

## RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

<b>*PART 1 – PUBLIC DOCUMENT</b>
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Any interest to declare/ or conflict and any dispensation granted N/A
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### SERVICE DIRECTORATE: LEGAL & COMMUNITY

<b>1. DECISION TAKEN</b>
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To make amendments to the NHDC Constitution as per Appendix A.
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<b>2. DECISION TAKER</b>
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Jeanette Thompson, Monitoring Officer (Service Director: Legal & Community).
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<b>3. DATE DECISION TAKEN:</b>
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6 May 2021 – Constitutional amendments from 7 May 2021.
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### 3. REASONS FOR RECOMMENDATIONS

3.1. To ensure wording of the NHDC Constitution does not conflict with the Local Government Act 1972 requirements (therefore delegated decision under 2.6.6 of the Constitution).

3.2. Amendments to wording following Full Council's decision of 15 April 2021 to adopt a new Code of Conduct for NHDC Members from 7 May 2021 (therefore delegated decision under 2.6.2(c) of the Constitution).

### 4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

### 5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1. The proposed changes to the Constitution were sent to the Group Leaders for comment before the decision was published, and the updated Constitution uploaded with the amendments in Appendix A.

### 6. FORWARD PLAN

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

### 7. BACKGROUND

#### **Flexible Meetings:**

7.1. Following the coronavirus pandemic, The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 'Flexibility of Meetings Regulations 2020'<sup>1</sup> came into force on 4 April 2020 and applied to meetings from that date until those held before 7 May 2021. These Regulations introduced new ways to hold Local Authority meetings, including wholly or partly virtual meetings of Members, officers, the press and public. Amendments to the Constitution were then approved by Full Council in 2020 to comply with the Flexibility of Meetings Regulations 2020.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2020/392/made>

- 7.2. Such provisions would cease unless new legislation came into effect on or before 7 May 2021. In 2021 Central Government indicated that it did not have sufficient time to introduce new legislative provisions.
- 7.3. The Lawyers in Local Government, Association of Democratic Services Officers and Hertfordshire County Council (with support of the Local Government Association and National Association of Local Councils) mounted a legal challenge against the Secretary of State for Housing, Communities and Local Government – seeking a declaration in High Court as to the interpretation of certain provisions under the Local Government Act 1972 (principally “meetings”, “attending”; and being “present”). This sought a more accommodating interpretation to allow virtual meetings to continue (if a Local Authority wished to do so on or after 7 May 2021).
- 7.4. This was heard by the High Court on 21 April 2021 and the challenge was unsuccessful, with the main Judgment handed down on 28 April, and a supplementary Judgment being published on 4 May 2021 regarding public access. This essentially means a reversion to pre-Flexibility of Meeting Regulations 2020 requirements, subject to any public health or Government guidance/ further legislation to the contrary.

## **8. RELEVANT CONSIDERATIONS**

### **Flexible Meetings**

- 8.1. Whilst this issue is still under review by Members and officers (with a view to seeking feasible and legal methods to conduct meetings and to cover issues for those Members who cannot attend), the amendments have been made to ensure that the Constitutional wording does not conflict with the Local Government Act 1972 requirements as from 7 May 2021, until or unless this situation is resolved.
- 8.2. The Government has called for evidence to potentially support new legislation.
- 8.3. This delegated decision will be reported to Council.
- 8.4. A further Constitutional review and amendment report will be undertaken and presented to Council during 2021.
- 8.5. Note that according to leading Counsel (Philip Kolvin QC), this does not apply to Licensing Act 2003 Committee ‘hearings’ – as they are subject to different legislative requirements, and those virtual hearings may continue. This will be something for the Council to determine.

### **NHDC Code of Conduct from 7 May 2021**

- 8.6. Following Full Council’s decision on 15 April to adopt a new Code of Conduct for Members from the above date, some amendments have been identified in terms of terminology and the Constitution has therefore been updated as set out in Appendix A. The new Code will be part of the Constitution from 7 May and any further amendment (if necessary) will be dealt with in the subsequent review in 2021.

## **9. LEGAL IMPLICATIONS**

- 9.1. Full Council’s terms of reference include “approving or adopting the Policy Framework”. The Policy Framework includes the Constitution.
- 9.2. Section 37 Local Government Act 2000 requires the Council to have in place a Constitution and to keep that 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.

- 9.3. Section 2.6.2(c) provides:

*2.6.2 Minor Changes*

*If, in the reasonable opinion of the Monitoring Officer or the Chief Finance Officer, a change is:*

*(c) required to be made so as to put into effect any decision of the Council or its committees or the Cabinet; or..*

*the Monitoring Officer or the Chief Finance Officer may make such a change.*

Changes under 2.6.2 must be notified to all Members.

- 9.4. Section 2.6.6 provides:

*2.6.6 Legislative Change*

*Any part of the Constitution may be amended by the Monitoring Officer where such amendment is required to be made so as to comply with any legislative provision. Such amendments shall take effect when the Monitoring Officer so decides or the legislation (where relevant) so provides. Such changes shall be reported to the next full Council meeting.*

**10. FINANCIAL IMPLICATIONS**

- 10.1 There are no significant financial implications arising from this decision.

**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 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.

- 12.2 The Flexibility of Meetings Regulations 2020 have been of benefit for those with disabilities, or clinically vulnerable, in allowing Members, officers or the public to attend a meeting remotely during the pandemic. The Council will therefore continue to allow (in so far as it is technically able) public and press access remotely. It is also considering Hybrid provisions for Member and officers – albeit in respect of Members, their attendance in that way would not count toward the quorum of a formal meeting or ability to make a decision in a formal meeting.

**13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and “go local” requirements do not apply to this decision.

**14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no direct implications from this report.

**15. ENVIRONMENTAL IMPLICATIONS**

- 15.1 In respect of the Flexibility of Meetings Regulations 2020 changes, these had perceived environmental benefits for the public, Members and Officers - by removing the

requirement to physically travel to and attend a meeting. In so far as the Council is able it will continue to promote such measures where practical even after the Flexibility of Meetings Regulations 2020 provisions lapse.

**16. APPENDICES**

16.1 Appendix A – Table of constitutional changes.

**17. CONTACT OFFICERS**

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**18. BACKGROUND PAPERS**

None.

**NOTIFICATION DATE**

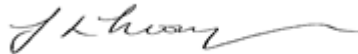
**14 May 2021**

**Signature of Executive Member Consulted**



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**Signature of Decision Taker ...**



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Date .....6.5.21.

**Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.**

**Call-in does not apply to NON-EXECUTIVE DECISIONS – THIS IS A NON-EXECUTIVE DECISION**