

PART A

Report to: Constitution Working Party
Date of meeting: 23 February 2012
Report of: Head of Legal and Property Services
Title: Suggested Amendments to the Constitution

1.0 **SUMMARY**

1.1 To consider the following changes to the Constitution for recommendation on to Council.

- A minor amendment to the Council scheme of delegation relating to Town and Country Planning and Development Control with regard to Article 4 Directions.
- To agree to changes to the Officer Code of Conduct to reflect the introduction of offences under the Bribery Act 2010.
- The Watford Borough Petition Scheme
- Matters for consideration at Council meetings
- Arrangements for access by councillors to Part B reports
- Access to meetings and papers in respect of Scrutiny Task Groups
- Replacement members on committees
- Councillors' names in minutes.
- Virement Rules

2.0 **RECOMMENDATIONS**

To recommend to Council

2.1 That A 6 (m) of the Council Scheme of Delegation be amended to remove the words 'where urgent action is considered necessary'

2.2 To amend the Officer Code of Conduct by adding the following paragraphs:

To 2.7 - Working with Contract and Contractors

'It is a criminal offence under the Bribery Act 2010 to request, agree or accept a financial or other advantage intending that you will perform your duties as a council officer improperly, or get another council officer to perform their duties

improperly. It does not matter if you do not directly receive or accept the advantage. You are expected to perform your duties in good faith and impartially. As a council officer you are in a position of trust.'

To 2.8 Gifts, Loans, Benefits or Hospitality

'To prevent any suspicion of dishonesty or corruption as specified above and to protect you from suspicion, a hospitality register will be kept by the Head of Legal and Property Services'

- 2.3 To advise Council whether to retain the Watford Borough Petition Scheme post the implementation of section 46 of the Localism Act 2011.
- 2.4 To determine what standard items should be excluded from the agenda for Budget and Annual Council – see paragraph 3.4.
- 2.5 To agree the process for the circulation of Part B reports as outlined in paragraph 3.5.
- 2.6 To agree the process for dealing with Scrutiny Task Group meetings as outlined in paragraph 3.6
- 2.7 To agree the procedure for replacement members on committees as outlined in paragraph 3.7
- 2.8 To agree to refer to the full names of councillors in committee minutes. See paragraph 3.8
- 2.9 To agree the revised virement scheme as set out in Appendix C.

Contact Officer:

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3.0 DETAILED PROPOSAL

3.1 A minor amendment to the Council scheme of delegation relating to Town and Country Planning and Development Control with regard to Article 4 Directions.

- 3.1.1 During the course of the year it has been necessary for the Council to consider making directions under Article 4 of the Town and Country Planning General Permitted Development Order 1995.

The provisions of Article 4 allow the Council as Local Planning Authority, if it considers it is expedient, that development that would otherwise be

deemed to have been granted permission under Schedule 2 to the Order (with the exception of Parts 22 and 23 or Part B), should not be so deemed, and that the Local Planning Authority should be entitled to determine whether planning permission should be granted, by an affected person making a formal application for planning permission.

The Direction can apply to all or any development of the Part, Class or Paragraph in question in an area specified in the Direction or any particular development falling within that Part, Class or Paragraph which is specified in the Direction.

3.1.2 Once a Direction is made it must be served on the owners and occupiers of the land which it affects and must be published in the local paper. It comes into effect immediately but will lapse after six months unless it is confirmed, either by the Local Planning Authority, or in some cases by the Secretary of State.

3.1.3 Under the current scheme of delegation the making of such a Direction is delegated to the Head of Planning and Development Manager 'where urgent action is considered necessary'.

It is the view of officers that this last proviso should be removed from the delegation and officers should be free to make and confirm such a Direction subject only to the existing caveats in the scheme of delegation. This would avoid having to take a report to Development Control Committee to confirm a Direction where no objections had been received.

