

TITLE OF REPORT: COUNCIL CONSTITUTION – ANNUAL REVIEW

REPORT OF THE ACTING CORPORATE LEGAL MANAGER AND MONITORING OFFICER
PORTFOLIO HOLDER: MRS L.A. NEEDHAM, LEADER OF THE COUNCIL

1. SUMMARY

- 1.1 This report recommends amendments and updates to the Council's Constitution following Council's adoption of an extensively revised Constitution on 5 September 2013 and minor amendments agreed on 9 April 2014.

2. RECOMMENDATIONS

- 2.1 That the Council approves the amendments and updates set out in Appendix A. and authorises the Monitoring Officer to make any consequential minor changes to the Financial Regulations and Contract Procedure Rules that may result.
- 2.2 That the amendment to paragraph 9.7.1 (number of regular Area Committee meetings) be implemented from the start of civic year 2016/17.
- 2.3 That Council notes that further amendments will be required in due course.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure the Council meets its statutory obligations and continues to improve its working practices.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 The Group Leaders were consulted on, and agreed to, the review process which was originally intended to be a light touch review.
- 5.2 Members and Officers (via Group Leaders and Heads of Service) were invited to submit any points for consideration as part of the review, before Christmas 2014. The responses received are included within Appendix A.
- 5.3 Group Leaders were consulted on the decision to delay bringing the review to Full Council from April 2015 (as originally intended) to July 2015, due to developing changes in legislation. All Members were notified of this delay in MIS on 27 February 2015.
- 5.4 Due to the number of changes proposed to the Constitution (mainly due to legislative changes), it was agreed with Group Leaders that an all Member Workshop be held on

23 June 2015 to provide an opportunity to have a more detailed discussion on the proposed changes and to identify and deal with any potential issues or problems ahead of the Full Council meeting. All Members were invited to the Workshop in MIS on 29 May 2015 and were sent papers on 12 June 2015. The Senior Management Team was separately consulted as part of the process and feedback from those discussions is included within the proposed changes.

5.5 Prior to the Workshop, on 16 June, the Group Leaders were briefed as to the proposed changes to the Constitution. Additionally the Chairmen of Overview and Scrutiny Committee and Finance, Audit and Risk Committee were separately consulted on the proposed changes to those committees. The Workshop took place on 23 June with ten Members and four Officers in attendance and points raised during the Workshop have been included in the proposed amendments to the Constitution at Appendix A.

5.6 The Leader of the Council, as portfolio holder, has been consulted throughout.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1 The Council's Constitution was extensively reviewed and revised two years ago, the new Constitution being adopted by Full Council on 5 September 2013.

7.2 The Constitution is reviewed annually to ensure it is kept up to date and fit for purpose, and amended as and when required to comply with changes in legislation or to reflect Council decisions. The Constitution is a 'live' document, in that it is subject to constant review to take account of Council decisions, changes in legislation and changes in working practice.

7.3 As stated at paragraph 5.1 this year's Constitution review was intended to be "light touch" only as the Council sought to move to an approach where detailed reviews of the Constitution are generally only undertaken every 3 years, unless there has been significant legislative change/ or re-organisation.

7.4 Following consultation at a national level between January and March 2015 on proposals from DCLG it was anticipated that the Local Authorities (Functions and Responsibilities) (England) Regulations 2015 (already proposed in draft) would be enacted. These Regulations were delayed prior to the General election and were the reason that the Constitution review was not taken to April's Full Council meeting. Following the general election and change of the Secretary of State, ministers at DCLG will need to consider the outcome of the consultation and priorities for change. The Deputy Monitoring Officer (DMO) has discussed this with the civil servant responsible for the proposed Regulations (most recently on 2 July) and it is not anticipated that these will be in force before the July Council meeting. The DMO has, however, been informed that consolidating Regulations will be issued, possibly later this year. At that stage a further review of the Constitution will need to be undertaken. If minor amendments are proposed, these can be dealt with under delegated authority by the Monitoring Officer and then notified to Members.

