

CABINET

21 April 2008

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007  
CONSEQUENTIAL CHANGES TO THE CONSTITUTION

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

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RECENT REFERENCES:

CAB1591 - Local Government and Public Involvement in Health Act 2007 – 16 January 2008

EXECUTIVE SUMMARY:

The Report makes provisions for changes to the Constitution following the 2007 Act. It follows 2008 regulations which specify which functions cannot be undertaken by Cabinet. It is anticipated that further reports will be necessary in due course as other regulations on other aspects of the Act are made.

A delegation to the Monitoring Officer is also proposed to allow minor editing/up-dating of the Constitution.

RECOMMENDATIONS:

1. That it be recommended to Council, that the changes to the Constitution as set out in Appendices 1-4 be approved.
2. That further consideration be given in 2009/10 as to whether it is appropriate to establish a special committee, on political balance rules, to undertake functions in respect of the review of executive arrangements and possible review of electoral cycles.

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### LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 CONSEQUENTIAL CHANGES TO THE CONSTITUTION

#### REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

#### DETAIL:

##### 1 Introduction

- 1.1 The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008, as amended, have been made by the Secretary of State to give effect to some of the provisions of the 2007 Act.
- 1.2 The basic principle in the Local Government Act 2000 was that all executive decisions were a matter for Cabinet. Regulations would determine particular functions which had to be treated differently. If a function was not mentioned in these regulations they were automatically executive functions reserved to Cabinet. The Council's Constitution is based on this principle.
- 1.3 The 2008 Regulations identify functions which are not to be the responsibility of Cabinet, where responsibility can be shared between Cabinet and Council, or upon which the Council has a choice as to which body should be responsible.

##### 2 Review of Executive Arrangements and Change in Cycle of Elections

- 2.1 The main issues dealt with in these Regulations are the provisions in the 2007 Act which relate to the procedure for changing the Council's governance arrangements. The Council will have to decide whether it wishes to go to a directly elected mayor with Cabinet or a strengthened Leader with Cabinet system. A linked proposal in the Act is the power to change from election by thirds to whole council elections every four years. Further details were outlined in Report CAB1591. Implementation for both governance and electoral arrangements would be in the May 2011 elections with preliminary work in 2009/10 onwards. These provisions cannot be the responsibility of Cabinet. Any decisions have to be taken by either Council or a Committee established for the purpose. The Regulations require that the major policy functions be reserved to Council (Appendix 1). At this stage, for the purpose of updating the Constitution, it is proposed that the administration of the process be the responsibility of the Licensing and Regulation Committee, which is already responsible for other electoral issues (Appendix 2).
- 2.2 It would still be possible for both Cabinet and Principal Scrutiny Committee to comment and have input into the process.
- 2.3 Another possible approach would be for a Special Committee on political balance rules to be established to undertake these functions. This could be considered nearer to the time in 2009/10.

### 3 Community Governance Reviews

- 3.1 These relate to changes to Parish Councils. Under the 2007 Act the Council will now have the power to make the Order rather than making recommendations to the Secretary of State.
- 3.2 The functions cannot be undertaken by Cabinet. The Regulations require that the making of the Order be reserved to Council (Appendix 1). It is proposed that the administration of the process be the responsibility of the Licensing and Regulation Committee, which had a similar role under the earlier legislation (Appendix 2).

### 4 Removal of Executive Leader

- 4.1 If the Council chooses the strengthened Leader with Cabinet system, then the Leader will continue to hold office until he/she is next up for election – rather than being appointed each year at Annual Council. In order to provide some protection there will be a power to remove the Leader. The Regulations require that the adoption of that procedure in the Constitution, and any decision to remove a Leader be reserved to the Council (Appendix 1).

### 5 Local Area Agreements

- 5.1 The power to enter into such agreements can, but need not be, the responsibility of Cabinet. It is proposed that this function should be undertaken by Cabinet. However, as with all powers held by Cabinet, this would be subject to the general provision in the Constitution which requires any decision which comes outside the Council's approved budget and policy framework to be referred to full Council (Appendix 3).

### 6 Minor Editing of the Constitution

- 6.1 This is the first of a number of changes to the Constitution arising from the 2007 Act. Any issues of principle will be brought forward to Members.
- 6.2 However, it would be useful to include a provision for minor editing in the Scheme of Delegation so that every minor change did not have to be subject of a report to Members. This could be of general application, not only to the 2007 Act. It could also extend to updating references to legislation, not affecting issues of principle previously approved by Members (Appendix 4).
- 6.3 Appendix 1 also includes other minor changes eg the Community Strategy is now to be called the Sustainable Community Strategy.
- 6.4 The Regulations also update references so that the minimum revenue provision has to be referred to Council as a part of the Treasury Management Strategy – which accords with local practice.

### OTHER CONSIDERATIONS:

#### 7 CORPORATE STRATEGY (RELEVANCE TO):

- 7.1 Relevant to the strategic priority of being an efficient and effective Council.

8 RESOURCE IMPLICATIONS:

- 8.1 Work on updating the Constitution is undertaking within existing resources. Resource issues relating to policy decisions to be taken under the 2007 Act will be included in reports at the appropriate time.

BACKGROUND DOCUMENTS: None.

APPENDICES:

Appendix 1 – Functions Reserved to Full Council.

Appendix 2 - Functions for the Licensing and Regulation Committee.

Appendix 3 - Local Choice Functions – Local Area Agreements.