3.2 **To agree to changes to the Officer Code of Conduct to reflect the introduction of offences under the Bribery Act 2010.**

3.2.1 The Bribery Act 2010 came into force on 1 July 2011 and now specifies offences relating to being bribed, as well as bribing others. The Council already has a robust code of conduct for Council employees that deals with officer relationships with the community, councillors, other employees, contractors, gifts and hospitality etc. A recent internal audit has highlighted the need to 'beef up' the code by making specific reference to the Bribery Act 2010 in the code, to ensure employees are clear about their legal position. A copy of the Officer Code is attached at Appendix A.

3.2.2 It is suggested that an additional paragraph be added to paragraph 2.7 Working with Contract and Contractors which states:
It is a criminal offence under the Bribery Act 2010 to request, agree or accept a financial or other advantage intending that you will perform your duties as a council officer improperly, or get another council officer to perform their duties improperly. It does not matter if you do not directly receive or accept the advantage. You are expected to perform your duties in good faith and impartially. As a council officer you are in a position of trust.

3.2.3 Also that an additional sentence be added in paragraph 2.8 Gifts, Loans,

Benefits or Hospitality which states:

To prevent any suspicion of dishonesty or corruption as specified above and to protect you from suspicion a hospitality register will be kept by the Head of Legal and Property.

- 3.2.4 The provisions of the Bribery Act 2010 apply to councillors as well as officers. At present the Members Code of Conduct is laid down by statutory instrument. Also on this agenda is an item on the future of the standards regime post the implementation of the Localism Act 2011. It would be officers intention to make reference to the Bribery Act 2010 in a new code of conduct to be adopted by the Council from July 2012.

3.3 **The Watford Borough Petition Scheme**

- 3.3.1 Section 46 of the Localism Act 2011 when brought into force will repeal the provisions of the Local Democracy, Economic Development and Construction Act 2009 requiring councils to adopt petition schemes. Prior to the requirement to have a formal scheme the Council had in its procedure rules the ability for members of the public to bring petitions to council and to cabinet. The Council kept the same requirement for the number of signatories for a petition to be debated at full council (30) as it had under the previous procedure rules.

What the scheme required which was new was the ability for petitioners to ask for a senior officer to give evidence at a public meeting about something they were responsible for as part of their job. It also introduced the ability to submit petitions electronically and the Council purchased specific software to receive such petitions. To date the Council has received no electronic petitions. A copy of the petition scheme is attached as Appendix B.

- 3.3.2 The Working Party is asked to consider whether it wishes to recommend to Council removing the current scheme and reverting to the previous position of petitions being accepted for discussion at full council and cabinet by way of the procedure rules, maintaining the ability for such petitions to be received electronically.

3.4 **Matters for consideration at Council meetings**

- 3.4.1 The Constitution states that there will be no public questions at Annual and Budget Councils. The Working Party is asked whether this should also include public petitions.
- 3.4.2 There is no Mayor's report at Annual Council. The Working Party is asked whether this should also include Budget Council as the Mayor already does quite a lot of speaking at Budget Council and Members are provided with ample opportunity to question her on the budget proposals and other issues.
- 3.4.3 The Working Party is also asked to consider whether there is a need for

Member Questions at Annual Council bearing in mind that the Municipal Year has only just started.

3.5 To agree the process for the circulation of Part B reports as outlined in paragraph 3.5.

3.5.1 Part B reports are sent to all members of the particular committee.

The current practice regarding non committee members, adopted after the December 2011 Cabinet meeting, was for the Democratic Services Manager to write to all Group Leaders asking them to advise their Group that, if anyone wanted a copy of a Part B item, they had to contact the Democratic Services Manager or the Head of Legal & Property. This process was followed for the January 2012 meeting. Only one councillor made contact and was given a copy of the report. At the meeting all the other non Cabinet councillors in attendance asked for copies and it was quite difficult to keep track of who took what, especially as the discussion on the item had already started

3.5.2 The Working Party is asked to agree that in future, one hard copy of a Part B report is sent to each of the Group Leaders asking them to contact the Democratic Services Manager if they require any further copies and stating why they need them. At least this way all Groups will have had an opportunity to see the report. This is particularly relevant for Cabinet where opposition groups members attend to ask questions on agenda items.

