

Cheltenham Borough Council

Council – 10 October 2011

Constitution Working Group - Review of the Constitution

Accountable member	Cabinet Member Corporate Services – Colin Hay
Accountable officers	Director of Resources, Director of Commissioning and the Borough Solicitor
Accountable scrutiny committee	Economy and Business Improvement
Ward(s) affected	None specifically
Key Decision	No
Executive summary	<p>This Report brings together the work carried out by the GO project finance officers, the Audit Committee, the Constitution Working Group and the Strategic Commissioning Cross Party Members Group on the Financial Procedure Rules, the Responsibility for Functions and the review of the Council's Overview and Scrutiny arrangements.</p> <p>The Council is being asked to approve the revised Financial Procedure Rules which are set out in Appendix 1 of the report and which are proposed to be formally approved by the other partners of the GO project. The revised Financial Procedural Rules reflect the Council's current Political and Management Structures and are intended to be generic between the GO partners, with local variation where necessary. It is intended that the new Rules should take effect, 1st April 2012.</p> <p>The Council is being asked to approve, in principle, a revised Part 3 of the Constitution Responsibility for Functions which is set out in Appendix 2 of the report. The revisions propose a fundamentally different approach to the Responsibility for Functions which is drafted on the basis that the functions delegated to Committees, Cabinet and Cabinet Members are prescribed in greater detail than at present, with those functions not so prescribed being exercised by Officers. This proposal provides greater clarity as to the functions exercised by Members and provides for more flexibility within the Officer delegations. The effectiveness of the proposed revisions is reliant upon sufficient safeguards elsewhere in the Constitution, particularly in Part 2 Article 13 (Principles of Sound Decision Making). Other parts of the Constitution will require significant review, consequent upon the proposed changes. Once the Council has approved the revised Scheme of Delegation in principle, the Constitution Working Group will undertake the further revisions which are necessary to implement these revisions and also any changes to the Overview and Scrutiny arrangements referred to below. This comprehensive review will be brought to the Council for approval as soon as possible, but, in any event, in time for implementation on or before May 2012.</p>

	<p>Finally, the report provides an update on the progress of the review of the Council's Overview and Scrutiny arrangements which intends to report its recommendation to the Council in December 2011.</p>
Recommendations	<p>The Council is asked to</p> <ol style="list-style-type: none"> 1. Approve the Financial Rules set out at Appendix 1 for implementation on 1st April 2012. 2. Delegate to the Director of Resources, in consultation with the Chair of Audit Committee, authority to make any textual or other amendments to the Financial Rules approved under paragraph 1 above, which arise from further consideration by the GO partnership and which do not materially affect the approved Rules. 3. Approve in principle Part 3 Responsibilities for Functions set out in Appendix 2 and the Corporate Policy Table in Appendix 3 <p>SUBJECT TO</p> <ol style="list-style-type: none"> a) Leader/Cabinet approving the Executive Functions set out in Part 3E (Appendix 2). b) Consequential amendments to be approved by Council following further consideration by the Constitution Working Group. <ol style="list-style-type: none"> 4. Note the progress of the Overview and Scrutiny Review and to agree the timescales.
Financial implications	<p>The revisions to the Financial Rules provide a robust but more flexible approach to financial management across the Council which maintain the principles of sound, stewardship of public funds.</p> <p>A common set of rules will facilitate joint working across the GO partner organisations and support the drive for effectiveness and efficiencies to be delivered via the shared service.</p> <p>There are no specific revenue or capital implications of this report.</p> <p>Contact officer: Mark Sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264123</p>
Legal implications	<p>Contained in the report.</p> <p>Contact officer: Sara Freckleton , sara.freckleton@teWKesbury.gov.uk. 01684 272011</p>
HR implications (including learning and organisational development)	<p>The proposed changes will need to be communicated to members and officers once approved.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 264355</p>
Key risks	<p>See attached risk assessment – Appendix 4</p>