Appendix 4 - Minor Editing Delegation.

Functions Reserved to Full CouncilIn Article 4.01 of the Constitution

- a) Insert "Sustainable" before "Community Strategy".
- d) Add "or for determining the Authority's minimum revenue provision" after "A plan or strategy for the control of the Authority's borrowing, investments or capital expenditure".

In Article 4.04 of the Constitution

Insert the following paragraphs after para k) and renumber remaining paragraphs:

- l) Making a request under section 14(A)(1) (requests for single member electoral areas) of the Local Government Act 1992 for single-member electoral areas.
- m) Passing a resolution to change a scheme for elections under section 32(1), 37(1) or 39(1) (resolutions for schemes for elections) of the Local Government and Public Involvement in Health Act 2007.
- n) The functions under the Local Government Act 2000 of:-
  - i) deciding whether to make proposals for a change in governance arrangements of the kind set out in sections 33A and 33B of the 2000 Act;
  - ii) deciding whether a change of the kind set out in section 33A of the 2000 Act should be subject to approval in referendum under Section 33E(5) of the Act; and
  - iii) passing a resolution to make a change in governance arrangements under section 33F of that Act;
- o) The functions under the Local Government Act 2000 of:-
  - i) including provision in executive arrangements for the Council to remove the executive leader by resolution under section 44C(1) of that Act; and
  - ii) passing a resolution to remove the executive leader under 44C(2) of that Act.
- p) The function of making an order giving effect to recommendations made in a community governance review under section 86 (reorganisation of community governance) of the Local Government and Public Involvement in Health Act 2007.
- q) The duty to make a change in governance arrangements under paragraph 3 or 8 of Schedule 4 to the Local Government and Public Involvement in Health Act 2007.

Appendix 2Functions for the Licensing and Regulation Committee

In para 4.10 of Part 3 Section 4 of the Constitution

Delete para 53 (now repealed) and replace by:

<b>Function</b>	<b>Provision of Act or Statutory Instrument</b>
53. Duty to consult on change of scheme for elections.	Sections 33(2), 38(2) and 40(2) of the Local Government and Public Involvement in Health Act 2007.
54. Duties relating to publicity.	Sections 35, 41 and 52 of the Local Government and Public Involvement in Health Act 2007.
55. Duties relating to notice to Electoral Commission.	Sections 36 and 42 of the Local Government and Public Involvement in Health Act 2007.
56. Power to alter years of ordinary elections of parish councillors.	Section 53 of the Local Government and Public Involvement in Health Act 2007.
57. Functions relating to change of name of electoral area.	Section 59 of the Local Government and Public Involvement in Health Act 2007.
58. Duty to draw up proposals relating to change of governance arrangements.	Section 33E(2) of the Local Government Act 2000.
59. Duty to consult prior to drawing up proposals relating to change of governance arrangements.	Section 33E(6) of the Local Government Act 2000.
60. Duty to implement new governance arrangements.	Section 33G and 33H of the Local Government Act 2000.
61. Duty to comply with direction given by the Secretary of State relating to change of governance arrangements.	Section 33I of the Local Government Act 2000.
62. Duty to hold referendum relating to change of governance arrangements.	Section 33K(2) of the Local Government Act 2000.
63. Duty to publish notice if governance proposals not approved.	Section 33K(6) of the Local Government Act 2000.
64. Duties relating to community governance reviews.	Section 79 of the Local Government and Public Involvement in Health Act 2007.
65. Functions relating to community governance petitions.	Section 80, 83 to 85 of the Local Government and Public Involvement in Health Act 2007.
66. Functions relating to terms of reference of review.	Section 81(4) to (6) of the Local Government and Public Involvement in Health Act 2007.
67. Power to undertake a community governance review.	Section 82 of the Local Government and Public Involvement in Health Act 2007.
68. Functions relating to making of recommendations.	Section 87 to 92 of the Local Government and Public Involvement in Health Act 2007.
69. Duties when undertaking review.	Section 93 to 95 of the Local Government and Public Involvement in Health Act 2007.
70. Duty to publicise outcome of review.	Section 96 of the Local Government and Public Involvement in Health Act 2007.
71. Duty to send two copies of order to	Section 98(1) of the Local Government and

Secretary of State and Electoral Commission.	Public Involvement in Health Act 2007.
72. Power to make agreements about incidental matters.	Section 99 of the Local Government and Public Involvement in Health Act 2007.

Re-number remaining paragraphs.

Appendix 3Local Choice Functions – Local Area AgreementsIn Part 3 Section 1 of the Constitution

Add

<b>Function</b>	<b>Responsibility</b>	<b>Delegation of Function</b>
22. Functions under sections 106, 110, 111 and 113 of the Local Government and Public Involvement in Health Act 2007 relating to local area agreements.	Cabinet	To the extent permitted in the terms of the portfolio holder delegation scheme.



Appendix 4Minor Editing DelegationIn Article 15 of the Constitution

In para 15.03 - Changes to the Constitution - add:

<b>Approval Mechanism</b>	<b>Part of the Constitution</b>
4. The Monitoring Officer to undertake minor consequential editing to the text to take account of other changes approved by Council, Cabinet or a Committee.	All parts of the Constitution
5. The Monitoring Officer to undertake minor consequential editing to the text to take account of legislative changes provided that it does not involve material changes to principles previously approved by Council, Cabinet or a Committee.	All parts of the Constitution