

**PROPOSED AMENDMENTS TO THE CONSTITUTION
OF LEICESTERSHIRE COUNTY COUNCIL
SEPTEMBER 2007**

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
ARTICLE 11 – JOINT ARRANGEMENTS 11.04 Delegation to and from other local authorities.	Add following paragraph: “(d) Details of any delegations from another authority are described in the County Council’s Scheme of Delegations in Part 3 of this Constitution.”	Links with proposed amendment to Part 3. See below.
ARTICLE 12 – OFFICERS 12.04 Functions of the Chief Financial Officer.	Add following paragraph:- “(f) Acceptance of Grant Conditions. The Chief Financial Officer pursuant to Section 151 of the Local Government Act 1972, will have the power to enter into binding financial agreements, including, but not limited to, applying for grants or making grant claims and accepting conditional or non-conditional grants.”	As explained in a report to the Cabinet on 24 July 2007, in order to take advantage of the grant for the building of the Earl Shilton By-Pass, the Council had to provide evidence that the Director of Corporate Resources, as Chief Financial Officer, was entitled to accept the grant and agree to the conditions. It is desirable for this delegation to be specified in the Articles of the Constitution alongside the other functions laid down for the Chief Financial Officer.

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
ARTICLE 14 – FINANCE, CONTRACTS AND LEGAL MATTERS	Amend Article 14 (b) by the deletion of the words “Rule 11 of”.	To reflect changes in the Contract Procedure Rules.
ARTICLES Schedule 2 Plans and Strategies forming the Policy Framework.	Amend local choice provision 16 to read as follows:- "16. Highways, transportation and development". Add following to local choice provisions:- 20 (d) Gender Equality Scheme. Add following to list of plans determined by the Executive:- Domestic Violence Reduction Strategy. Enforcement Programme for Underage Sales of Tobacco Products. Statement of Community Involvement (Minerals and Waste Development Frameworks and Planning Applications).	Updates.