7.5 Notwithstanding the original intention of a light touch review and the lack of updated Functions and Responsibilities Regulations, the review this year has ended up being in

greater detail than originally thought, due to a number of other legislative changes. The key changes are identified in section 8 below.

8. ISSUES

Council Standing Orders (Section 4.8)

- 8.1 The Council's Standing Orders are set out at section 4.8 of the Constitution. A number of changes have been proposed to improve the usability of this section, including in response to issues which have arisen since the last review. The most substantive changes relate to clarifying and tweaking the rules around questions by either Members or members of the public. The proposals include that questions can be asked by the public at any Committee and the ability for Members to ask (through the Chair) points of clarification from members of the public who have presented to them.

Scrutiny/ Finance Audit and Risk Committee (FARC) (Section 6)

- 8.2 Our current Constitution divides responsibility for Scrutiny between two committees, Overview and Scrutiny and Finance, Audit and Risk. Under the Local Audit and Accountability Act 2014 and The Accounts and Audit Regulations 2015 it is necessary for a non-Executive Committee to approve the Annual Statement of Accounts and Annual Governance Statement. These are currently reviewed by FARC prior to the Chief Executive and Leader signing them. There are limited options within the existing Committee structure to take the decision to approve these two documents. Given the function of the Committee it is considered that FARC is best placed to be the decision maker, however that requires it to lose its scrutiny function (as scrutiny committees by law cannot make decisions).
- 8.3 It is therefore proposed to make FARC an ordinary Committee of the Council, with revised terms of reference. FARC's current scrutiny functions will pass to the Overview and Scrutiny Committee. Various options were considered, including an Overview and Scrutiny Sub-Committee to deal with financial matters (used previously by this Council, but logistically it did not work), or splitting the Overview and Scrutiny functions to two Committees (but conclusion was that this was not necessary).
- 8.4 A number of options were considered as to how best to deal with the requirements of the legislation, before deciding to propose the two Committee solution. Although it is anticipated that the impact on Overview and Scrutiny Committee should not be substantial (as FARC had never used their call-in power and will still have a role in reviewing financial documents), the workload of the Committee will be monitored with a view to considering whether an alternative structure should be adopted in a future Constitution review.

Area Committees (Section 9)

- 8.5 A number of proposals have been included:-
- Tweaking the quorum numbers to try to assist the smaller area committees being quorate;
 - Changing the number of meetings from "no fewer than four" to "a maximum of four", as proposed in the 2013 Constitution review;
 - Mirroring the rules of Extraordinary Council meetings for Extraordinary Area Committee meetings;
 - Being more explicit that Area Committee decisions must be within the Budget and Policy framework of the Council.

A further review of this section may be required in due course once the outcome of the review of the grants process is known.

Officer Employment Procedure Rules (Section 12.8)

- 8.6 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require amendments to be made to the Council's Standing Orders as to how disciplinary allegations against statutory officers are dealt with. The likelihood of changes has been flagged in the previous two Constitution reviews. These amendments must, by law, be introduced at the first Council meeting after the Annual Council meeting (ie the meeting on 16 July 2015). In short the previous process by which a Designated Independent Person had to be appointed to investigate allegations has been removed and replaced by a process which requires a Panel and the input of the Independent Person(s) appointed under the Localism Act 2011 for standards matters. A number of changes have therefore been made to the Officer Employment Procedure Rules and the Employment Committee (10.2) in order to ensure compliance with the various legislative requirements.
- 8.7 The proposed changes are the minimum required to ensure compliance with legislative requirements. Whilst some guidance has been published (reflected in the changes) it is hoped that there may be further guidance forthcoming from the Local Government Association and/or other representative bodies as to how to respond to the new Regulations, not least of which as there is an apparent conflict between the new mandated approach and contracts of employment of officers affected. It is understood that there are challenges to the regulations underway, which may (or may not) lead to the repeal of some of the provisions. It will therefore be necessary to keep these sections of the Constitution under review to ensure they are fit for purpose.

