

Proposed Changes to the Constitution

Report of the Assistant Director of Law & Administration

- A. Changes to Procedural Standing Orders**
- B. Changes to the Constitution made by the Director of Law and Administration under his Delegated Powers.**

A. Procedural Standing Orders

A1. Council Motions on Notice

Procedural Standing Order 11.2.2 provides:

“Unless the Chairperson, in consultation with Group Leaders, decides otherwise, subject to Procedural Standing Order 11.8, motions from each political group (for the purposes of this Procedural Standing Order 11.2.2 only, all independent councillors are considered as a political group) shall be considered by full Council for up to a maximum of 30 minutes on the day of a meeting”.

This paragraph has given rise to debate following the last two Council meetings. The Monitoring Officer wrote to the Group Leaders on 9th February 2009 with a suggested solution to the question of what happens when the 30 minute time limit expires (see copy attached at Annex A). However, the responses received expressed a divergence of opinion therefore the matter has come to this Committee for discussion.

The issues are:

- i) What happens to the discussion when the time limit expires – should the motion be put to the vote or should it fall?
- ii) The 30 minute time limit can be partially used up by an amendment to a motion proposed by another political group. Do committee members consider that the time taken up by such an amendment should count towards the 30 minutes? Should the time taken up by an amendment be itself limited? If so, by how much.
- iii) Currently, the interpretation placed upon 11.2.2 is that the proposer’s right of reply must fit within the 30 minutes period. Should the right of reply be granted at the end of the 30 minutes: the right of reply is limited to 5 minutes only.

Note Procedural Standing Order 11.8 which states that

"The total period of time spent on motions on the day of a meeting shall not exceed two hours immediately following which the motion under discussion shall be put to a vote. This Procedural Standing Order may not be suspended."

Also, Procedural Standing Order 11.9 which states that

"In the event a motion has not been discussed at the meeting for which notice has been given, that notice of motion shall then be void".

iv) A further scenario has been put forward by Cllr Cordwell to the Monitoring Officer who has invited the Constitution Committee to give a view on it.

The question from Cllr Cordwell was whether there is provision in the Constitution for a motion which is not party political and has the support of other councillors, though not endorsed by any specific group.

The Council's constitution presently makes no direct provision for this to happen. The premise upon which the constitutional provisions are based is that there will be two hours in total for motions, with each of the four groups having half an hour each. It was drafted thus in an attempt to deal with the perception on the part of the groups that the allocation of time was not always administered entirely fairly. There is some scope for flexibility in that the Chair can make determinations as to the allocation of time, subject to the total time spent on motions at any given meeting not exceeding two hours.

Do the Committee feel that there should be a provision in the Constitution to cover this scenario, for example an additional 30 minutes? What parameters might be put around such a motion, and who would decide on its validity?

A2. Time for Receipt of Notice of Motion.

On a different issue, Procedural Standing Order 11.2.1 provides that

"Motions for which proper notice has been given under this procedural standing order will be listed on the agenda in the order in which they are received".

Notices of Motion are required to be delivered to the Chief Executive *"not later than 12 noon on the sixth day before the date of the meeting"*. However, the agenda and summons to a Council meeting are sent out where possible at least 9 days before a meeting. Therefore currently it is not feasible to add notice of motions to the agenda. It is recommended that this is remedied by requiring written notice of a motion not later than 12 noon on the 12th day before the date of the meeting.

A3. Questions by Members

Procedural Standing Order 10.1 provides:

“At each ordinary meeting the full Council (excluding the first annual meeting of a new Council) there will be 30 minutes set aside for questions from members on any matter within the powers or duties of the Council or which affects the County and there shall be an additional 10 minutes set aside for questions from members in relation to the responsibilities of the Police Authority.”

Members will be aware that prior to the last meeting of full Council on 18 February 2009 there was for the first time some debate about whether a member's question met the requirements of the constitution, in particular whether or not it “affects the County”. The Chief Executive recommended and it was accepted at the Chairman's briefing that on this occasion all Members' questions should go forward to the Council meeting, but that the Monitoring Officer should be asked to give some guidance on the interpretation of the procedural standing order. The Monitoring Officer is of the view that a common sense approach should be applied but that Constitution Committee should be requested to give its view.

In considering this Members might wish to bear in mind Article 1.03 of the Constitution which sets out the purpose of the Constitution and Article 1.4 which says that in interpreting the Constitution one should always choose that option which is closest to the purposes in Article 1.03.

Those purposes are:-

- 1.03.1 enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;*
- 1.03.2 support the active involvement of citizens in the process of local authority decision-making;*
- 1.03.3 help County Councillors represent their constituents more effectively;*
- 1.03.4 enable decisions to be taken effectively and efficiently;*
- 1.03.5 create a powerful and effective means of holding decision makers to public account;*
- 1.03.6 ensure that, in an overview and scrutiny committee, no one will review or scrutinise a decision in which they were directly involved;*
- 1.03.7 ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions;*

1.03.8 provide a means of improving the delivery of services to the community

The purpose of Members' Questions is to give members the opportunity to seek clarification on matters. It allows backbench members to raise issues affecting their local area and to hold the executive to account. It gives backbench members a voice at full Council.

It is possible to argue that very many topics might affect Gloucestershire, perhaps indirectly or merely by implication.

Does the Committee take the view that:

i) The procedural standing order should be amended to provide additional criteria and greater limitation on the subject matter of Members' Questions?

For example : :to delete the phrase "or which affects the County"; or
 :to add a requirement for there to be a "direct link with the powers and duties of the Council".

Note that questions from the public are required by Procedural Standing Order 9.3.4 to be on a matter "*within the powers and duties of the Council*".