1. Background

- 1.1** A comprehensive review of the Council's Constitution was commenced last year to address both the Council's Action Plan approved in March 2010 and to recognise the fact that the last full review of the Constitution was in 2005.
- 1.2** In December 2010, the Council approved a number of amendments to the Constitution which were deemed to be necessary to satisfy the Council's Action Plan, recognising that the comprehensive review was still ongoing. The Constitution Working Group last reported to the Council on the 27th June 2011 with an update on the progress of the review.
- 1.3** The Working Group has undertaken a comprehensive review of Part 3, and has commented upon proposed revisions to the Financial Procedure Rules, and these two significant pieces of work are now placed before the Council for approval.
- 1.4** The proposed approach to the Responsibilities for Functions (Scheme of Delegation) - Part 3 will result in a requirement for consequential considerable amendment to other parts of the Constitution particularly the Articles (Part 2) in order to ensure that the decision-making is carried out transparently with robust safeguards. Therefore, the Council is being asked to approve, in principle, the proposed revisions to Part 3 to enable the fully revised Constitution to be placed before the Council for approval once the Constitution Working Group is satisfied that all necessary amendments, including those needed to accommodate the outcome of the Overview and Scrutiny review, have been addressed.
- 1.5** As Members are aware, the GO project involving the Council and its other partners (Cotswold, West Oxford and Forest of Dean) is nearing first stage implementation and it is intended that, as far as is possible, the Financial Rules to which the participating authorities work are consistent (with any local variations as appropriate).

2. Review of Financial Rules – Part 4H of the Constitution

- 2.1** The Financial Rules which are set out in Part 4 of the Council's Constitution were last updated in 2009 although remain substantially as approved in 2005. Amendments need to be made to these Rules in order to reflect the current structure, policies and procedures of the Council.
- 2.2** The Council is committed to sharing its Financial, Human Resources and Payroll services with its partner authorities (Cotswold, Forest of Dean, West Oxfordshire) through the GO project from 1st April 2012. Agreement has therefore been reached within the GO partnership with a view to agreeing a set of Financial Procedure Rules which is common to the partnership authorities, with some local variations as necessary to reflect specific procedural or Constitutional requirements of the individual authorities.
- 2.3** The draft Financial Procedure Rules which are attached at Appendix 1 have been considered and approved by finance officer representatives from each of the GO authorities and have, in Cheltenham Borough Council's case, taken into account amendments suggested by the Constitution Working Group and the Audit Committee. Each Authority will need to approve the new Rules and this may lead to further amendments being suggested.
- 2.4** The Council is being asked to approve the Financial Procedure Rules as set out in Appendix 1. Any revisions which are proposed as a result of the consideration by other partner authorities and which have a material effect on the proposed Rules will be brought to the Council for approval. It is suggested that authority be delegated to the Director of Resources in consultation with the Chair of Audit Committee to make any textual and other amendments which do not materially affect the Rules but which ensure consistency of approach across the GO authorities and alignment with the GO systems and processes.