Other changes

- 8.8 A number of other changes are proposed, as set out in Appendix A, to respond to (and ensure compliance with) statutory requirements, to clarify wording or to reflect working practices. Following suggestions at the budget workshop the review of the Constitution is now proposed to be "on an annual basis with a substantive review every 3 years" (2.4). It is also proposed to add some flexibility to the operation of the Charities Cabinet Sub-Committee, to allow for a more streamlined approach to minor or urgent matters (5.10).
- 8.9 The Contract and Procurement Rules (section 20) have been subject to separate review and are being reported to Council elsewhere on the agenda. If adopted the amended rules will be added to the adopted constitution.

Future Constitution Reviews

- 8.10 As stated at paragraph 7.2 the Constitution is a 'live' document, in that it is subject to constant review to take account of Council decisions, changes in legislation and changes in working practice. Whilst the Constitution is drafted to provide arrangements that will meet the Council's requirements, as it is still a relatively new Constitution (adopted less than two years ago) it will need be kept under review in the usual way to ensure it operates as intended.
- 8.11 A number of areas have already been identified as potentially needing review in the future. For example:

- the Officer Employment Procedure Rules (section 12.8) as stated previously;
- the process for Grants, which is subject to ongoing review, which may be impacted by an expressed intention by central government to require tighter financial controls on Local Authority award of grants; both Contract and Financial Regulations and the Council's Constitution may be subject to further amendment to incorporate such regulations;
- the delegations in section 14 which have been identified in the previous two reviews as needing comprehensive review. Following the forthcoming senior management re-organisation these will have to be changed (and when doing so the intention will be to make these more user-friendly and reflective of both Officer/ Portfolio holder's brief), including introducing consistent terminology across the delegations;
- The Planning Code of Conduct for Members, which it is anticipated will be reported to Council on 3 September 2015;
- The new approach to Overview and Scrutiny and Finance, Audit and Risk Committees.

9. LEGAL IMPLICATIONS

- 9.1 Full Council's terms of reference include "Adopting and changing the Constitution", save for matters which are delegated to the Monitoring Officer.
- 9.2 Section 37 Local Government Act 2000 requires the Council to have in place a constitution and to keep that constitution under review. The Local Government Act 2000 section 9P sets out the requirements of a local authority's constitution, including the requirements to prepare it and keep it up to date and the requirement to make it available for public inspection.

10. FINANCIAL IMPLICATIONS

- 10.1 The proposed changes to the constitution are relatively minor, although some may result in financial savings. A reduction in the number of Area Committees held in a year to four will result in a minor cashable saving, however there will also be non-cashable efficiencies in terms of the officer time to support those Committees. . Any future substantial change to the constitution could have financial implications and impact on the overall "cost of democracy".
- 10.2 Financial Regulations, which form Section 19 of the Constitution, were most recently approved by Full Council on 12th February 2015.

11. RISK IMPLICATIONS

- 11.1 Ensuring the Council has appropriate governance arrangements in place is an important risk mitigation measure. The Council's Constitution is a fundamental part of those governance arrangements.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 The proposals made within this report for changes to the Constitution do not materially affect any groups with protected characteristics, but it is the aim, in revising the Constitution and its content regularly, to make it more 'user friendly', ensure transparency and also to encourage greater participation in the Council's decision making processes.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 Ongoing training is offered and provided to relevant officers to ensure they remain familiar with the Constitution. This will be met from existing work plans. HR will be included in the considerations of any further changes proposed to the Officer Employment Procedure Rules once further clarity is provided at a national level.

15. APPENDICES

- 15.1 Appendix A – Proposed amendments to the Constitution.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Current NHDC Constitution.