

Title of Report:	Review of the Constitution	Item 9
Report to be considered by:	Council	

Purpose of Report:

To propose various amendments to the Council's Constitution.

Recommended Action:

- (1) To agree to minor changes to Paragraph 2.6.5 of Article 6 (if required).
- (2) To approve the amendments to the Council's Scheme of Delegation in relation to Public Rights of Way and the Integrated Waste Management Contract as set out in Paragraphs 3.1 to 3.8 of the report.
- (3) To approve the change to the Council Rules of Procedure (4.1.4) (as set out in Paragraph 4) in relation to the adjustment in dates of Council meetings.
- (4) To approve the Council's Budget and Planning and Policy Framework for 2004/05 (as set out in Paragraph 5.1 and 5.2 of this report) and in accordance with Regulation 4 and Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, and that all other plans and strategies requiring approval be delegated to the Executive.
- (5) To adopt the Overview and Scrutiny Guide (Appendix 9(a)) and to incorporate it within the Council's Constitution under Part 14 Codes and Protocols.
- (6) To approve the revised schedule of meetings as set out in Appendix 9(b).

Reason for decision to be taken:

- To amend the Constitution to reflect the Council's desire to have efficient and effective decision making/community involvement processes in place.

List of other options considered:

- None

Key background documentation:

- None

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Supporting Information

1. Background

- 1.1 Article 14 of the Constitution requires the Council to monitor and review its operation to ensure that the aims and principles of the Constitution are given full effect. A review has been undertaken and set out below are a number of proposed amendments.

2. Executive – Article 6 and Part 5 Rules of Procedure

- 2.1 Paragraph 2.6.5 of Article 6 sets out the current Executive Portfolios and this may need to be amended in the light of any proposed changes to these Portfolios.

Executive Leader
Deputy Leader and Environment and Waste
Community Care and Housing Operations
Children and Young People
Strategy and Commissioning
Community Safety
Highways and Transportation
Public Protection and Information and Communication

Recommendation:

That Paragraph 2.6.5 of Article 6, setting out the Executive Portfolios, be amended to reflect any changes made at the Annual Council meeting.

3. Scheme of Delegation – Part 3 of the Rules of Procedure

Public Rights of Way

- 3.1 The Constitution Task Group, at its meeting on 29 March 2004, was advised that under the Council's current Scheme of Delegation, the Head of Countryside and Environment has the following delegated powers in relation to Public Rights of Way. It is clear that these powers were incorporated into the new Constitution from the old Standing Orders and do not reflect the requirements of the Local Government Act 2000 in relation to Key Decisions.
- (1) To enter into agreements, where appropriate and in consultation with Ward Members, with landowners for the creation of new Public Rights of Way and where no objections are received. (Section 25 of the Highways Act 1980)
 - (2) To extinguish Public Rights of Way, where appropriate and in consultation with Ward Members, and where no objections are received. (Section 118 of the Highways Act 1980)
 - (3) To divert existing Public Rights of Way, where appropriate and in consultation with Ward Members, and where no objections are received (Section 119 of the Highways Act 1980).
- 3.2 Under the current arrangements and where objections are raised to those issues referred to above, the matter has to be referred to the Executive for determination.
- 3.3 Under the Local Government Act 2000, Key Decisions, which must be made by the Council or the Executive, are described as matters which either:

- (1) affect more than one Ward or;
- (2) result in the Local Authority incurring expenditure which is, or the making of savings which are, significant having regard to the Local Authority's budget for the service or function to which the decision is related.

3.4 In order to streamline the Council's decision making process in relation to Key Decision, the Council has approved a list of exceptions under (i) which effectively means that decisions can be made by the Individual Portfolio Holder much quicker whilst still retaining transparency within the process.

3.5 In relation to Public Rights of Way it is suggested that the following amendments be made to the Scheme of Delegation and to the list of exceptions to the Key Decision requirements. The proposed changes will ensure efficient and transparent decision making and will also bring the Rights of Way issues into line with the requirements of the Local Government Act 2000.