3. Review of Responsibilities for Functions

- 3.1** Part 3 of the Constitution deals with the allocation of the Authority's functions to various bodies and individuals, e.g. Council (i.e. full Council), Committees (and Sub-Committees), Cabinet, Cabinet Members and Officers. A fully revised Part 3 has been prepared for consideration by Council and Cabinet and is included at Appendix 2 to this report.
- 3.2** The majority of the Authority's functions are Executive Functions and these fall to the Leader of the Council to allocate. These Functions are set out in Part 3E (Appendix 2). However, the Authority also has a number of important Non-Executive Functions and it is for Council to decide how these will be allocated. These Non-Executive Functions are set out in Parts 3B-D (Appendix 2).
- 3.3** The new draft Part 3 is considerably shorter than the current Part 3. This is due to:
- (a) rewriting and shortening of much of the current text;
 - (b) transfer of a number of current tables/schedules to appendices to the Constitution;
 - (c) a fundamental change in approach to the allocation/delegation of functions to Officers.
- 3.4** The current Part 3 operates on the basis of those functions delegated to Committees, Cabinet and Cabinet Members being drawn in a wide sense and the delegated functions to Officers being closely prescribed. The new draft Part 3 is drawn on the basis of the functions delegated to Committees, Cabinet and Cabinet Members being prescribed in more detail than at present; Officers will then be able to exercise all other functions not so prescribed (and subject to certain safeguards as referred to below). This new approach potentially has at least two key benefits:
- greater clarity as to what the Functions of Members actually are;
 - a clearer and more flexible scheme of Officer delegation because Officers will simply exercise those Functions not allocated elsewhere in Part 3 and there will not be detailed line by line delegations which will quickly become out of date.
- 3.5** It will be important to build in safeguards to the new approach to Officer delegation. The proposed safeguards are fourfold:
- (i) the delegator (e.g. Council, the Leader) or a Cabinet Member (in respect of an Executive Function falling within their portfolio) may direct in any particular case that an Officer shall not exercise their delegated power and that the matter shall be referred upwards to Council, the Leader, the Cabinet Member, etc. for decision;
 - (ii) Key Decisions and Significant Decisions cannot be made by Officers except where the Chief Executive or an Executive Director is exercising their urgency powers;
 - (iii) all Officers must comply with the principles of sound decision making set out in Article 13 of the Constitution (these principles, which include the obligation to comply with Financial Rules and Contract Rules, are being reviewed to ensure that they are comprehensive and robust and an updated Article 13 will be referred to Council subsequently for approval along with the final version of Part 3);
 - (iv) where the Chief Executive, Executive Directors or Directors sub-delegate their Functions, they will be obliged to ensure that the empowered Officer is fully aware of the responsibilities and accountabilities that come with those Functions.
- 3.6** It should be noted that the description of Functions and service areas delegated to Officers reflects the Chief Executive's proposals to transfer some functions from the Director Operations to other Directors, principally the Director Wellbeing & Culture in readiness for the creation of the

proposed local authority company with Cotswold District Council.

- 3.7** The proposed delegations to officers in Part 3D and E include provision for the Chief Executive and Executive Directors to undertake functions where other officers are absent or unable to act. Where a statutory officer (Head of Paid Service, Monitoring Officer or Chief Finance Officer) is acting in their statutory capacity, then their nominated deputy will act in their absence or when they are unable to act.
- 3.8** Appendix 3 to the report contains a draft table showing the Authority's current corporate (as opposed to operational) policies, plans and strategies. This document is cross referenced in the new Part 3 and is intended to set out which parts of the Authority are responsible for which policies, etc. and who the Lead Members/Officers are together with other information such as when the policy, etc. is up for review. The table includes those policies, etc. which comprise the Policy Framework, .i.e. those which are produced by the Executive and approved by Council. Some elements of the table remain to be populated.

