

Council – 8 May 2008

AMENDMENTS TO THE COUNCIL'S CONSTITUTION

Report of the Head of Corporate Services

Statutory Powers:- Local Government Act 2000 and Traffic Management Act 2004

Financial Implications:- None consequent upon this report

Purpose of report

1. To amend Articles 6, 9 and 10 of the Constitution so that
 - (a) the Leisure contract monitoring reports be presented to the Scrutiny Group for consideration rather than the Audit Committee (Articles 6 and 10);
 - (b) the Standards Committee can undertake new powers of assessing and reviewing complaints made about Members' conduct referred for local investigation;
2. To amend the Scheme of Delegations to reflect the acceptance of new powers for Civil Parking Enforcement on behalf of Devon County Council, working in partnership with Teignbridge District and West Devon Borough Councils (Minutes E.102/07 and 93/07 also refer).

RECOMMENDATION

That the Council RESOLVES that with immediate effect:

1. **(a) the monitoring of the Leisure Contract operated by Tone Leisure (South Hams) Ltd. become the responsibility of the Scrutiny Group instead of the Audit Committee;**
 - (b) the Standards Committee be delegated the function of assessing and reviewing complaints made about Members' conduct and referred for local investigation; and**
 - (c) the Head of Corporate Services be authorised to amend these bodies' respective terms of reference in Articles 6 and 10, and 9 of the Constitution accordingly;**
2. **(a) to give the Head of Environment Services delegated authority to appoint Civil Enforcement Officers and authorise them to enforce the provisions of the**

Traffic Management Act 2004 relating to civil enforcement of traffic contraventions by virtue of the Council's agreement with Devon County Council; and

(b) the Head of Corporate Services be authorised to amend the Scheme of Delegations accordingly.

Background – Leisure Contract Monitoring

3. At its 29 March 2007 meeting, the Council established an Audit Committee (minute 95/06 refers). During the debate on the terms of reference of the Committee, lengthy discussions took place regarding whether the monitoring of the leisure contract should be the responsibility of Scrutiny or the Audit Committee. Whilst there were valid reasons on both sides, the pragmatic view at that time was that it should, on an interim basis, rest with the Audit Committee.

Background – Local Investigation of Complaints

4. On 17th April 2008, the Government made the Standards Committee (England) Regulations 2008 which, amongst other things, bring into force on 8th May the processes whereby complaints about the conduct of local authority members will be referred for investigation not by the Standards Board for England, but by local Standards Committees. District Council Standards Committees will also deal with complaints against members of town and parish councils. The Standards Committee's terms of reference (Article 9 of the Constitution) need to be amended to reflect this change.

Background – Civil Parking Enforcement

5. On the basis that the full and actual set-up and running costs be funded by Devon County Council, the Council accepted the powers for Civil Parking Enforcement on behalf of Devon County Council at its 27 March 2008 meeting. To reflect the change in the law arising from the Traffic Management Act 2004, it is necessary to update the Scheme of Delegations to grant additional delegated authority to the Head of Environment Services.

The Audit Committee

6. The Audit Committee has been effectively operating for a year and it is now considered an opportune time to review the arrangements for the monitoring of the leisure contract.
7. The view has been expressed by some Members that the issue of Leisure monitoring would sit better within the remit of the Scrutiny Group. This is due to the monitoring reports concerning service delivery against targets, rather than Audit Committee related functions, such as internal audit and processes.

The Standards Committee

8. The new procedure for dealing with complaints against members requires local Standards Committees to appoint two sub-committees, which must be composed of different people and chaired by independent members. The first sub-committee will assess new complaints to consider whether they will be referred to the Monitoring Officer for investigation, or other recommended action (such as the provision of training). The second will review that decision if it is to refuse to investigate, and the complainant isn't happy with it. At the moment the Standards Committee has no sub-committees and has only five members (one place being vacant). We will need to appoint at least one more member, either another independent person or one representing a parish council, to fulfil these obligations but we are also examining how far we may be able to share them with Teignbridge District and West Devon Borough Councils; the Regulations contemplate that we could appoint independent members of those authorities to our Standards Committee, either permanently or case by case. A further report will be brought to Council about this, and the new procedures (upon which of course Members will be fully consulted) once discussions have been finalised. Training will follow. In the meantime, Council needs to authorise the Standards Committee to undertake the new functions conferred upon it by the 2008 Regulations, and the Head of Corporate Services to amend Article 9 of the Constitution accordingly.

Civil Parking Enforcement

9. As a result of the acceptance of new powers through an agreement with Devon County Council (as agreed by the Secretary of State), the Council will be employing Civil Enforcement Officers to issue penalty notices for on street parking. In addition, it is a requirement for such officers to issue penalty notices under the Council's own Off Street Car parking orders for off street car parks and other associated duties. The Head of Environment Services must personally and specifically authorise Civil Enforcement Officers to perform these duties.

Constitution

10. As stated in Articles 4.2(a) and (h) of the Council's Constitution, any changes to the Constitution and amendments to the terms of reference are a matter requiring the ultimate approval of full Council.

Risk Assessment

11. The proposed changes to the Council's Constitution do not carry with them any risk to the Council.

Conclusion

12. The provisions within the Constitution are regularly reviewed to ensure it is fit for purpose and sufficiently robust if subject to challenge.

13. On balance, and having now been reviewed for a year, it is considered more appropriate for the Leisure Contract monitoring reports to be presented to future meetings of the Scrutiny Group for consideration.
14. As the Standards Committee is embarking upon a new regime for the monitoring and investigation of complaints, the Council's Constitution requires amendment to implement the new functions being imposed upon it.
15. To ensure the effective working for the Council of the new powers for Civil Parking Enforcement, it is essential that the required delegated authority (as outlined above) be granted to the Head of Environment Services.

Darryl White
Member Support Services Manager

Council
8 May 2008

Delyth Jenkins Evans
Deputy Monitoring Officer

Background Documents:

Local Government Act 2000 and the Standards Committee (England) Regulations 2008
Traffic Management Act 2004
Council Constitution