

**TITLE: AMENDMENTS TO THE CONSTITUTION / SCHEME OF DELEGATION**

**TO/ON: CABINET 29<sup>TH</sup> MARCH 2006  
STANDARDS COMMITTEE 30<sup>TH</sup> MARCH 2006  
FULL COUNCIL 12<sup>TH</sup> APRIL 2006**

**BY: HEAD OF LEGAL AND DEMOCRATIC SERVICES**

**PORTFOLIO HOLDER: CABINET MEMBER FOR MEMBER DEVELOPMENT**

**STATUS: FOR PUBLICATION**

## **1. PURPOSE OF THE REPORT**

- 1.1 This report outlines the additional powers for Rossendale Borough Council under the Clean Neighbourhoods and Environment Act 2005 and the Gambling Act 2005 .
- 1.2 This report will also be considered by Standards Committee and Full Council as it proposes changes to the Council's Constitution.

## **2. RECOMMENDATIONS**

- 2.1 The Constitution and scheme of delegation to officers contained within the Council's Constitution be amended to include additional powers granted under the provisions of the Clean Neighbourhoods and Environment Act 2005/Anti Social Behaviour Act 2003 as detailed in Appendix A .Also to amend the scheme of delegation to introduce the powers contained within the Gambling Act 2005 as outlined at Appendix A.
- 2.2 To amend the confidentiality rules in light of the introduced by the Local Government (Access to Information) Variation Order 2006 as outlined within this report as outlined at Appendix B .
- 2.3 To amend the Constitution at paragraph 10 to add a procedure to provide for "Questions by members to the Leader "any such question asked by members at Full Council will be addressed to the Leader and answered by the Leader or in his absence the Deputy Leader or such other Cabinet member elected by them to answer the question submitted. Only questions should be submitted at this stage and statements should not be made by those asking the question.

To amend the Constitution at paragraph 10 to add a procedure to provide for "Questions by members to the Cabinet "any such question shall be in writing

the member having given 3 clear working days notice to the Democratic Services Manager . The question to be answered by the Cabinet.

The agenda of all Full Council meetings will hear public questions before member questions on notice Paragraph 9.8 will be amended to provide that the Leader of the Council will determine which Cabinet member or officer will answer a particular question.

- 2.4 To amend Article 7 of the Constitution “Overview and Scrutiny Committee” to insert the words “act as an Audit Committee” The terms of reference for the Audit Committee will be:

To oversee all arrangements for both the internal and external audit of the Council’s accounts and financial records.

To consider and make recommendations to Cabinet on the accounts and to consider the following:

The annual audit report and the management letter of the external auditor. Any other statutory report of the external auditor.

Any internal audit report that may be referred by the Chief Executive, the Director of Finance, the Head of Legal and Democratic Services (as Monitoring Officer)

Terms of reference for the Accounts Committee will be To approve the annual accounts and report of this Council (with delegated power).Power to approve the Council’s statement of accounts pursuant to regulation B(2) of the Accounts and Audit Regulations 1996.The Leader /Deputy Leader /Portfolio Holder for Finance and risk management /Leader of the Opposition /Deputy Leader of the Opposition will constitute the Committee

### **3. REPORT AND REASONS FOR RECOMMENDATIONS AND TIMETABLE FOR IMPLEMENTATION**

#### **CLEANER NEIGHBOURHOODS ACT 2005/ANTISOCIAL BEHAVIOUR ACT 2003**

- 3.1 In 2002 a review of the legislative framework for providing and obtaining a clean and safe local environment was carried out by DEFRA to accompany the Cross Government report “Living Places – Cleaner, Safer, Greener”. The review found that the powers, duties and guidance for dealing with problems associated with local environmental quality were not working as effectively as they should be, and produced options for delivering changes. These options were contained in the consultation paper “Living Places – Powers, Rights, Responsibilities”. Some of the measures were introduced into legislation in Part 6 of the Anti-Social Behaviour Act 2003. The majority of the options were developed further and included as proposals for legislative action within the Clean Neighbourhoods consultation launched on 25 July 2004.