Motions are required by Procedural Standing Order 11.3 to be "*about matters which are related to the responsibilities of the Council or which affect the County. The Chairperson's decision on whether or not a motion is relevant to the responsibilities of the Council will be final.*"

ii) Should the wording be left as it currently stands, and Members reminded that questions should be relevant to County Council matters - rely on Members good sense to keep them relevant? The Chairperson to have the final say?

iii) Alternatively should the wording be widened to allow there to be no constraints on the subject matter?

B. Changes to the Constitution made by the Director of Law and Administration under his Delegated Powers.

Under his delegated powers, the Director of Law and Administration has authorised a change to the Constitution, which is now reported to this Committee, before being reported to and ratified by full Council as required by Article 15 of the Constitution. It is at Annex B.

RECOMMENDED THAT:

1. Procedural Standing order 11.1 is amended to read (amendment shown in bold)

"Except for motions which can be moved without notice under these procedural standing orders, written notice of motions for discussion at full Council meetings must be delivered to the chief executive not later than 12 noon on the **twelfth** day before the date of the meeting. The Chief Executive will maintain a record of all motions submitted and the public may inspect that record except in respect of motions considered in the absence of the press and public.

2. The change to the Constitution set out in Annex B is noted and will be reported to full Council for ratification.

Christine Wray
Assistant Director of Law & Administration
Telephone: 01452 426911

WRAY, Christine

From: ROBERTS, Nigel
Sent: 09 February 2009 17:17
To: CABINET - DARE, Barry - Leader; RUTTER, Cllr Maureen; HILTON, Cllr Jeremy; HIBBERT, Cllr Diane
Cc: BUNGARD, Peter; WOOD, Stephen; ECCLES, Becca; PONTER, Ian; COATES, Richard; WRAY, Christine
Subject: Constitution of the Council - Provisions Relating to Motions at Meetings of County Council

All,

members will recall that at the last meeting of County Council, the Chair asked me for an interpretation of the constitution in so far as its requirements relating to motions is concerned.

The point at issue was that the clock had run down in respect of the thirty minute slot allocated to one of the groups; and a decision was needed as to the fate of the motion that was under debate at the point of closure.

As I advised at the time, the constitution is silent as to the position that prevails when each 30 minute period expires.

The nearest that we have to guide us is Procedural Standing Order 11.8 on page 73, which provides thus (and the emphasis is mine) -

"The total period of time spent on motions on the day of a meeting shall not exceed two hours ***immediately following which the motion under discussion shall be put to a vote.***"

On the basis of the existence of this provision, I advised that the most common-sense approach would be for the same thing to apply to live motions then under debate at the expiration of each group's allotted 30 minutes.

I remain of the view that this is the most sensible approach, but it isn't the only one; it might also be the case that every such motion should fall when the clock falls, without it being put to the vote.

Given the scope for alternative interpretations, it struck me that the governance of the Authority would be best served if the point was clarified before the next meeting of Council.

As Monitoring Officer, I have delegated authority to make changes to the constitution *inter alia* "to secure the convenient, efficient and effective discharge of any function" and given all the circumstances, I am minded to do so in order that the apparent uncertainty can be rectified, but only if all of the group leaders are in agreement as to which view should prevail.

I shall be grateful, therefore, if you can all let me know your preferred option; and the choices are that upon the expiration of each group's allocated 30 minutes for consideration of motions, the motion then under debate either

- falls; or
- is put to the vote.

Just to be clear; I will only exercise the delegated authority in my favour if there is clear and unanimous agreement on the part of all four group leaders.

Best regards

Nigel Roberts
Monitoring Officer

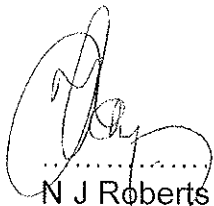
Changes to Gloucestershire County Council Constitution by the Monitoring Officer

In the exercise of my powers set out in Article 15.02.1 of the Council's Constitution, in order to

- give effect to a decision of the full Council

with effect from 21st January 2009, I make the changes to the Council's Constitution set out below.

1. In Part 3 of the Constitution the table entitled "Particular Delegations to the Leader of the Council and Lead Cabinet Members" shall be amended as shown in tracked mode on the page attached hereto.



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N J Roberts
Director of Law & Administration & Monitoring Officer
Gloucestershire County Council

Und
..... January 2009

Particular Delegations to the Leader of the Council and Lead Cabinet Members

Executive function, duty or power to be delegated	Appropriate Cabinet Member	Consultation under paragraph 5.4
All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution	Leader of the Council	Group Director and Director or Head of any service area affected by such a decision
All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution	Lead Cabinet Member Services to Children and Young People	Group Director and Director or Head of any service area affected by such a decision
All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution	Lead Cabinet Member Community and Adult Care	Group Director and Director or Head of any service area affected by such a decision
All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution	Lead Cabinet Member Environment and EconomyCommunity and Business Management	Group Director and Director or Head of any service area affected by such a decision
<u>All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution</u>	<u>Lead Cabinet Member – Resources</u>	<u>Group Director and Director or Head of any service area affected by such a decision</u>
<u>All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution</u>	<u>Lead Cabinet Member –Community Safety</u>	<u>Group Director and Director or Head of any service area affected by such a decision</u>
<u>All executive functions, duties or powers of the Council within his/her area of responsibility as specified in paragraph 4.4 of Section 4 of the Constitution</u>	<u>Lead Cabinet Member - Communications</u>	<u>Chief Executive</u>

Particular Delegations to Officers

Decision Category No	Function, duty or power to be delegated	Appropriate Officer	Consultation under paragraph 5.4
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