

CONSTITUTION COMMITTEE – 18TH MARCH 2002

REPORT OF THE CHIEF EXECUTIVE

REVIEW AND REVISION OF THE CONSTITUTION

Purpose

1. The purpose of this report is to recommend changes to the County Council's Constitution in the light of experience and in particular Regulations issued by the Government on the exercise of functions by local authorities.

Background

2. Article 15 of the County Council's Constitution gives the Chief Executive a duty to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. It requires that changes to the document should only be approved by the full County Council after consideration of the proposal by the Chief Executive and the Constitution Committee.
3. This report concerns the first review of the Constitution since it came into effect on 20 June 2001 and proposes a number of relatively minor changes, mainly responding to developments which have occurred and an improved understanding of matters since the Constitution was drafted in early 2001.
4. The detailed proposals are set out in the Appendix to this report together with an explanation as to why it is considered that the change is necessary.
5. The two principal changes proposed relate to the way the Government has decided that certain functions should be exercised. The first relates to the issue of planning applications under consideration by district councils or other agencies on which the County Council is a consultee. The second relates to the exercise of functions under Section 112 of the Local Government Act 1972 relating to the appointment of staff and their terms and conditions of service.
6. In the case of planning applications which do not fall to be determined by the County Council but on which the County Council is being consulted by district councils or other agencies, the Government regulations make these an "executive function". This means that the County Council's response is a matter for the Cabinet, not the Development Control and Regulatory Board. This was not the understanding at the time the Constitution was being drafted. Since this came to light it has been our practice for such matters to be submitted in the first place to the Development Control and Regulatory Board and for that body to offer its advice to the Cabinet, who then determine the Council's response.

7. In the case of Section 112 decisions, these concern the power to appoint staff and to determine the terms and conditions on which they hold office (including procedures for their dismissal). The original Regulations only specified the power to appoint staff as a non-executive function, therefore the decision was taken to include in the terms of reference of the Constitution Committee the following matter – “Employment of Staff i.e. the Officer Employment Procedure Rules (Part 4H). Power to appoint staff”. Subsequently, amended Regulations were issued by the Government which made all Section 112 decisions “non executive” functions, which means that they cannot be determined by the Cabinet. This is despite strong representations from a number of local authorities questioning the logic of this approach.
8. This has left the County Council in some difficulty, particularly on matters needing decisions such as action plans where staff are to be made redundant, approving early retirements and agreeing pay settlements.
9. It is therefore being proposed to establish an “Employment Committee” to deal with Section 112 matters on behalf of the Council. There are a number of matters which require urgent attention in the meantime and it is proposed in the case of these items, to put these to the Constitution Committee for determination pending the position being regularised. When established the Employment Committee may well wish to extend the delegation to Chief Officers to avoid the need for it to address relatively routine matters.
10. The remaining proposed changes are of much less consequence and deal with minor drafting changes, in several cases picking up developments which have occurred since the Constitution was drafted.

Equal Opportunities Implications

None.

Recommendation

11. That the County Council be recommended to approve the proposed changes to the Constitution as set out in the Appendix to this report.

Background Papers

None.

Circulation under Sensitive Issues Procedure

None.

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