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>ARTICLES</p> <p>Schedule 3 – Tables</p> <p>Table A – Overview and Scrutiny Committees</p>	<p>Add following to scope of the Scrutiny Commission and renumber remainder accordingly:-</p> <p>“7. To act as the crime and disorder committee in accordance with Section 19 of Part 3 of the Police and Justice Act 2006.”</p>	<p>To comply with new legislation.</p>
<p>RESPONSIBILITY FOR FUNCTIONS – PART 3</p>	<p>Add following after Section on Joint Arrangements:-</p> <p><u>“Delegation to and from other local authorities</u></p> <p>The Cabinet has delegated to the District Councils the task of maintaining on-street parking regulations. That is, patrolling on-street areas and where required issuing Penalty Charge Notices where breaches of the regulations apply. The details are the subject of a Service Level Agreement.</p> <p>The County Council has accepted a reciprocal delegation of necessary notice processing powers from the District Councils to enable the County Council to meet its obligations under the Service Level Agreement.</p>	<p>To record the decisions taken at the meetings of the Cabinet on 4 June and County Council on 11 July 2007.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>RESPONSIBILITY FOR FUNCTIONS (PART 3)</p> <p>Section D - General delegation to Heads of Departments.</p>	<p>Amend paragraph 10 by the addition of the words “or approved external funding” after the word “budget”.</p> <p>Amend paragraph 11 to read as follows:-</p> <p>“11. Power to incur revenue expenditure: power to incur revenue expenditure within the approved budget or approved external funding on non-employee related items, subject to any conditions specified by the Director of Corporate Resources and to approval of the Executive where the Director of Corporate Resources considers this to be appropriate.”</p> <p>Amend paragraph 12 to read as follows:-</p> <p>“12. Tenders and quotes. In exercising the power in paragraph 11 above the head of department shall comply with the provisions of the Contract Procedure Rules.”</p> <p>Delete paragraph 13 and renumber remaining paragraphs accordingly.</p>	<p>Links to the adoption by the County Council of revised financial management practices.</p> <p>Covered by new Contract Procedure Rules.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>Delete paragraph 15.</p> <p>Amend paragraph 17 to read as follows:-</p> <p>“17. Surplus equipment. Power to dispose of surplus or obsolete vehicles, plant, apparatus, or other equipment or books in accordance with the Standard Financial Instructions.”</p> <p>Delete paragraphs 18 and 19.</p>	<p>Now covered in Contract Procedure Rules.</p> <p>To reflect changes in Standard Financial Instructions.</p> <p>No longer necessary.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>RESPONSIBILITY FOR FUNCTIONS PART 3</p> <p>Section D. General Scheme of Delegation to Heads of Department</p>	<p>Amend Paragraph 20) (Decision making between meetings) to read as follows:-</p> <p>“Power to the Chief Executive to take action between meetings which he or she considers is urgent, in consultation:-</p> <p>(a) on matters within the responsibility of the Executive with the Leader and Deputy Leader or such other member of the Executive as may be nominated by the Leader or Deputy Leader; or</p> <p>(b) on matters within the responsibility of a relevant body with the Chairman and relevant Group Spokesmen of that body;</p> <p>subject to the details of such action being reported for information to the next appropriate meeting of the body concerned.”</p>	<p>Reflects practice which has developed since Cabinet was established whereby this action is inevitably taken by the Chief Executive rather than any other Chief Officer.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
RESPONSIBILITY FOR FUNCTIONS - PART 3	<p><u>Section E Panels</u></p> <p>Add following to list of Panels</p> <p>“(k) Representations Panel (Independent providers of adult social care): to consider representations made from independent sector providers against proposals to remove them from a list of approved service providers or to suspend them from such a list and to make recommendations to the Director of Adult Social Care and Health as to the appropriate course of action.”</p>	<p>To provide an opportunity for service providers whose livelihood may be affected by a decision to make representation to an independent group of members (i.e. not members of the Cabinet) before any final decision is reached.</p> <p>The terms of the delegation to the Director of Adult Social Care and Health refer to this entitlement.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>PART 4A – MEETING PROCEDURE RULES</p> <p>Standing Order 9 – Procedure Relating to Reports to Council</p>	<p>Amend paragraph 9 (2) to read as follows:-</p> <p>“(2) At the appropriate place in the order of business of the Council each report shall be taken as read and the member who has signed the report (or in the case of a report of the Cabinet, the Leader or his or her nominee) shall propose any necessary motions for securing the approval by the Council of the recommendations in the report unless at his or her request or with his or her concurrence the Council give leave for recommendations to be amended or for the report to be withdrawn.”</p>	<p>The current wording is ambiguous in relation to what may be proposed. The amendment will correct that position.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>MEETING PROCEDURE RULES (PART 4A)</p>	<p><u>Standing Order 18</u></p> <p>Amend note in respect of the Standards Committee to read as follows:-</p> <p><u>“Reporting Body</u> <u>“Appropriate Spokesmen”</u></p> <p>Standards Committee. Spokesmen of the two groups to which the mover of the motion does not belong.”</p> <p>Note at end of Rules.</p> <p>Amend as follows:-</p> <p>Delete Complaints Procedure Review Panel (Social Services).</p> <p>Add</p> <p>Fostering Panel Disputes Panel Representations Panel (Independent providers of adult social care).</p>	<p>To reflect that the Chairman is an independent member and not a member of the Council.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
PART 4B – ACCESS TO INFORMATION PROCEDURE RULES	<p>Add following paragraph to the note at the start of the Rules.</p> <p>“The Government makes reference to clear days. Case law defines this as meaning, in effect, working days. Thus weekends and other days on which the Council’s offices are closed are excluded as are the day of despatch and the day of the meeting.”</p>	To assist understanding of the Rules.

