

COUNCIL
10 APRIL 2018

PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

6

TITLE OF REPORT: COUNCIL CONSTITUTION – ANNUAL REVIEW 2018

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

1. EXECUTIVE SUMMARY

This report recommends amendments to update the Council's Constitution.

2. RECOMMENDATIONS

That Full Council:

- 2.1 approves the proposed amendments set out in Appendix A.
- 2.2 delegates to the (Acting) Corporate Legal Manager & Monitoring Officer authority to make such amendments as are necessary to the Constitution to give effect to the Senior Management Restructure post implementation.

3. REASONS FOR RECOMMENDATIONS

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

4. ALTERNATIVE OPTIONS CONSIDERED

None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

The proposals take into account issues raised by Members and Officers since the last review. The Group Leaders were consulted on the proposed changes.

6. FORWARD PLAN

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 Monitoring Officer has a duty to monitor and review the Constitution. Under paragraph 2.4 of the Constitution there is an annual straightforward (necessary/ minor) and triennial in-depth review process. The last in-depth review took place in 2015 and so 2018 was scheduled for an in-depth review. Whilst the 2018 review has taken into account all of the matters raised with the Monitoring Officer during the course of the year, it is considered most appropriate to await the outcome of the Senior Management Restructure before a significant in-depth review is undertaken.
- 7.2 Members will note that further amendments will be required following the conclusion of the Senior Management Restructure and it is proposed that authority to finalise the detail of that aspect of the review is delegated to the (Acting) Corporate Legal Manager and Monitoring Officer, as per recommendation 2.2.
- 7.3 The key changes set out in Appendix A are summarised in section 8 below.

8. RELEVANT CONSIDERATIONS

Section 2 Changes to the Constitution including the Financial Regulations

- 8.1 Presently all minor amendments to the Financial Regulations have to be reported to Full Council, whereas only certain changes to the main body of the Constitution have to be reported in this way, with others notified to members via MIS. The proposed changes to this section address this inconsistency by applying the existing procedure for minor amendment to the main body of the Constitution, to the Financial Regulations.

Section 4 Functions of Full Council

- 8.2 Amendments to the Functions of Full Council are proposed for clarification and to reflect current practice.

Section 4 Standing Orders

- 8.3 New procedure rules are proposed to apply to presentations by the public. The rules are intended to align the procedures for questions and presentations by the public and include the ability for the presentation to be rejected if it is substantially the same as a presentation that has been made at a meeting in the previous six months, or the same as one presented at the same meeting; it will also allow some consideration and thereby protection of the Council from defamatory or offensive presentation. It is proposed that the presentation be sent to the Proper Officer two working days prior to the meeting to enable consideration of whether the presentation is repetitious in this way, or otherwise is not in accordance with the rules. However it is not proposed to apply this new notification requirement to Planning Control Committee or Area Committees. It is acknowledged that embedded within the constitution these committees have their own rules with regard to notification of presentations¹, and it is intended that these practices should continue.
- 8.4 Changes have been introduced to formalise the Councillor's Speaking Right introduced by the revised Code of Conduct adopted on 27 November 2017 which will take effect on 4 May 2018. The right shall apply to Full Council, Cabinet, Committees and Sub-committees (excluding the Employment Panel).

Section 5 Functions of Cabinet

- 8.5 Several amendments to the Functions of Cabinet are proposed for clarification, for consistency with other constitutional provisions, and to reflect current practice. In

¹ Paragraph 1.5 of Appendix 1 to Section 8, and paragraph 9.8.3(c)(i)
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addition, changes are proposed to set out the role of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) prior to the creation of any partly or wholly owned company.

Section 8 Procedure for Member's participation in Planning Control Committee

- 8.6 As part of the introduction of the Councillor's Speaking Right to this committee, consideration has been given to how the right should be aligned with the rights of ward advocates and members who are excluded from participating in the debate and vote on the basis of perceived or actual bias or predetermination. The proposed amendments to this section clarify that the 5 minute timeslot for addressing the committee (or 10 minutes in the case of a major application) is to be shared between all members who are eligible to speak.

Section 9 Area Committee Grant funding delegation

- 8.7 It is proposed that an officer in consultation with the Chairman or Vice Chairman of area committees has delegated authority to provide grants aid/financial support in between meetings of the Area Committee. This delegation will be subject to a limit of £500 for each individual grant. Allowing small grants of this nature to be dealt with outside of the committee cycle will provide greater flexibility for the Area Committee to meet the needs of the applicant groups. The intention is to finalise this amendment following the conclusion of the Senior Management Restructure so that the Service Director with responsibility for community development can become the delegated officer.

Section 10 Employment Committee and new Employment Appeals Committee

- 8.8 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 provided new arrangements for taking disciplinary action against Council Statutory Officers. In July 2015 the necessary changes to the Constitution were introduced to reflect the new statutory arrangements. Since that time, The Joint Negotiating Committee for Local Authority Chief Executives (JNC), which is the body responsible for Chief Officer Conditions of Service, has undertaken a thorough consideration of the statutory changes and has published a model discipline procedure and guidance. The model procedure includes provisions for Statutory Officers to have a right of appeal to an Appeals Committee against decisions by the Employment Committee to take action short of dismissal (as a decision to dismiss would be referred to Full Council under the procedure). The proposed changes to this section introduce an Employment Appeals Committee to undertake this function. Previously this appeals function fell within the terms of reference of the Licensing and Appeals Committee, however it was felt that this was disproportionate and inappropriate forum to consider appeals of this nature.
- 8.9 The JNC's model procedure also recommends that the Monitoring Officer is delegated powers to filter complaints of misconduct against Chief Officers before they are referred to the Employment Committee for consideration, in consultation with the Chairman. This delegation has been incorporated into the proposed amendments to the Employment Committee's terms of reference. Where such complaints related to the Monitoring Officer, they shall be dealt with by the/ a Deputy Monitoring Officer.

Sections 12 & 14

- 8.10 Members will be aware that the formal consultation into the Senior Management Restructure closed on 21st March 2018. Sections 12 and 14 of the Constitution will require extensive amendments to reflect the new structure and to give effect to a new scheme of delegation (although some further consequential ones will be required elsewhere to align descriptions/ terminology). Due to the timing of reports and the need for the consultation responses to be fully considered, it has not been possible to bring

forward the relevant proposals as part of this annual review. The recommendation at 2.2 of this report is therefore included to allow the necessary amendments to be made at the earliest opportunity and these will be reported back to members via MIS.

9. LEGAL IMPLICATIONS

9.1 Full Council's terms of reference include "approving of 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 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

The proposed change in paragraph 8.7 provides an additional delegation in relation to the award of Area Committee Grants. Any awards will still be required to be within the annual budget allocated to that Committee. As a result there are no financial implications (either revenue or capital) arising from this report.

11. RISK IMPLICATIONS

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 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

The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

The Senior Management Restructure is not the subject matter of this report; however, changes shall be made to the Constitution following consultation, consideration of those responses and implementation. Otherwise, no other implications.

15. APPENDICES

Appendix A – Schedule of proposed amendments to the Constitution.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 Current NHDC Constitution 2017: <https://www.north-herts.gov.uk/home/council-and-democracy/council-constitution>