Scheme of Delegation

- (1) To enter into agreements, where appropriate and in agreement with Ward Members, with landowners for the creation of new Public Rights of Way, which does not involve more than one Ward (Section 25 of the Highways Act 1980).
- (2) To extinguish Public Rights of Way, where appropriate and in agreement with Ward Members, and which does not involve more than one Ward (Section 118 of the Highways Act 1980).
- (3) To divert existing Public Rights of Way, where appropriate and in agreement with Ward Members, and which does not involve more than one Ward (Section 119 of the Highways Act 1980).
- (4) To determine claims for Public Rights of Way, where appropriate and in agreement with Ward Members, under Section 53 of the Wildlife and Countryside Act 1981.

Individual Decision Making Scheme

3.6 Insofar as the Public Rights of Way issues referred to in (i) to (iv) above are concerned, it is proposed that where these issues affect more than one Ward, whether objections are received or not, the decision be the subject of the Individual decision making process. The list of exceptions to the Key Decisions will therefore need to be extended to cover these processes.

Integrated Waste Management Contract

3.7 At its meeting on 11 March 2004, the Executive considered a report in relation to project governance for the integrated Waste Management Contract. The Executive accepted that neither it nor the individual decision-making process could facilitate the quick decisions necessary to procure the Waste Management Contract. The suggested way of achieving this was to amend the Scheme of Delegation in the Constitution so that the Executive delegates to the Corporate Director, Environment and Public Protection or in his absence the Head of Countryside and Environment, in consultation with Members and Officers, set out in the pro-forma, the authority to make all decisions within this process, subject to the following which will be referred to the Executive or the Council:

- (1) The appointment of a preferred bidder and award of contract. These two key decisions will be taken by the Executive, the latter being referred to Council for the award of the Contract.
- (2) Any decision take under delegated powers will be recorded in writing on the pro-forma. The pro-forma will provide an audit trail of decisions taken and of Member consultation. This will represent the consultation required under the Constitution. The Chair of the Select Committee will be involved in the case of an “immediate” decision, which is not subject to call in. This is in accordance with Procedure Rule 6.5.1.

Where an immediate decision is necessary, those authorising the decision will need to be available at very short notice, especially at the negotiation phase.

Throughout this process there is still the option for a decision to be referred to the Executive by the Executive Member with the Portfolio for Waste and/or the Corporate Director, Environment and Public Protection where this is considered appropriate.

The exercise of the delegated powers in this report will not be subject to the protocol for decision-making by individual Executive Members despite the involvement in the decision of the Executive Member for Waste with the Corporate Director.

- (3) Financial limits are set in the Constitution, so no exercise of delegated authority may be taken outside the approved revenue and capital budgets.

- 3.8 The proposed amendment to the Scheme of Delegation applies to decisions for the procurement of the new integrated waste management contract only. Outside waste issues outside the formal contract procurement process will continue to be considered by the Executive.

Recommendation:

That the proposed amendments to the Scheme of Delegation and individual decision-making scheme in relation to Public Rights of Way and the Integrated Waste Management Contract be approved.

4. Council Rules of Procedure – Adjustment to Council (Rule 4.1.4)

- 4.1 In the light of the recent review carried out by the Corporate Director (Strategy and Commissioning) into the events leading to a change of date of the Council budget meeting, the Constitution Task Group has approved and is recommending to Council that the following procedure replace the current Council Rules of Procedure 4.1.4.

- (1) The appropriate Proper Officer should contact the Head of Policy and Performance or Policy Manager to make them aware of the circumstances requiring a change of date.
- (2) Communication should then be undertaken between the Proper Officer (or his/her representative) and the Group Leaders to articulate the need for the change of date.
- (3) Should the Group Leaders not be available the Deputy Group Leaders should then be the points of contact.
- (4) The Group Leader should be asked for his/her views on the proposal. The resultant conversation needs to be recorded in writing, dated and timed. A copy should then be e-

mailed to the Group Leader and made available to the Head of Policy and Performance or Policy Manager.

- (5) Contact with the Chairman should then be made by the appropriate Proper Officer (or his/her representative) to articulate the need for the change of date. The Chairman will be given the views of the Group Leaders and will then make a decision on how to proceed.
- (6) The result of that discussion will then be confirmed to the Group Leaders in writing and to the Head of Policy and Performance or Policy Manager.

