legal framework relating to a cabinet model of governance. This presents a risk of challenge unless amended.
- 3.2 Delegations in the current scheme are unclear and inconsistent which presents a risk of challenge.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 None

5.0 CONSULTATION

- 5.1 This report is informed by the views of the Improvement Board, members and officers as set out above.
- 5.2 These proposals have been informed by the feedback from members from the five 'Member Events' held over the last six months focussed around the improvement agenda. These events have included specific events dealing with the role of scrutiny, the role of the local councillor and on 4 April an opportunity for detailed discussions and feedback by all members around these proposals. The collated feedback from that session and responses to the questionnaire are attached as appendix 2.
- 5.3 The views of the Democracy Working Party which has met on a number of occasions have helped inform these proposals.
- 5.4 The Audit and Risk Management Committee have been expressly consulted on the changes to Financial Procedures and Contract Standing Orders, their recommendations will be presented to this meeting.

5.5 The views of all members will be formally invited before the council meeting and those views will be collated and reported to the meeting where this recommendation is considered.

6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

6.1 None

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

7.1 The Constituency Committees will provide a strong platform for engaging and involving these groups in the future.

8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

8.1 While the proposals will require a different level and nature of support to that currently provided, that support will come from within existing resources which will be realigned to meet the new requirements.

9.0 LEGAL IMPLICATIONS

9.1 As set out in the report.

10.0 EQUALITIES IMPLICATIONS

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality

No because there is no relevance to equality.

11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

11.1 None

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

12.1 None

13.0 RECOMMENDATIONS

That the Cabinet recommend to Full Council:

13.1 To adopt the revised constitution set as appendix 3 to this report.

13.2 To note that additional consequential changes will need to be made over the next year in the light of experience of operating the new Policy and Performance Committees and Constituency Committee arrangements.

13.3 The Council to rename the Standards Committee the Standards and Constitutional Oversight Committee.

13.4 The Standards and Constitutional Oversight Committee to have these additional responsibilities:

13.4.1 To keep the councils constitutional arrangements under review and to make such recommendations to the council as it considers appropriate for ways in which the constitution should be amended in order better to achieve the purposes set out in Article 1, (set out below at paragraph 2.23).

13.4.2 To oversee and agree such minor and changes to the council's constitutional arrangements as are recommended by the Monitoring officer from time to time.

14.0 REASON/S FOR RECOMMENDATION/S

14.1 To ensure the Constitution remains lawful and fit for purpose

REPORT AUTHOR: Stephen Gerrard

telephone (0151) 691 8569

email stephengerrard@wirral.gov.uk

BACKGROUND PAPERS/REFERENCE MATERIAL

Key Acts

Local Government Act 2000

Local Government and Public Involvement in Health Act 2007

Key Subordinate Legislation

Local Authorities (Functions and Responsibilities)(England) Regulations 2000/2853)

Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007/1024

Local Authorities (Referendums) (Petitions) (England) Regulations 2011/2914

Local Authorities (Conduct of Referendums)(England) Regulations 2012/323

Local Authorities (Committee System) (England) Regulations 2012/1020

Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089

Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012/1022

BRIEFING NOTES HISTORY

Briefing Note	Date

SUBJECT HISTORY (last 3 years)

Council Meeting	Date