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>EXECUTIVE PROCEDURE RULES (PART 4D)</p>	<p>Amend paragraph (vi) of the Working Definition of “Key Decision” to read as follows:-</p> <p>“(vi) additional expenditure or savings which the Director of Corporate Resources considers to be significant having regard to the budget for the service or function to which the decision relates.”</p> <p>Delete note at end of rules.</p>	<p>The existing rule has been difficult to apply in practice. The revision would allow the Director of Corporate Resources to determine what should be in this category of key decisions having regard to the specific circumstances which apply in each case.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>FINANCIAL PROCEDURE RULES (PART 4F)</p>	<p>Contents Amend item 10 to read “Financial Planning”.</p> <p>Rule 2 – Responsibility of the Director of Corporate Resources. Add the following words at the end of paragraph (d):-</p> <p>“including the establishment of reserves and provisions”.</p> <p>Rule 3 – Responsibility of Chief Officers.</p> <p>Paragraph (a) – Substitute “Annual Plan” for “Best Value Performance Plan”.</p> <p>Add new paragraphs (e) and (f) as follows:-</p> <p>“(e) Chief Officers should ensure that corporate guidance is followed with respect to the governance and financial aspects of partnerships.</p> <p>(f) Chief Officers must ensure that a financial control framework is in place for the operation of key partnerships.”</p>	<p>))) Minor Improvements))))))))</p> <p>Need to reflect increasing activity in partnership with other bodies.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>Rule 7 – Capital programmes.</p> <p>Amend paragraph (d) to read as follows:-</p> <p>“(d) Commencement before the planned programme year can be approved by the Director of Corporate Resources provided he/she is satisfied that resources are available within the overall three year programme.”</p> <p>Rule 10 – Amend heading to read “Financial Planning”.</p> <p>Rule 19 – Redeployment or redundancy amend (b) to read as follows:-</p> <p>“(b) When preparing an Action Plan, the Chief Officer will have due regard to the requirements of the County Council’s Organisational Change Policy and Procedure and Policy on Termination in the Interests of the Efficiency of the Service. Chief Officers shall consult the Director of Corporate Resources over the funding arrangements for the Action Plan proposals.”</p> <p>Rule 30 – Risks and liabilities. Add following at the end of paragraph:-</p> <p>“In doing so they need to follow the risk management strategy”.</p>	<p>Minor improvement to reflect practice.</p> <p>To reflect Employment Committee’s recent decision approving the new policies referred to.</p> <p>Minor Improvement.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>STANDARD FINANCIAL INSTRUCTIONS (PART 4F)</p>	<p>Contents and numbering – amend to reflect agreed changes.</p> <p>Instruction 1 – Capital expenditure in excess of approved amount</p> <p>Amend paragraphs (b) and (c) to read as follows:-</p> <p>“(b) The Director of Corporate Resources may approve increases in expenditure where compensating savings are being made and there is no change in policy. In any particular instance, the Director of Corporate Resources may decline to give approval and instead refer the proposal to the Executive.</p> <p>(c) Where not already included in the capital programme, proposed bids for external capital funding <u>must</u> be agreed by the Director of Corporate Resources.</p> <p>(d) Increases relating to schemes where the increase is to be funded in full by external contributions with no revenue implications or where these can be met from existing budgets may be approved by the Director of Corporate Resources.”</p>	<p>Removal of financial limits extending scope of delegation to Director of Corporate Resources.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>Instruction 2 – Capital reserve scheme – Delete.</p> <p>Instruction 3 - Capital Substitution Delete “annual and total” in second sentence.</p> <p>Instruction 4 – Virement</p> <p>Amend to read as follows:-</p> <p>(a) In order to maintain effective and responsive services to meet the needs of the people of the County it is acknowledged that spending on individual budget heads may vary from the approved budget. This is permissible (subject to (b) and (c) below) so long as the total departmental budget is not exceeded.</p> <p>(b) Virement (either between individual lines or sections of the approved budget) is allowed except where it would involve:-</p> <ul style="list-style-type: none"> i. a change in an existing policy; ii. a reduction in service; iii. on-going net costs which might not be containable; or iv. funding capital expenditure from revenue (except for items under £50,000 and for the Central Maintenance Fund, highways maintenance and exceptions agreed by the Executive). 	<p>Minor Improvement.</p> <p>Reflects revised financial practices.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>The above will require the prior approval of the Executive, may constitute a Key Decision and may require the approval of the County Council. The Executive may consult the Chairman of the Scrutiny Commission if it considers that the nature of the proposal is such that the views of an overview and scrutiny committee should be canvassed.</p> <p>(c) Before submitting a virement proposal which falls under (b) above to the Executive for approval, the chief officer shall consult the Director of Corporate Resources and shall include in his or her report to the Executive the justification for the change in priorities and any comments of the Director of Corporate Resources. If the expenditure proposal is for longer than the current financial year, the chief officer must demonstrate that the proposed corresponding saving will also be continuing. This change will then be built into the ongoing budget.”</p>	

