



COTSWOLD DISTRICT COUNCIL

13TH MAY 2014

COUNCIL

AGENDA ITEM (8)

CONSTITUTIONAL MATTERS

Accountable Members	All Councillors
Accountable Officer	Nigel Adams Head of Democratic Services 01285 623202 nigel.adams@cotswold.gov.uk
Purpose of Report	To consider a number of Constitution-related matters.
Recommendations	(a) That the Council considers the proposals contained in this report; (b) that the Head of Democratic Services be authorised to make the relevant changes to the Council's Constitution arising from the decisions of Council (as necessary).
Reason(s) for Recommendation(s)	To review operational arrangements to ensure that they are fit for purpose and represent good practice.
Ward(s) Affected	N/A
Key Decision	No
Recommendation to Council	N/A
Financial Implications	The proposed revised arrangements in respect of Cabinet Member Decision-Making Meetings are likely to give rise to some financial savings.
Legal and Human Rights Implications	There could be legal consequences of allowing Motions which seek the reconsideration and/or reversal of quasi-judicial decisions.
Environmental and Sustainability Implications	None
Human Resource Implications	The proposed revised arrangements in respect of Cabinet Member Decision-Making Meetings are likely to be less resource intensive from an officer perspective.

Key Risks	There could be reputational, legal and financial risks associated with allowing Motions which seek the reconsideration and/or reversal of quasi-judicial decisions.
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Equalities Impact Assessment	Not required
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Related Decisions	(i) Council, 1 st May 2012 - Review of Constitutional Arrangements (Minute 82 refers) (ii) Council, 14 th May 2013 - Committee Matters (Minute CL.65 refers)
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Background Documents	None
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Appendices	None
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Performance Management Follow Up	Implement Council decision(s)
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Options for Joint Working	N/A
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<p>Background Information</p> <p>1. <u>General</u></p> <p>1.1 Officers regularly keep the Constitution under review, have regard to any legislative changes and/or operational matters that arise from time to time, and present any suggestions to Council (usually so that any changes can be implemented in time for an ensuing Municipal Year). Such 'informal' reviews supplement more periodic major reviews that are conducted, often involving a working group of Members.</p> <p>1.2 Against the above background, Council is invited to consider a number of possible Constitutional changes.</p> <p>2. <u>Formal Questions</u></p> <p>2.1 There have been a number of occasions over the past year when formal questions have been directed to the Leader of the Council, rather than the relevant Cabinet Member; and some instances where the Leader has asked the relevant Cabinet Member to respond either to the initial question, or supplementary, or both. Whilst neither the question submission nor response method is contrary to the Constitution, the Leader of the Council believes that, given the executive model operated by the Council, it would be more appropriate for questions to be directed to the Cabinet Member who is accountable for the subject area.</p> <p>2.2 The views of Council are sought.</p>
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3. Motions on Notice

3.1 A recent event has drawn attention to an issue relating to the submission of Motions on Notice where, it is believed, that clarification is necessary.

3.2 Council Procedure Rule 12 relates to Motions on Notice, and Rule 12.4 is of particular relevance:-

12.4 Debate

A motion concerning a matter within the purview of the Cabinet or any Committee which is moved and seconded shall automatically stand referred to the Cabinet or that Committee. The Chairman may, however, allow the motion to be dealt with at the meeting at which it is moved if he/she considers it convenient and conducive to the despatch of business.

3.3 There is a clear inference that all Motions are to be presented to Council in the first instance, and then referred on to the Cabinet or relevant Committee for consideration and decision, unless the Chairman feels that it would be beneficial for a Motion to be discussed by the Council. From recollection, this has always been the intention and, indeed, the practice.

3.4 Following a recent Planning Committee decision in respect of a planning application, a Member notified me that he wished to present a Motion to the Planning Committee, seeking a reference back of the application. Having checked the Procedure Rules, it is clear that Rule 12 does apply to meetings of the Cabinet and Committees. However, I believe that this does not reflect either intent or practice.

3.5 It is therefore suggested that the Constitution be amended to require all Motions on Notice to be submitted to the Council in the first instance.