3.6 Access to meetings and papers in respect of Scrutiny Task Groups

3.6.1 When the current scrutiny arrangements were introduced it was determined that scrutiny task groups should be treated in the same way as formal committees with agenda and minutes being published on the web and the meetings open to the public.

One of the problems which occurred following a meeting of the Hospital Parking Charges Task Group at which the press was present was that an inappropriate quote was published in the paper.

The purpose of task groups is to brainstorm ideas and thoughts on a specific topic with a view to making recommendations to the Overview & Scrutiny Committee. If the press and public are present there is always the risk that a "random" comment made as part of the discussion may be taken out of context and presented as a firm proposal. This can set hares running unnecessarily. It is also important to encourage a good flow of ideas at Task Groups to ensure that all aspects of the topic are covered and having the press and public present can stifle such debates.

We have consulted other local authorities to see what they do with regard to task groups and most responded that they did not treat them as public meetings.

Obviously recommendations made to the Overview &Scrutiny Committee will become public, along with the background papers which would include Task Group reports and minutes.

3.6.2 It is suggested that Task Groups be treated as informal meetings and not publicised but that the Task Group reports and minutes be included as background papers (and therefore accessible) once the Task Group's final recommendations are submitted to the Overview & Scrutiny Committee.

3.7 **To agree the procedure for replacement members on committees**

3.7.1 The Constitution Working Party at its meeting on 2/4/08 agreed that replacement members should be allowed on Call-in & Performance Scrutiny only. The arrangement was not specifically updated when the new arrangements were introduced although the report to Council did state that "the current convention of substitution/replacement of members on the Overview & Scrutiny Committee and Budget Panel be retained, except where either are meeting to discuss an ongoing review." As there was not and Overview & Scrutiny Committee under the old arrangements this point needs clarification and also needs to be specifically included in the Constitution.

3.7.1 It is suggested that replacement members be allowed on all scrutiny committees except where there is an ongoing review and that this arrangement be included in the Constitution.

3.8 **Councillors' names in minutes**

The current practice when writing minutes is to refer to "a member" and "another member" etc when indicating who spoke during a discussion. When a number of members speak on a particular issue this can get very cumbersome. An alternative would be to refer to councillors by name.

Although this does not require a change to the Constitution, the Working Party is asked for its views on introducing this proposal with effect from the 2012/13 Municipal Year.

3.9 **Virement Rules**

3.9.1 The Head of Strategic Finance is proposing to update the Virement Rules to reflect the fact that the Executive Director Resources Post will be deleted at the beginning of the next financial year and also to clarify the use of earmarked reserves.

3.9.2 The proposed rules are attached as Appendix C. The proposal is that where a cost centre is currently under the indirect control of the Executive Director Resources this role will be taken by the Head of Strategic Finance. Also all virements over £50,000 will require a further control through the relevant portfolio holder or the Mayor.

- 4.0 **IMPLICATIONS**
- 4.1 **Financial**
- 4.1.1 The Head of Strategic Finance comments that there are no financial implications arising directly out of this report.
- 4.2 **Legal Issues** (Monitoring Officer)
- 4.2.1 The Head of Legal and Property Services comments that the legal implications are contained within the body of the report.
- 4.3 **Equalities**
No implications
- 4.4 **Potential Risks**
None apparent

- 4.5 **Staffing**
- 4.5.1 N/A
- 4.6 **Accommodation**
- 4.6.1 N/A
- 4.7 **Community Safety**
- 4.7.1 N/A
- 4.8 **Sustainability**
- 4.8.1 N/A

Appendices

- A. Officers' Code of Conduct
- B. Watford Borough Council Petition Scheme
- C. Proposed Virement Rules

Background Papers

Constitution

File Reference None