

**CONSTITUTION WORKING GROUP held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 11.30am on 18 JANUARY 2011**

Present: Councillor A J Ketteridge – Chairman  
Councillors C M Dean, E J Godwin, J E Menell, D J Morson, H S Rolfe and S V Schneider.

Officers present: J Mitchell (Chief Executive), M Perry (Assistant Chief Executive), and P Snow (Democratic and Electoral Services Manager).

**CWG8 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

An apology for absence was received from Councillor R H Chamberlain.

**CWG8 MINUTES**

The Minutes of the meeting held on 12 July 2010 were approved and signed by the Chairman as a correct record.

**CWG9 DRAFT CONSTITUTION**

The draft proposed constitution had been circulated with the agenda for the Extraordinary Council meeting on 19 October. Now that the Council had decided to move to executive arrangements from May this year, the constitution had been formally tabled for adoption at the meeting on 17 February. The Working Group had a duty to review the constitution and make recommendations for any alterations that may be required.

The Chairman asked Members how they wished to review the constitution document and it was agreed that a line by line examination was not necessary. Instead, the meeting would discuss and review concerns and suggestions for changes as raised by any Member.

Councillor Morson said that the Liberal Democrat group had reviewed the constitution and had two main areas of concern. Broadly speaking, he asked that the constitution be kept as flexible as possible to incorporate changes to the structure of the Council after May 2011 and in particular to allow for a plurality of scrutiny committees.

Their intention, if elected, was to allow for a number of scrutiny committees to monitor each of the policy areas to be covered by a portfolio holder, whereas the draft constitution referred to only one scrutiny committee. The illustrative model for the new structure circulated by the Administration had indicated four portfolio holders. The Liberal Democrat group wished to be allowed sufficient flexibility to appoint matching committees to undertake scrutiny. The intention was to make involvement in decision making more inclusive.

Councillor C Dean highlighted contradictory references to Performance and Audit and Scrutiny Committees in Article 6 and elsewhere, but to one of each

committee in the Overview and Scrutiny Procedure Rules. The scrutiny function would form a greater part of the decision making process under the new system and the constitution should reflect this reality. In a number of authorities each portfolio holder was scrutinised by a separate scrutiny committee or sub-committee and she was keen to ensure that such a system could be replicated here. Proper and adequate scrutiny should start early in the decision making process and this would limit the need for decisions to be called in.

She then drew attention to the wording in the Access to Information Rules (23.2.1) that denied entitlement of an overview or scrutiny committee to any document in draft form.

After further discussion, the Assistant Chief Executive – Legal clarified that the wording followed the model constitution issued by the Government and the principles encapsulated in Freedom of Information and Environmental Information Regulations. It was agreed that this wording would not necessarily prevent the viewing of draft documents as access could be allowed on a discretionary basis. Mr Perry said that any denial of a request for access to a document in draft form would have to satisfy the public interest test as to why it should not be disclosed.

On the wider question of how scrutiny would function, Councillor Rolfe made the point that policy decisions should be introduced at cabinet only if there was majority support. Scrutiny would work best, in his view, where chaired by a member of the opposition party. Other members said they would expect the scrutiny function to be chaired by the ruling administration group but the key indicators of successful scrutiny would be that it was both critical and robust.

Councillor Godwin thought that appointing too many scrutiny committees would be unwieldy and would hamper speedy decision making. In contrast, Councillor Morson thought that one scrutiny committee would be insufficient to scrutinise all of the portfolio holders across the range of services.

An extension of the scrutiny function might need to result in an expansion of the number of members on each committee beyond the ten as drafted in the procedure rules. The Chairman said that he was not averse to a greater number of Members being involved in the scrutiny function especially as that committee had not always been the most popular.

The concept of appointing shadow cabinet members was briefly discussed although no firm conclusions were drawn. The Assistant Chief Executive – Legal confirmed that shadow portfolio holders would not need to be acknowledged in the constitution.

The Working Group agreed to recommend that the words 'at least' be inserted in three places in paragraph (a) of the Overview and Scrutiny Procedure Rules to allow flexibility for more than one committee of each type to be established and for more than ten members to serve on each one.

Councillor Morson said the second main area of concern for the Liberal Democrat group was the prescriptive framework set out in Article 10 relating

to the format of area forums. There were real concerns about how well the area forums were working. He acknowledged that in terms of community engagement the present concept had worked well but it less clear how matters of concern would be fed back to portfolio holders. If they were successful at the coming election, his party would wish to reintroduce area committees with powers of decision. He asked that the constitution could be framed in such a way as to allow for the concept of area committees.

