

TITLE OF REPORT: COUNCIL CONSTITUTION – ANNUAL REVIEW 2016

REPORT OF THE CORPORATE LEGAL MANAGER AND MONITORING OFFICER
EXECUTIVE MEMBER: MRS L.A. NEEDHAM, LEADER OF THE COUNCIL

1. SUMMARY

- 1.1 This report recommends amendments and updates to the Council's Constitution. The last review was reported to Council on 16 July 2015, following which amendments were made to: incorporate Contract Procurement Rules changes in August 2015; the Planning Code of Conduct for Members in September 2015; and a minor statutory change on 18 April 2016 by the Monitoring Officer under delegated authority.

2. RECOMMENDATIONS

- 2.1 That the Council approves the amendments set out in Appendix A.
- 2.2 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 RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Senior Management Team and Leader were consulted and agreed to the review process which is a light touch review. The proposed amendments follow on from a Council decision, Local Government Association (LGA) recommended practice and (in respect of Standards Committee) following liaison with the Independent Person (IP) and Deputy IP.

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

- 7.2 The Council's Constitution was extensively reviewed and revised three years ago and adopted by Full Council on 5 September 2013. A review was undertaken in 2015; however, this became a more substantive review with more extensive amendments approved by Council on 16 July 2015. Thereafter, amendments were made to the Contract Procurements Rules following legislative changes and incorporation of a social value act policy approach (approved by Cabinet 28 July 2015). A further amendment was made under the Monitoring Officer's delegated authority on 18 April 2016, under paragraph 2.6.2(d) of the Constitution, to introduce a new term of reference for Cabinet at 5.6.33, in respect of the power to make, renew and revoke Public Spaces Protection Orders.
- 7.3 Under 2.4 of the Constitution there is an annual simple and triennial substantive reviews process – with 2016 as a more substantive review year. However, given the extensive review undertaken in 2015, potential Contract Procurement Rules amendments and the forthcoming reorganisation of Senior Management the proposed changes in this report are to cover only necessary or minor amendments. The key changes are identified in section 8 below.

8. ISSUES

Council Standing Orders (Section 4.8.20(d)):

- 8.1 This covers a proposed tweaking to the rule relating to a Member not being heard and how to approach a situation if, *following a Member vote not to hear another Member or for the Member to leave or adjourn the meeting*, (the motion(s) having been carried) *the Member then remains*.
- 8.2 Some Councils have approached this more formally in the past, potentially considering the physical removal of a Councillor or calling the Police. However, it is proposed that a more effective and less confrontational method would be to treat the situation as *though the Member has effectively left* (therefore not hearing further from that Member or counting the vote of that Member for the remainder of the meeting). This would help to further enhance the Council's standing orders for dealing with disruptive behaviour and allow a meeting to continue in a swifter fashion.
- 8.3 New Standing order 4.8.20(e) requiring a Member with a DPI or a Declarable Interest which is so significant, not to participate and should leave meetings. This is to supplement the Code of Conduct and strengthen the powers to deal with such issues in a meeting. If approved, subsequent rules to that will be renumbered.

Standards Committee (Sections 7.2, 7.2.1, 7.5.11):

- 8.4 The proposed amendment to membership is to reflect the decision already made by Council on 19 May 2016 to increase elected Councillor numbers from 8 to 12.
- 8.5 The proposed change to remit in terms of the complaint arrangements follows discussions with the Independent Person and Deputy Independent Person. The arrangements were originally approved by Council in 2012, with some further amendments in 2013. Some minor adjustments were approved by the Monitoring Officer in 2015, following liaison with the Standards Committee and the Independent Person. It has now been three years since the arrangements were approved and a substantive review is now due. The most effective forum for review and approval would be the Standards Committee (given its overall experience of such matters and newly enlarged Committee size).