- 3.2 The 2003 Act introduced a range of new powers and changes to existing powers. The reduction of anti-social behaviour is regarded as a key local and national priority and the powers granted under the provisions of the 2003 Act enables the local authority and its partners to take action in appropriate cases.
- 3.3 The Clean Neighbourhoods and Environment Act 2005 develops further measures contained in the 2003 Act and contains a range of measures to improve the quality of the local environment by giving local authorities additional powers to deal with specific forms of environmental nuisance:

#### Crime and Disorder

- Requires local crime and disorder reduction partnerships to take anti-social behaviour affecting the local environment into account in developing crime and disorder strategies.
- Gives local authorities new powers to deal with alleyways affected by anti-social behaviour. The local authority is granted the power to make a “gating order” in respect of any highway which is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses.

#### Fixed Penalty Notice (Fines)

- Makes greater use of fixed penalties as an alternative to prosecution, in most cases giving local authorities the flexibility to set their own rates.
- Gives Parish Councils the power to issue fixed penalties for litter, graffiti, fly posting and dog offences.

#### Nuisance and Abandoned Vehicles

- Gives the local authority the power to removed abandoned cars from the streets immediately.
- Creates two new offences to help the local authority deal with nuisance parking: offering for sale two or more vehicles, or repairing a vehicle on the road as part of a business. The local authority has the power to issue a fixed penalty notice for the offences

#### Litter

- Makes it an offence to drop litter anywhere, including private land and river, ponds and lakes.
- Gives the local authority new powers (litter clearing notices) to require businesses and individuals to clear litter from the land.
- Strengthens existing powers for local authorities to require local businesses to help clear up litter they generate (street litter control notices).

- Enables local authorities to restrict distribution of flyers, hand outs and pamphlets that can end up as litter.
- Confirms that cigarette butts and discarded chewing gum are litter.

### Graffiti and Fly Posting

- Extends graffiti removal notices (as introduced by the 2003 Act to include fly posting).
- Improves local authorities' powers to tackle the sale of spray paints to children.
- Strengthens the legislation to make it harder for beneficiaries of fly posting to evade prosecution.
- Enables local authorities to recover the costs of removing illegal posters.

### Waste

- Amends provisions for dealing with fly tipping by:
  - (a) Removing the defence of acting under employer's instructions.
  - (b) Increasing the penalties.
  - (c) Enabling local authorities and the Environment Agency to recover their investigation and clear up costs.
  - (d) Extending provisions on clear up to the landowner in the absence of the occupier.
- Gives local authorities and the Environment Agency the power to issue fixed penalty notices (and in the case of local authorities to keep the receipts from such penalties) to:
  - (a) Businesses that fail to produce waste transfer notes.
  - (b) Waste carriers that fail to produce their registration details or evidence they do not need to be registered.
  - (c) Anybody who leaves waste left out on the streets (local authority only).
- Introduces a more effective system for stop, search and seizure of vehicles used in illegal waste disposal and enabling Courts to require forfeiture of such vehicles.
- Introduces a new provision covering the waste duty of care and the registration of waste carriers.

- Introduces a new requirement for site waste management plans for construction and demolition projects.
- Repeals the divestment provisions for waste disposal functions to provide greater flexibility for local authorities to deliver waste management services in the most sustainable way.
- Reforms the recycling credit scheme to provide increased local flexibility to provide incentives for more sustainable waste management.

### Dogs

- Replaces dog byelaws with a new, simplified system which will enable local authorities and Parish Councils to deal with fouling by dogs, ban dogs from designated areas, require dogs to be kept on a lead and restrict the number of dogs that can be walked by one person.
- Gives local authorities sole responsibility for stray dogs. Previously this responsibility had been shared between local authorities and the police. This change will come into force only when the transfer of resources has been agreed.
- Regulations are awaited which will need to be adopted by the Council at a later stage.

