

EAST HERTS COUNCIL

ANNUAL COUNCIL – 13 MAY 2009

REPORT BY MONITORING OFFICER

14. AMENDMENTS TO CONSTITUTION

WARD(S) AFFECTED: ALL

'D' RECOMMENDATION - that (A) the implications of the Local Government and Public Involvement in Health Act 2007 and the Police and Justice Act 2006, as now detailed, be noted;

(B) the protocol for Councillor Call for Action (CCfA), as detailed at Appendix 'A14', be approved for inclusion within the Council's Constitution;

(C) the proposed amendments to the Officer delegations relating to human resources be approved; and

(D) the Monitoring Officer be authorised to amend the Constitution as necessary.

1.0 Purpose/Summary of Report

1.1 To consider

- (a) the implications for the Council's Constitution of the introduction of powers under the Local Government and Public Involvement in Health Act 2007 and in particular, the "Councillor Call for Action" (CCfA) provisions;
- (b) the implications of regulations relating to the Police and Justice Act 2006; and
- (c) proposed amendments relating to officer delegations on human resources matters.

2.0 Contribution to the Council's Corporate Priorities/Objectives

2.1 **Fit for purpose, services fit for you**

Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.

3.0 Local Government and Public Involvement in Health Act 2007

3.1 From 1 April 2009, there are two areas of new powers to consider as follows.

3.2 Section 119 of the Local Government and Public Involvement in Health Act 2007 contains new powers for ward councillors to call for debate and discussion at committee, a topic of neighbourhood concern, known as “Councillor Call for Action” (CCfA). The powers are limited to issues affecting single council wards and where other methods of resolution have been exhausted. More general policy issues can continue to be dealt with by scrutiny committees under existing powers.

3.3 Section 236 of the Act gives Councils the right to devolve Council functions to individual members, giving them the ability to get things done without going through the formal decision-making process. Functions which could be delegated include those relating to environmental improvement, community grants and supporting local neighbourhoods. This new provision is optional for Authorities.

4.0 Councillor Call for Action (CCfA)

4.1 The Council’s Constitution provides for individual councillors to request items for consideration at scrutiny committees. CCfA goes beyond this and provides for individual councillors to attempt specific solutions for local problems. It is designed to sit alongside existing mechanisms for resolving local issues.

4.2 There are certain exceptions, for example, if a CCfA is vexatious, or where it deals with an individual complaint.

4.3 CCfA is designed as a “long stop” to be used when all other attempts at resolution have been exhausted. It is not designed to provide an immediate solution, but can offer a high profile discussion of a local issue. CCfA procedures should focus on outcomes and resolutions for councillors and the local community and not processes.

4.4 As a result, whilst it will be necessary to consider amending the Council’s scrutiny procedure rules to take account of CCfA, these need not be prescriptive and should allow for maximum flexibility. It is suggested that the process set out in Appendix ‘A14’ (pages 166 - 167) is approved for inclusion within the Constitution. This process would be added to the existing scrutiny procedure rules within Part 4

of the Constitution. This may be reviewed in the light of experience and further best practice guidance from Government and professional bodies.

5.0 Delegated powers under Section 236

5.1 In respect of the provisions on delegated powers, if the Council was minded to adopt these, there is a requirement for such decisions to be recorded under section 100EA of the Local Government Act 1972. Precise arrangements can be made by individual Authorities. As stated in paragraph 3.3 above, these provisions are optional and at this stage, it is not proposed to adopt these powers.

6.0 Police and Justice Act 2006

6.1 Sections 19 - 21 of the Police and Justice Act 2006 relate to the scrutiny of Crime and Disorder matters. Draft regulations, to be effective from 30 April 2009, have been published, which require Authorities to designate a committee which is responsible for scrutinising Crime and Disorder matters. In East Herts, the Community Scrutiny Committee is already charged with scrutiny of crime and disorder issues under the current Constitution and no further action is required in this respect.

6.2 The Act requires the designated committee to discuss Crime and Disorder no less than twice in every twelve month period, so the Community Scrutiny Committee will need to have regard to this issue when considering its work programme. Under the 2006 Act, the Committee can request the attendance of an officer or employee of a responsible authority or of a co-operating person or body in order to answer questions or otherwise provide information. With appropriate notice, this person is expected to attend.

6.3 Further guidance relating to crime and disorder scrutiny provisions are expected later this year.

7.0 Other Legislation

7.1 Members should note that further regulations under the Local Government and Public Health Act 2007 are to be issued in due course, which may require further amendments to the Constitution. These relate to several sections where the provisions came into force on 1 April 2009:

- scrutiny of partner organisations and power to require

- information from partner authorities (sections 121 and 122);
- powers relating to joint overview and scrutiny committees (section 123); and
- powers relating to overview and scrutiny committees of district councils (section 124).

7.2 Additionally, the Local Democracy, Economic Development and Construction Bill, which is currently progressing through Parliament, includes provisions relating to petitions. Although the exact impact is still unclear, they will likely be linked to CCfA and the complaints process. It may be that the Bill does not receive Assent until the autumn/winter 2009. Therefore, it is possible that, in view of time constraints, some elements of the Bill may not be enacted before the next general election.