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>Instruction 5 – Revenue - Supplementary estimates. Amend last sentence of (b) to read as follows:-</p> <p>“Supplementary estimates may be approved but budget adjustments deferred whilst it becomes clearer whether costs can be met from elsewhere within the relevant budget.”</p> <p>Instruction 6 – Revenue – revised budgets Delete.</p> <p>Instructions 8,9,10,11,12,13,14,15,16,17,18 relating to Contracts.</p> <p>Delete and substitute the following:-</p> <p style="text-align: center;">INSTRUCTION 6 Contracts</p> <p>(a) All contracts should be dealt with in accordance with the Contract Procedure Rules set out in Part 4G of the Council’s Constitution.</p> <p style="text-align: center;">Capital Contracts</p> <p>(b) The appropriate chief officer will be responsible for the maintenance of all financial as well as technical records for contracts of a capital nature.</p>	<p>For clarification.</p> <p>Proposed new Contract Procedure rules cover these issues.</p>

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	<p>(c) Where building, construction or other capital contracts provide for payment to be made by instalments on the certificate issued by an authorised officer, the records must show the state of account on each contract between the County Council and the contractor together with other payments and related professional fees.</p> <p>(d) Payments to contractors in respect of all contracts must be authorised only by a certificate signed by the person made responsible by the contract for issuing such certificates (i.e. “the Certifying Officer” or authorised deputy). In the case of Private Architects, Quantity Surveyors, Engineers or Consultants, certificates must be countersigned as to validity by the appropriate chief officer who appointed them. The form of the certificate must be agreed by the Director of Corporate Resources. The Certifying Officer will be responsible for the correct certification of all aspects of contract payments and for ensuring the correct completion of all associated contract documentation.</p>	

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>(e) The Certifying Officer will ensure that all contract documentation is properly completed before the contractors final account is paid.</p> <p>(f) Prior to issue of final certificates the Director of Corporate Resources will, to the extent he or she considers necessary, audit accounts for contracts. He or she will be entitled to make all such enquiries and receive such information and explanations as he or she may require in order to satisfy himself or herself as to the accuracy of the accounts.</p> <p>(g) Chief officers should actively try to promote an agreement with contractors on outstanding issues, where work was completed over two years ago.</p> <p>(h) Claims from contractors in respect of matters not clearly within the terms of any existing contract must be referred to the County Solicitor for consideration of the Council's legal liability before a settlement is reached. The Director of Corporate Resources must also be informed of the amount of such claims before final settlement to enable him or her to consider the financial implications.</p>	

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>(i) Where completion of a contract is delayed beyond the due date for completion by more than one-sixth of the contract period, it will be the duty of the responsible officer under the contract, after consultation with the County Solicitor and spending department, to take appropriate action in respect of any claim for liquidated damages. The responsible officer may decide that liquidated damages should not be applied. This should be reported to the Executive subject to any guidelines set down by the Executive.</p> <p style="text-align: center;">Professional Fees</p> <p>(j) Where staff are not charged to projects on a fee basis, the appropriate chief officers will supply the Director of Corporate Resources with details of the cost of staff and private consultants employed on capital work.</p> <p>(k) In all cases an agreement with a private firm or individual shall require them to comply with the Contract Procedure Rules (Part 4G), and to give the same facilities to the Director of Corporate Resources as required of chief officers of the Council by its instructions and procedures.</p>	