### Noise

- The power to issue fixed penalties for noise nuisance at night and the power to close noisy premises is contained in the 2003 Act. In the 2005 Act local authorities are given new powers to deal with burglar alarms, impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise levels and gives local authorities greater flexibility in deal with noise nuisance. For example a local authority may designate alarm notification areas whether residential or non-residential in which notification of nominated keyholders must be given to the local authority. Fixed penalty notices may be issued for offences and unless set by a local authority the penalty is £75.00. A local authority may retain the receipts arising from fixed penalty notices. Local authorities will also have powers of entry following the issue of a warrant by a Justice of the Peace.

### Architecture and the Built Environment

- Puts commission for architecture and the built environment on a statutory basis.

### Miscellaneous

- Enables local authorities to cover the costs of dealing with abandoned shopping trolleys from their owners.

- Extends the list of statutory nuisances to include light pollution and nuisance from insects.
- Amends the contaminated land appeals process.
- Increase the penalty for various offences relating to pollution.

#### **4. GAMBLING ACT 2005**

- The Gambling Act 2005 provides new powers for local authorities to license gambling premises within their area, as well as undertaking functions relating to lower stake gaming machines and clubs and miners welfare institutes. There will be a new system of temporary use notices. These will authorise premises that are not licensed generally for gambling purposes to be used for certain types of gambling, for limited periods.
- The Act contains three licensing objectives which underpin the functions that the Commission and licensing authorities will perform. These objectives are central to the new regulatory regime created by the Act. They are :
  - (a) Protecting children and other vulnerable people from being harmed or exploited by gambling
  - (b) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime ;and
  - (c) Ensuring that gambling is conducted in a fair and open way.
- The Council as Licensing Authority will be required deal with applications to license gambling premises, the issue of permits authorising gaming and gaming machines and the registration of certain lotteries

#### **5. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ORDER 2006**

Please note that from 18<sup>th</sup> March 2006 a new Schedule 12A to the Local Government Act 1972 (Confidential Information) will be in force.

The new Regulations amend the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000.

In essence the Order amends Part 5A (access to meetings and documents of certain authorities, Committees and Sub Committees) of and Schedule 12A (Access to Information : exempt information) to the Local Government Act 1972. The changes to the Constitution are as attached at Appendix B these will be inserted at para 9.4 page 170-173 of the Constitution.

Members should note that the Head of Legal and Democratic Services has previously been asked by the Leader of the Council to consider in great detail whether officer reports should be open to the public or confidential. The legislation now provides a public interest test in some situations which will now apply. Overview and Scrutiny have also asked for a report which I am taking to the next committee on confidential report writing.

## **6. CORPORATE IMPROVEMENT PRIORITIES**

- 6.1 The Council seeks to continually improve these amendments will allow the Council to enforce new legislation .

## **7. FINANCE AND RISK MANAGEMENT**

- 7.1 Not applicable

## **8. MEMBER DEVELOPMENT AND POLITICAL ARRANGEMENTS**

- 8.1.1 Training may if members would find it useful to be provided with an update of the impact of any aspects of the legislation.

## **9. HUMAN RESOURCES**

- 9.1 Not applicable

## **10 RISK**

- 10.1 If the Council does not change the Constitution it will not be in a position to use these powers

## **11. LEGAL IMPLICATIONS ARISING FROM THE REPORT**

- 11.1 The legal requirements are outlined within this report

## **12 EQUALITIES ISSUES ARISING FROM THE REPORT**

- 12.1 Not applicable

## **13 WARDS AFFECTED**

- 13.1 All wards

## **14 CONSULTATIONS**

- 14.1 Not applicable

### **Background documents:**

For further information on the details of this report, please contact: Mrs. L. Fisher, Head of Legal and Democratic Services on 01706 252447.

Cleaner Neighbourhoods Act 2005/ The Local Government (Access to Information) (Variation) Order 2006 and the relevant Authorities (Standards Committee) Amendment Regulations 2006 and the Local Authorities (Executive Arrangements) (Access to Information) Amendment Regulations 2006/Gambling Act 2005/Anti Social Behaviour Act 2003.