Employment Committee and Officer Employment Procedure Rules (Sections 10.3, 10.4, 12.8):

- 8.6 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 required amendments to be made to the Council's Standing Orders in respect of disciplinary action against "relevant officers" (Chief Executive, Chief Finance Officer and / or Monitoring Officer). These were to include Independent Persons (IPs) already appointed under s28(7) of the Localism Act 2011.
- 8.7 Changes were approved by Full Council (Annual and then as part of the July 2015 review) to reflect these arrangements. As outlined in the July 2015 Council report, further amendments to the Council's Standing Orders/ procedures would, potentially, be required once the LGA had issued guidance.
- 8.8 The LGA has now issued a circular¹ in respect of the Chief Executives' Handbook – setting out a requirement that the IPs are part of a separate Employment Panel (defined as a Committee)² to consider any recommendation to dismiss a 'relevant officer'³ and that this Panel should not include elected Members. The proposed changes in Schedule A reflect the recommendations of a separate Employment Panel of two IPs. It would be possible to recruit a third IP for such a Panel, to prevent administrative issues (in terms of presiding over such a Panel meeting and making a clear decision on whether to refer the matter to Full Council). However, as these have to be appointed to the Council under the Localism Act 2011, Members should consider whether this is justified given the level of standards related workload. *If Members require an additional IP, then the recommendations under paragraph 2 should include a further recommendation, instructing the Monitoring Officer to proceed with recruitment, with a view to confirmation of appointment being brought back to Council, later in the civic year.*
- 8.9 Legal opinion is that whilst these LGA proposals go beyond the 2015 Regulations requirements in precluding the appointment of elected members to the Panel, it was concluded that there were sound reasons for following this proposal (including IPs independence and ensuring that the relevant officers' likely terms and conditions were mirrored in the Council's arrangements).

Delegated authority of the Monitoring Officer (Section 14.6.9(c)&(d)):

- 8.10 The Monitoring Officer currently has delegated authority to undertake amendments to the Constitution (which by definition includes all Sections 1-20) under Section 2.6 and 14.6.9(c)&(d). The wording in 14.6.9(c)&(d) duplicates the authority in section 2.6; however, it does not clearly indicate any remit for other Governance related Policies/ Procedures/ Codes or Guidance. The proposal is therefore to amend the wording to those sub-sections and to include such remit where the Monitoring Officer is instructed to do so by Council/ Committee or Cabinet or as per the same minor amendments procedure already laid down for the Constitution under 2.6.

Minor consequential changes:

- 8.11 These are covered under 4.4.1(v), 4.8.24, 5.6.20, 12.8.7, 14.6.5(a)(viii) & (xxi), the Contract Procedure Rule indexation/ key contacts and the Financial Regulations detailed in the Schedule (Appendix A), for the reasons outlined in that Schedule.

¹ Joint Negotiating Committee for Chief Executives of Local Authorities Circular 05 May 2016

² Section 102(4) Local Government Act 1972 Committee.

³ "Relevant officer" has a statutory definition under the 2015 Regulations 2015 to mean the Head of the authority's paid service, Chief Finance Officer or Monitoring Officer and the IP Employment Panel would only be required to sit to consider recommendation to dismiss those officers under disciplinary procedures.

Future Constitution Reviews:

- 8.12 As stated, the Constitution is effectively 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 it needs to be kept under review in the usual way to ensure it operates as intended.
- 8.13 A number of areas have already been identified as potentially needing review in the future. For example:
- the delegations in section 14 which have been identified in the previous three reviews as needing comprehensive revision. Following the forthcoming senior management re-organisation these will have to be changed. When doing so the intention will be to make these more user-friendly and reflective of both Officer/ Executive Member's brief, including introducing consistent terminology across the delegations;
 - Contract Procurement Rules amendments following legislative changes. Proposals are anticipated from the Contract Procurement Group for the September Council meeting.
 - A potential review of the Financial Regulations for any inconsistencies and revision of formatting.

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 and there are no direct financial implications.

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 has been included in the considerations of the further changes proposed to the Employment Committee / Officer Employment Procedure Rules following the LGA circular.

15. APPENDICES

- 15.1 Appendix A – Schedule of proposed amendments to the Constitution.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Current NHDC Constitution.
- 17.2 Constitution report 16.7.15.
- 17.3 Record of Decision made under Delegated Authority, made by Monitoring Officer on 18 April 2016 (in respect of power to make, renew and revoke Public Spaces Protection Orders) (notified to Members on 22 April 2016).
- 17.4 Joint Negotiating Committee for Chief Executives of Local Authorities Circ 5 May 2016.