

<b>Subject:</b>	<b>A New Constitution for Brighton &amp; Hove City Council – Updating Report</b>		
<b>Date of Meeting:</b>	<b>26<sup>th</sup> April – Special Council</b> 17 <sup>th</sup> April – Leaders Group		
<b>Report of:</b>	<b>Monitoring Officer</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. Summary and Policy context**

- 1.1 This updating report is to be read in conjunction with the full report made to the Governance Committee on 20 March 2012 and the recommendations of that Committee to the Council.
- 1.2 The report brings forward some changes to be incorporated in the final version of the new constitution. A number of these stem from recently made Regulations which come into force on 4 May 2012.

**2. Recommendations**

- 2.1 That the Council notes the updating and amending of (a) Appendix 1 of the report to the Governance Committee and (b) the complete set of new constitution documents, as mentioned in this report.
- 2.2 That the Council approves the amendment to the Pay Policy set out in paragraph 6.3 of this report.
- 2.3 That the Council approves the following:-
  - (1) That the Council resolves, in accordance with section 9KC of the Local Government Act 2000, to change its governance arrangements from Leader and Cabinet to a Committee System;
  - (2) That the parts of the constitution set out in Appendix 1 to the report to the Governance Committee (being the parts where there are substantive changes) be approved;
  - (3) That the transitional arrangements in relation to the Audit and Standards Committees, as set out in paragraph 16.3 of the report to the Governance Committee, be approved and adopted until such time that the relevant Regulations relating to standards are made and come into force;

- (4) That the current scheme of delegations to officers be approved subject to the changes set out at Appendix 5 to the report to the Governance Committee and any other consequential modifications;
- (5) That the rest of the existing constitution be approved and adopted, subject to such amendments as are necessary to make them fit for a committee system;
- (6) That the Monitoring Officer be authorised to make the minor and consequential changes referred to in resolutions (4) and (5) above;
- (7) That the constitution as set out in Appendix 1 to the report to the Governance Committee, with the addition of the parts referred to in resolution (5) above, be approved and adopted as the Council's constitution in accordance with the requirements of the Local Government Act 2000 and relevant Regulations, Orders and Directions made by the Secretary of State;
- (8) That the new system of governance and the new constitution come into force immediately after the conclusion of Annual Council on 17 May 2012;
- (9) That the Chief Executive be authorised to take all steps necessary or incidental to the implementation of the new governance arrangements, including the power to make such transitional arrangements as are necessary for the orderly implementation of the proposals;
- (10) That officers be instructed to make copies of the Council's new constitution available at its principal offices and to publish a notice describing the new arrangements, in accordance with section 9KC of the Local Government Act 2000; and
- (11) That it be noted that the issue of Member's Allowances dealt with separately elsewhere on the agenda and that any proposed Code of Conduct be referred to Council as part of the recommendations from the Standards Committee.

### **3. Background**

- 3.1 Since the meeting of the Governance Committee on 20 March, officers have continued to check through the documents of the new constitution to eliminate minor inconsistencies & typographical errors and make minor updates. For example, the Health & Social Care Bill has become an Act since the meeting of the Governance Committee.
- 3.2 None of the above changes is of significance, but there are some amendments of more substance which are recommended for incorporation in the new constitution. These are described in paragraphs 4 and 5 below. There is also one other matter, concerning the Pay Policy Statement, which is indirectly relevant to the constitution, set out at 6 below.

3.3 All the amendments, including those mentioned in paragraphs 4 and 5, have been added in a revised version of Appendix 1, which is now attached to the report to the Governance Committee in place of the original Appendix 1. The version of the whole new constitution available on-line for the Governance Committee meeting has also been amended and the amended version has replaced the original version on-line.

#### **4. Local Authorities (Committee System) (England) Regulations 2012**

4.1 Laid before Parliament on 10 April, these Regulations come into force on 4 May 2012. They have particular relevance for any authority adopting a committee system and therefore for the Council's the new constitution as they (a) list functions which must be discharged by full Council and (b) set out the overview and scrutiny requirements for any authority which decides to have such committees.

##### **Council Functions**

4.2 Appendix 1 Part 3.1 "Council Functions" sets out functions which must be discharged by full Council. It has now been amended as described at (a) to (e) below, (a) to (d) being necessary to ensure due compliance with the Regulations:-

(a) the addition, in the section relating to Members' Allowances, of a reference to the need for full Council to determine any allowances payable to the Mayor and Deputy Mayor. In practice, the full Council already does this, but as these two allowances are not made under the same scheme as Members' Allowances it is advisable to mention them specifically.

(b) the addition of four matters which would need full Council approval if the Council ever wished to implement any of them, ie

- (i) making a request to the Boundary Commission for single-member electoral areas;
- (ii) passing a resolution to change the scheme for local elections;
- (iii) making an order to give effect to recommendations in a community governance (parish) review;
- (iv) making a scheme to permit co-opted members of overview and scrutiny committees to vote at committee meetings.