8.0 Officer Delegations – Human Resources

8.1 East Herts current disciplinary, grievance, capability and absence procedures were last reviewed in August 2006. These policies are currently being updated, and a new appeals policy devised, in order to reflect best practice, the Employment Act 2008 and ACAS Code of Practice. Following consultation with Unison and Heads of Service, the policies will be reported at the Local Joint Panel in June 2009.

8.2 The new Appeals Policy has changed the process for hearing appeals. Under the new procedure, appeals will usually be heard by a Head of Service/ Director who has not previously been involved in the case. There may be some circumstances where an appeal may need to be heard by the Chief Executive.

8.3 The Constitution makes reference to ‘appeals matters handled by the Human Resources Committee’. However this has not been custom and practice for over three years.

8.4 It is requested that the following changes are agreed to ensure that, once the new policies are approved, they may be adopted immediately. The proposed changes are:

Part 3 (A) – Chief Executive, Directors and all Heads of Service
 Insert new delegation (Page 90)

“14. To consider and determine appeals relating to disciplinary sanctions, grading and grievances by employees other than chief officers.”

Part 3 (B) – Chief Executive

Delete Paragraph 4 (page 90) as this has been replaced by new Paragraph 14 above.

Subsequent paragraphs are renumbered.

Existing Part 3 (B) Paragraph 5 (page 91) amended as follows:

Delete

“All matters relating to staffing, employment, terms and conditions and industrial relations for the Council’s workforce, save those matters relating to the Head of Paid Service and Chief Officers as specified elsewhere in the Constitution and appeals matters handled by the Human Resources Committee.”

and replace with

“All matters relating to staffing, employment, terms and conditions and industrial relations for the Council’s workforce, save those matters relating to the Head of Paid Service and Chief Officers as specified elsewhere in the Constitution. To delegate decisions regarding staffing matters as appropriate.”

9.0 Consultation

9.1 None

10.0 Legal Implications

10.1 The Council’s Constitution is required to take account of new legislation.

11.0 Financial Implications

11.1 There is no financial provision for Councillor Call for Action.

12.0 Human Resource Implications

12.1 The proposed amendments to the officer delegations on human resource matters will support the new appeals policies.

13.0 Risk Management Implications

13.1 None.

Background Papers

Council for Public Scrutiny (CfPS) 'Guidance on Councillor Call for Action (s119) under the Local Government and Public Involvement in Health Act 2007'.

CfPS 'councillor call for action: a new voice for members'.

CfPS 'Councillor Call for Action: best practice guide'.

Home Office: Statutory Instruments Crime and Disorder (Overview and Scrutiny) Regulations 2009.

Contact Officer: Simon Drinkwater, Monitoring Officer, ext 1405

Report Author: Martin Ibrahim, Senior Democratic Services Officer
Marian Langley, Scrutiny Officer

ADDITIONS TO SCRUTINY PROCEDURE RULES

Councillor Call for Action (CCfA) Protocol

Under section 119 of the Local Government and Public Involvement in Health Act 2007, Members may call for debate and discussion at committee, a topic of neighbourhood concern. These powers are limited to an issue which affects a single council ward. CCfA will be considered by the scrutiny committee, whose terms of reference include within its remit, the subject of the CCfA. If in doubt, the Monitoring Officer shall determine which scrutiny committee would be the relevant recipient. In order to initiate the CCfA process, the Chairman of the relevant scrutiny committee in conjunction with the Monitoring Officer will need to be satisfied that the following criteria have been met:

Criteria

Statutory Regulations specify matters that are excluded from CCfA:

1. any matter which is vexatious, discriminatory or not reasonable;
2. any matter which is the subject of an individual complaint;
3. any matter relate to a planning appeal, licensing appeal or other issue where there is an alternative avenue available; and
4. the matter must be one where all other attempts at resolution have been exhausted.

The following process will need to be followed:

Process

1. A Member should direct a CCfA request in writing to the Chairman of the relevant scrutiny committee and the Monitoring Officer who will, if the above criteria are met, allow the issue to be placed on the agenda for a subsequent meeting. The request should specify:
 - the ward concerned and how the issue relates only to that ward;
 - the views and concerns of local residents;
 - how existing mechanisms for resolution have been tried and exhausted; and
 - the desired outcomes for resolving the issue.

2. The scrutiny Chairman, in conjunction with the Monitoring Officer, may determine whether the next scheduled meeting of the relevant scrutiny committee is appropriate or if an additional meeting needs to be convened.
3. The scrutiny committee, subject to the necessary notice being given, will be able to request attendance from the relevant Executive Member and/or representatives of partner organisations, and/or to request information.
4. The scrutiny committee should discuss how to achieve the desired outcomes that the member bringing the CCfA has specified and should conclude its consideration with a recommendation that certain action(s) should take place. The scrutiny committee may decide to challenge whether the desired outcome is reasonable.
5. Whilst there will be no specified procedure for the discussions at committee, the scrutiny Chairman, in consultation with Officers, may determine an informal structure that will enable all parties to contribute.
6. All CCfA requests, whether pursued or not, should be reported to the next relevant scrutiny committee for information. This will enable scrutiny committees to take account of all requests in determining work programmes.