3.6 For various reasons, the Motion to Committee referred to in paragraph 3.4 above was not pursued, but it has now been submitted as a Motion to Council - see Motion 4/2014 at agenda item (11). As this Motion was submitted in advance of this report being presented to Council, it is felt that, notwithstanding the comments in the following paragraphs and **exceptionally**, the Motion should be considered in advance of an 'in principle' decision being taken by the Council.

3.7 The content of the Motion does give rise for concern, in that it seeks to use a procedural 'route' to secure the reconsideration, and possible reversal, of a decision legally taken on a quasi-judicial matter. To allow such Motions to be promoted could impact on the ability of the Council and its Committees to perform their quasi-judicial functions in a robust and timely manner and risk such processes being brought into disrepute and even 'grinding to a halt'. From a planning perspective, this could mean an increase in the number of appeals against non-determination (and, possibly, awards of costs) and even Judicial Review applications.

3.8 Although it is hoped that Motions seeking the reconsideration of any item would be rare, there is a difference between a request to reconsider a policy/operational matter and one which seeks to reconsider a quasi-judicial one. Further, in the case of quasi-judicial matters, there is always the option of going to appeal or a Judicial Review.

3.9 It is therefore suggested that the Constitution be amended to prohibit the submission of Motions which seek to overturn any quasi-judicial decision previously taken.

3.10 The re-consideration of planning applications in the light of new material considerations/changed circumstances, within a period of six months from the date of the original decision, has also identified the need for a further minor change to Procedure Rules.

3.11 In such circumstances, the suspension of Procedure Rules is often sought, and Procedure Rule 37 states as follows:-

37. SUSPENSION OF PROCEDURE RULES

All of the Rules of Procedure which apply to meetings of the Cabinet and Committees, except Rule 16.6 and Rule 17.2, may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Cabinet/Committee are present and support the suspension. Suspension can only be for the duration of the meeting.

Any notice of motion to suspend Procedure Rules to enable the rescinding of a decision taken within the preceding six months must be submitted in line with the normal procedure for the submission of notices of motion, except that in cases which satisfy the legal conditions of urgency, any such notice of motion be permitted to be dealt with at the meeting concerned.

3.12 The Rule states that, other than in cases of urgency, a Motion to suspend Procedure Rules to enable the rescission of a decision can only be by way of a formal Notice of Motion, submitted in advance in accordance with the usual time-frames. Given that such a review could be brought about by different reasons, i.e. not just at the request of Members, it is suggested that this requirement be dispensed with, particularly as the first paragraph of Rule 37 provides for a larger number of Members to support a Motion to suspend without notice.

3.13 It is therefore suggested that the second paragraph of Rule 37 be deleted.

4. Cabinet Member Decisions

4.1 As part of the current executive arrangements, the arrangements in respect of Cabinet Member Decision-Making Meetings are largely the same as for any other Meeting, in that decisions are only taken at formal Meetings where notification has been given of 'time and place'. Meetings are not open to the public and, although other Members can attend, they rarely do. In addition, papers are not released into the public domain until after a decision has been made.

4.2 However, such formality is not a legal requirement, and is relatively resource-intensive. Other authorities do not all follow the same arrangements, but have applied different mechanisms. Having looked at a number of options, the following revised arrangements are put forward for consideration:-

- (i) dispose of the requirement for a formal meeting;
- (ii) identify and publish a date after which the Cabinet Member will make a decision;
- (iii) circulate the report to all Councillors (via CMIS alert) a specified time in advance of the 'decision date', inviting comments (other Cabinet Members and Audit and Scrutiny Committee Members could also receive the information in this way instead of 'hard' copies as at present);
- (iv) any comments would be made available to the Cabinet Member as one of the considerations in any decision;
- (v) decisions would still be subject to the normal call-in procedure.

4.3 The key benefits of the revised arrangements are as follows:-

- (i) removes the requirement for meetings to be arranged/held (decisions could be made through telephone conferences or via e-mail);
- (ii) provides the opportunity for greater overall Member input without the need to attend at a specific time and place;
- (iii) recognises that Cabinet Member Meetings are usually not attended by other Members;
- (iv) financial benefits through possible reduction in print/postage costs, and mileage;
- (v) the agenda and report(s) would be made public in the usual way, rather than waiting for a decision to be made before publication, leading to more transparency.

4.4 It is therefore suggested that the revised arrangements set out above be implemented with effect from the 2014/15 Municipal Year.

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