Recommendation:

To approve the change to the Council Rules of Procedure (4.1.4) (as set out in Paragraph 4) in relation to the adjustment in dates of Council meetings.

5. Budget and Planning/Policy Framework

- 5.1 In accordance with Regulation 4, Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the Council is requested to confirm the Planning and Policy Framework for 2004/05 as set out below:

Community Plan

Corporate Plan

Best Value Performance Plan

Crime and Disorder Reduction Strategy

Local Transport Plan

Licensing Policy

Youth Justice Plan

Plans and strategies which together comprise the development Plan eg Berkshire Structure Plan and West Berkshire Local Plan

- 5.2 It is suggested that the Council's Budget Framework be as set out below:

Revenue Budget

Capital Programme

Capital Strategy

Medium Term Financial Strategy

Borrowing Limits

Recommendations:

- (1) **That, in accordance with Regulation 4, Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the Council's Policy Framework for 2004/05 be as set out in Paragraph 6.1 above.**
- (2) **That, in accordance with Regulation 5, Schedule 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, all other plans and strategies requiring approval, and not included in the approved Policy Framework, be delegated to the Executive.**

(3) That the Budget Framework, as set out in Paragraph 6.2 above, be approved.

7. Overview and Scrutiny Guide

7.1 Over the past eight months work has been ongoing on the production of the attached Overview and Scrutiny Guide (Appendix 9(a)). The guide seeks to formalise the changes that have taken place and articulates further changes that will improve this function still further. The main changes cover:

- (1) Holding the Executive to account.
- (2) Role of the Scrutiny Business Management Group
- (3) A project management approach to scrutiny reviews
- (4) Greater involvement of Select Committees in reviews
- (5) Stronger links between the overview and scrutiny function and the Executive
- (6) Developing budget scrutiny
- (7) Monitoring performance and budgets – “champions”
- (8) More outward looking approach

7.2 The guide is comprehensive and will act as a reference text for Members, officers and outside evaluators. A summary version will be produced and made available generally.

Recommendation:

That the Overview and Scrutiny Guide (Appendix 9a) be adopted and incorporated into the Council's Constitution under Part 14 Codes and Protocols.

8. Timetable

8.1 The Council, at its meeting on 9 December 2003 approved the timetable of meetings for 2004/05. In order to reflect changes in the democratic structures, a revised schedule of meetings is attached as Appendix 9(b) for approval. The changes to meeting dates are as follows:

- In order to ensure that the Council's budget meeting takes place after the Police Authority set their precept it is proposed to change the Council meeting date from 22nd February 2005 to 1st March 2005;
- The revised timetable includes Licensing Committee meeting dates as agreed by the Committee on 9th March;
- When the timetable was originally approved a Thatcham Area Planning Sub-Committee meeting was omitted on 8th December 2004.

8.2 The dates for Easter 2005 have also been amended, as these were unfortunately incorrect on the approved timetable.

Recommendation:

That the revised timetable of meetings (Appendix 9b) for 2004/05 be approved.

Appendices

Appendix 9(a) – Overview and scrutiny guide

Appendix 9(b) – Timetable of meetings

Implications

Policy:	There are no Policy Implications associated with this proposal.
Financial:	There are no Financial Implications associated with this proposal.
Personnel:	There are no Personnel Implications associated with this proposal.
Legal:	In accordance with the Local Government Act 2000 and associated Regulations.
Environmental:	There are no Environmental Implications associated with this proposal.
Equalities:	There are no Equalities Implications associated with this proposal.
Partnering:	Some of the proposed changes in designations and Post Titles in relation to Part 16 – Management Structure are as a direct result of partnering.
Property:	There are no Property Implications associated with this proposal.
Risk Management:	There are no Risk Management Implications associated with this proposal.

Consultation Responses

Local Stakeholders:	N/A
Officers Consulted:	Nick Carter, Malcolm Burch, David Holling, Elizabeth Howlett
Trade Union:	N/A