(c) adding "the Annual Investment Strategy" to the Policy Framework, in the first section with the other plans and strategies required by law to be adopted by full Council.

(d) amending the definition of "Budget" which has to be approved by full Council by the addition of the words underlined, to read "The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax, and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure, the determining of its minimum revenue provision and the setting of virement limits."

(e) removing the reference to the Leasehold Reform, Housing and Urban Development Act 1993 in the definition of "Housing Land Transfer" as the

relevant section of that Act has been repealed. The definition now refers only to the relevant sections of the Housing Act 1985.

## **Overview and Scrutiny**

- 4.3 The Regulations make detailed provisions for Overview and Scrutiny in a committee system authority. The Council's Overview and Scrutiny Terms of Reference and Procedure Rules are contained in Appendix 1 of the report to the Governance Committee as Part 5 of the new constitution. A longer look at the Regulations and Part 5 may produce some desirable changes, but at this stage Part 5 appears to take account of all the matters of substance in the Regulations. Therefore no amendments have been made at this stage.
- 4.4 It is noted that the Regulations require the Council to designate a Scrutiny Officer for its overview and scrutiny functions, and Part 6.6 of the new constitution – the list of Statutory and Proper Officers – duly includes the Head of Overview and Scrutiny as the Scrutiny Officer.
- 4.5 The Regulations also require the Council to continue to appoint church representatives and parent governor representatives to the overview and scrutiny committee which deals with education, in the Council's case the Health and Wellbeing Overview and Scrutiny Committee. The new constitution already takes this into account in Article 6 (Committees and Sub-Committees) and Part 5. Under the regulations, these co-optees retain limited voting rights in relation to education functions which being considered at any meeting of the Committee.
- 4.6 The Regulations give the Council power to make a scheme to permit non-voting co-optees to vote at Overview and Scrutiny Committees. If at any future date it is considered that this might be appropriate, approval of the scheme would be a matter reserved to the full Council – see paragraph 4.2 (b) (iv) above.

## **5. City Sustainability Partnership**

- 5.1 The City Sustainability Partnership is one of the Advisory Groups whose terms of reference have been included in Part 4 of the constitution – “Scheme of Delegations to Committees and Sub-Committees”. It is an independent strategic body working to promote the sustainable development of Brighton & Hove. The terms of reference originally incorporated in the new constitution reflected those in force when the current constitution was adopted in 2008. In fact the terms of reference have changed and so suitably updated terms of reference are now incorporated in the revised Appendix 1 to the report to the Governance Committee, Part 4.

## **6. Pay Policy**

- 6.1 The Council's recently approved Pay Policy Statement 2012-13, which is not directly one of the documents in the new constitution but is relevant to the exercising of the powers and duties of the Council, provides at section 4 Governance:- “Where it is proposed to offer a salary package of £100,000 or more full Council will have the opportunity to vote on the salary package prior to the appointment being made”.

- 6.2 Whilst this is appropriate for all new posts, in any case where an existing post with a salary package of this amount becomes vacant and needs to be filled there could well be unnecessary delay in making an appointment if the full Council has to consider a report before this can be done. There could be further problems trying to deal with the matter at full Council if the post happened to be one of several generic posts all on the same terms and conditions. Policy and Resources Committee has the delegated power to discharge the Council's functions as an employer, and would appear to be a better forum for dealing with existing posts. Therefore it is recommended that the Pay Policy be amended to permit existing posts to be advertised and filled provided that Policy and Resources Committee (or its Urgency Sub-committee) has given prior approval.
- 6.3 The proposed amended passage is:- "Where it is proposed in relation to a post to offer a salary package of £100,000 or more full council will have the opportunity to vote on the salary package of any new post prior to the appointment being made and Policy and Resources Committee or its Urgency Sub-Committee will have the opportunity to vote on the salary package of any existing post prior to the appointment being made."

## **7. Community engagement and consultation**

- 7.1 The decision to move to a committee system of governance was made by a meeting of full council in December 2011. The design principles, working assumptions, draft structure and draft constitution documents have all been considered by the New Constitution Working Group and the Leaders Group.
- 7.2 The constitution and a summary document will be available to the public both at Council offices and on the Council's website.

## **8. Financial and other implications**

- 8.1. The financial implications, legal implications, equalities implications, sustainability implications, crime & disorder implications, risk and opportunity management implications, public health implications and corporate / citywide implications remain as in the report to the Governance Committee, except that the Finance Officer consulted was Nigel Manville on 11 April 2012.

## **SUPPORTING DOCUMENTATION**

**Appendices: these are all attached to the report to the Governance Committee**

1. Key documents from the proposed new constitution [amended version as described in this report]
2. Design Principles document
3. Working Assumptions document
4. Proposed committee structure chart
5. Note regarding officer delegations
6. Table showing proposed size and allocation of Committees
7. Protocol in relation to co-optees.

### **Documents in Members' Rooms**

1. Brighton & Hove City Council Constitution – May 2012 [amended version, as described in this report]

### **Background Documents**

1. None