By way of clarification, the Assistant Chief Executive – Legal said that any such change would need a constitutional amendment. There would have to be at least three area committees to avoid the rules of political balance applying. Otherwise, some ward members would not be allowed to be part of the area committee in which their ward was located. The Executive was able to delegate executive functions to area committees in so far as the function related to the area concerned, but that too would require an amended constitution.

Councillor Rolfe said that the Council should seek to embrace the localism and big society agenda. He suggested setting up a working party to take these matters forward in partnership with parish councils and the area forums. The Leader agreed that this suggestion should be examined and he would discuss what could be done with Councillor Rolfe outside of this meeting. Councillor Menell said that the localism bill had lit a spark and parish councils were coming to the realisation that they would have the ability to do many more things. The next North Area Forum meeting would consider the LSP and the effect of the localism bill. She hoped it would be possible to engage with parish councils in this process at an early stage.

Councillor Schneider said that area forums had been good for the general public but that a different form of engagement was needed for parish councils as there was a feeling they had been bypassed. Councillor Rolfe said that the intention of the bill was to engage with the whole community. It would no longer be possible to separate the community interest from that of parish councils and he supported the intentions outlined by Councillor Menell.

Councillor C Dean then asked about the provision in paragraph 1.6 of the Executive Procedure Rules that meetings concerning only matters that were not key decisions may be held in private. Mr Perry confirmed that the executive had a legal right to take non-key decisions in this way but the expectation remained that all meetings would be held in public.

The Leader confirmed that it was not his intention that any meetings would take place in private. He also confirmed that, in his view, the relevant portfolio holder would be expected to attend area forum meetings but could not be obliged to do so.

Councillor Morson then raised the matters of concern recently highlighted by Mr Sproul on behalf of the Tenant Forum and discussed at the Council meeting in December. He said that there was no reference to the Tenant Forum in the constitution and asked for reassurances that the rights of tenants to participate in Council business would be protected under the new arrangements.

At present, the constitution allowed committees to co-opt representatives of relevant special interest groups and such representatives could then speak at meetings but not vote. The Community and Housing Committee had co-opted two Tenant Forum representatives on this basis as well as two representatives of the Museum Society. However, the Tenant Forum was not part of the Council's constitution as it was a free standing body elected by tenants every two years.

Members agreed that the Tenant Forum was an integral part of the housing function and that tenants' concerns would always be listened to with care and consideration. The channel of communication for this would be through the portfolio holder for the housing service. Tenant representatives would be entitled to attend cabinet meetings as members of the public and could then make a statement or ask questions subject to the relevant notice being given. The same considerations would apply to representatives of the Museum Society.

After further discussion on the best way to protect the interests of the Council's tenants under the new arrangements, Members asked that consideration be given to incorporating a similar form of words from the existing constitution into the new constitution, notwithstanding that policy committees would no longer exist at that time. The Assistant Chief Executive undertook to do this.

The meeting then gave further consideration to the position of working groups and task groups under an executive governance system. Members were advised that, in effect, all working groups and task groups would cease to exist at the end of the present Council. The Annual Meeting in May would then consider the membership and terms of reference of those working groups felt to be needed at that time.

In this context, it was noted that the illustrative chart produced by the administration, had made provision for working groups to be appointed in a number of service areas, including the Museum. In addition, Article 15 required the appointment of a Constitution Working Group to monitor and review the operation of the constitution.

Both working and task groups could be established at any time, either by the Council or by the Executive, and these bodies need not be politically balanced.

The Democratic and Electoral Services Manager circulated for information an indicative timetable of meetings for the year 2011/12. This was both incomplete and provisional at this stage but would give some idea of the nature of the timetabling of meetings under the new system. The timetable could not be adopted until the annual meeting in May.

It was agreed that there should be six scheduled Council meetings, in addition to the annual meeting, including the budget setting meeting in February. The expectation was that there would be at least six meetings of the overview and scrutiny committees. The Standards Committee would not need to meet as

often and three meetings were suggested. There would not be any scheduled meetings of the Licensing Committee as this in future would meet on an as and required basis. There was also agreement that the executive should meet at least six times per year and that this number should be inserted into paragraph 1.5 of the Executive procedure rules.

In conclusion, the Chairman said that operating the new arrangements would prove to be a big challenge for everyone concerned. He thanked those present for the constructive nature of the discussion and said that the constitution, as proposed for amendment at this meeting, would now be submitted to the next meeting of the Council on 17 February for adoption.

RECOMMENDED that the changes to the draft Constitution, as described in the text above, be proposed for adoption by the Council.

The meeting ended at 12.50pm