4. Review of Overview & Scrutiny Arrangements

- 4.1** The objective of the review is to ensure an effective scrutiny process operates in Cheltenham Borough Council which supports commissioning and achieves positive outcomes for the town.
- 4.2** As Members are aware, a review of the Council's Overview and Scrutiny arrangements are currently taking place. It is intended that any changes are implemented following the elections in May 2012.
- 4.3** On 25 June, the Cabinet Member Corporate Services wrote to all members suggesting that as there seemed to be a consensus from members on the need for change to the current scrutiny arrangements, a small working group be set up and proposals brought back to the October Council meeting. This timetable would enable the Constitution Working Group to consider the constitutional changes required for the new arrangements in the same timescales.
- 4.4** Councillor Penny Hall is Project Sponsor, and Councillor Colin Hay as Cabinet Member Corporate Services is a key stakeholder for the review which is being managed by the Democratic Services Manager. The Strategic Cross Party Members Group is acting as a sounding board for the review to ensure the commissioning requirements are met.
- 4.5** The review is informed by a variety of sources to enable a view to be formed on what matters are being scrutinised and how effectively this is being done. The sources of information include:
- An analysis of the items on scrutiny agendas over a 12 month period starting from June 2010 by source, type and outcome.
 - A scrutiny questionnaire sent to all members, officers and co-optees in August.
 - An interactive workshop with members and officers involved in the scrutiny process in October.
 - Consideration of the needs of the commissioning process.
 - Consideration of best practice and scrutiny reviews carried out by other councils.
- 4.6** This approach was agreed by the Strategic Cross Party Working Group on 19 July 2011. At the commencement of the review it became apparent that it could not be completed as comprehensively as is necessary in time for the October meeting of Council. A revised plan was considered and agreed by the Project Sponsor and by the Constitution Working Group.
- 4.7** Good progress has been made on the review and is currently on target against the plan in that:-

- the analysis of scrutiny agendas is in progress.
- the questionnaire has been issued to members and officers with 21 responses received from members and 11 from officers. Responses are currently being analysed but initial indications are that 65% of members who responded thought that overview and scrutiny could be operating more effectively. 50% of members responding thought the size and structure of scrutiny needed reviewing as well as the agenda for scrutiny meetings and reports. These responses confirm the need and appetite for a review to be carried out and recommendations for improvements brought back to Council.
- a workshop has been held with officers involved in commissioning (12 September 2011) to consider the potential impact of commissioning on overview and scrutiny.
- the Democratic Services Manager is working with the scrutiny team at Gloucestershire County Council to run a workshop at the Democratic and Member Services network meeting on 30 September to examples for best practice from other councils.
- workshops are being planned with officers and members in October. It is important that we get members and officers buy in during the review hence the workshops are an important part of the process. At the workshops it is intended to review the results of the analysis and get ideas on the potential new arrangements.

4.8 The revised timescale which is now proposed for the review is:

10 October 2011 – update report to Council

12 December 2011 – report on revised scrutiny arrangements for approval by Council

January to May 2012 – detailed arrangements and preparation for implementation

May/June 2012 – Member induction and implementation of new arrangements.

5. Reasons for recommendations

5.1 To ensure

- that the Council's Financial Procedure Rules are up to date and reflect the current structure, policies and procedures of the Council as well as assisting the implementation of the shared arrangements under the GO partnership.
- that the Responsibility for Functions (Scheme of Delegation) is clear, robust and transparent.

5.2 To update the Council on the progress of the review of the Council's Overview and Scrutiny arrangements.

6. Alternative options considered

6.1 The retention of a similar approach to officer delegations as that in the current Part 3 was considered. The Constitution Working Group decided to pursue the revised approach in view of the benefits set out in section 3 above but also subject to the safeguards in that section.

7. Consultation and feedback

7.1 Consultation on the proposed Financial Rules has taken place with the GO partnership (Finance Officers) with the Senior Leadership Team, the Constitution Working Group and the Audit Committee.

- 7.2** Consultation on the proposed revised Part 3 has taken place with Officers, the Constitution Working Group and informally with Cabinet Members.
- 7.3** Consultation on the review of the Council's Overview and Scrutiny arrangements has taken place as set out in section 4 of this report.
- 7.4** If Members wish to make any further observations or comments on the Constitution, particularly any suggestions for amendment, then these can be made to any member of the Constitution Working Group (Councillors Les Godwin, Colin Hay and Duncan Smith) or to the Borough Solicitor/Monitoring Officer. The Working Group will continue to meet and would welcome any input from Members to inform the review.

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Appendices	<ol style="list-style-type: none"> 1. Financial Rules 2. Part 3 Responsibilities for Functions (inc draft appendices – Lead Member portfolios, Allocation of local choice functions) 3. Corporate Policy Table 4. Risk Assessment
Background information	Council Constitution