

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

20 February 2006

Report of the Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGES TO THE CONSTITUTION

1.1 Introduction

1.1.1 Article 15 in Part 2 of the Constitution sets out the procedure for review and revision of the constitution. Changes to the Constitution may only be approved by the full Council after consideration of a report on the proposal from the Council's Monitoring Officer. In preparing the report, the Monitoring Officer is required, amongst other things, to compare practices in this authority with those in other comparable authorities and national examples of best practice (where appropriate) and to consult the Council's other statutory officers, the Head of Paid Service and the Chief Financial Officer.

1.1.2 There have been two proposed changes to the constitution in recent times, which are summarised below. In each case, I am able to report that there is no legal objection to these changes being made.

1.1.3 The changes are as follows:

- 1) to record the changes to the delegations made by cabinet as a result of the passing of the Clean Neighbourhoods and Environment Act 2005 (Minute SS06/004 refers);
- 2) the introduction of new categories of exempt information (section 1.2 below refers).

1.2 Access to Information

1.2.1 Under the Local Government Act 1972, the press and public have a right of access to any reports submitted to members, unless the material falls within one of the categories of "exempt information".

1.2.2 The Government announced that, following the adoption of the Freedom of Information Act 2000 and the revision of the Data Protection Act in 1998, they intended to revise the categories of exempt information to bring them into line with

those pieces of legislation. This has now been done by Regulations, which will have effect from 1 March 2006.

- 1.2.3 So far as they apply to us, the rules are encapsulated within rule 10.4 of the Access to Information Procedure Rules set out in our Constitution. I have set out at **[Annex 1]** a copy of this rule as it will be modified by the new Regulations. This change is mandatory.
- 1.2.4 There are effectively two changes from the existing rules:
- rather than referring to different categories of personal information, as hitherto, the new rules refer to "information relating to any individual", which is in line with the Data Protection Act; and
 - information is exempt if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, which is the test in the Freedom of Information Act.
- 1.2.5 The new rules will apply to all agendas published on or after 1 March 2006 and the appropriate category of exempt information will need to be quoted in reports issued thereafter. I am in process of revising the Monitoring Officer's Guidance on the subject, which will be issued to Services as soon as possible.

1.3 Recommendations

- 1.3.1 It is **recommended** that the Monitoring Officer be authorised to make these changes to the Constitution, including any consequential amendments.

Background papers:

contact: Duncan Robinson
01732 876033

The Local Government (Access to Information)
(Variation) Order 2006 [SI 2006/88]
The Local Authorities (Executive Arrangements)
(Access to Information) (Amendment) (England)
Regulations 2006 [SI 2006/69]
The Relevant Authorities (Standards Committee)
(Amendment) Regulations 2006 [SI 2006/87]

Duncan Robinson
Monitoring Officer