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>(l) Where private consultants are to supervise work, the contracting chief officer is responsible for ensuring that he or she receives regular written reports covering the physical and financial progress of that work and for taking any appropriate action on the basis of progress reports.</p> <p>Instruction 19 – Orders for work, goods and services.</p> <p>Paragraph (b) add “and e-procurement” after “Procurement Card”.</p> <p>Paragraph (e) amend second sentence to read as follows:-</p> <p>“Orders must be authorised only by officers designated by the appropriate chief officer who will maintain a list of officers authorised to sign on his or her behalf”.</p> <p>Instruction 20 – Payments of invoices and claims.</p> <p>Amend first sentence to read as follows:-</p> <p>“Invoices should be on suppliers printed forms except where alternative arrangements have been agreed by the Director of Corporate Resources.”</p>	<p>Update.</p> <p>Minor improvement.</p> <p>Minor improvement.</p>

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
OFFICER CODE OF CONDUCT (PART 5B)	Add Employee Code of Conduct attached as Appendix A.	The Standards Committee agreed the proposed code at its meeting on 18 June, 2007 for consultations with trade unions and, subject to consultations, decided that a recommendation be made via the Constitution Committee that the Code be included as Part 5B of the Constitution.

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
<p>PART 5C – PROTOCOL ON MEMBER/OFFICER RELATIONS</p>	<p>Add following to protocol:-</p> <p>“Guidance to Elected Members on Employment Issues</p> <p>17. Although employees are not encouraged to do so, elected members may occasionally find themselves being approached by employees on matters relating to their personal circumstances as a member of the Council’s staff.</p> <p>18. This puts the elected member in some difficulty because they will potentially have a conflict of interest. On the one hand the member may well want to offer assistance to the employee, particularly if they reside in their electoral division. On the other hand, as a member of the County Council all elected members have responsibilities as “ the employer”.</p>	<p>The Employment Committee agreed guidance to elected members on employment issues at its meeting on 22 March 2007 and noted that it was intended to incorporate the Guidance into the Protocol of Member/Officer relations when the Constitution was next reviewed.</p>

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	<p>19. It is suggested in such circumstances that the member concerned should limit their role to the following:-</p> <ul style="list-style-type: none"> - listening to the nature of the issue; - offering advice about where the employee can get assistance and support e.g. trade union, HR staff, manager, website; - pointing to the various mechanisms which the Authority has in place for resolving issues and disputes with groups of employees and individuals. (These are explained below); - satisfying themselves that the Council's procedures (including the Whistleblowing Procedure where appropriate) are being followed correctly in that case and receiving details of the outcome. If there is concern that this may not be the case the member should seek advice from a relevant officer (i.e. Monitoring Officer, Head of Democratic Services, Head of Human Resources). 	

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>20. Beyond the above, it would not be wise for an elected member to pursue any particular case on behalf of the employee. To do so could prejudice any procedures which are already underway and would not be in the Council's or public's interests.</p> <p>21. The following procedures are available for employees to raise individual issues in relation to their employment:-</p> <ul style="list-style-type: none"> • Grievance Procedure – covers individual issues not covered by any other procedure • Harassment and Bullying Procedure • Job Evaluation Employee Procedure • Various appeal procedures, for example within the following: <ul style="list-style-type: none"> - Disciplinary Procedure - Organisational Change Policy and Procedure - Capability Procedure - Probation Procedure - Lease Car Scheme - Attendance Management Policy - Right to Apply for Flexible Work 	

<u>ITEM</u>	<u>PROPOSED AMENDMENT</u>	<u>EXPLANATION</u>
	<p>22. The Whistleblowing Procedure is available to raise issues of bad practice, possible fraud or corruption or other matters which seem to be against the interests of the public, the Council or its staff.</p> <p>23. Collective issues may be raised at Departmental Joint Consultative Committees or Health and Safety Committees or the Central Negotiating and Consultative Committee or Central Health and Safety Consultative Committee as appropriate. Trade unions may refer collective issues not resolved at officer level to the Disputes Panel which is a body of 5 elected members established to consider representations from trade unions and management and to make recommendations to the Employment Committee or Cabinet, or both, as appropriate.</p>	