

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

POLICY DEVELOPMENT GROUP – 23 MAY 2013

Title of report	UPDATE OF THE COUNCIL'S CONSTITUTION
Contacts	<p>Councillor Nick Rushton 01530 412059 nicholas.rushton@nwleicestershire.gov.uk</p> <p>Chief Executive 01530 454500 christine.fisher@nwleicestershire.gov.uk</p> <p>Head of Legal and Support Services 01530 454762 elizabeth.warhurst@nwleicestershire.gov.uk</p>
Purpose of report	To seek Scrutiny's comments on the draft report to Council (18 June 2013) which proposes various amendments to the Constitution
Reason for Decision	To update the Constitution and improve the effectiveness of the governance arrangements of the Authority.
Council Priorities	Value for Money
Implications:	
Financial/Staff	None.
Link to relevant CAT	
Risk Management	A clear and up to date Constitution will minimise the risk of the Authority failing to comply with statutory requirements and assist in delivering its priorities and objectives.
Equalities Impact Assessment	Not applicable.
Human Rights	Not applicable.
Transformational Government	Clear and robust governance arrangements and procedures assist with the effective and efficient delivery of services and proper decision making.
Comments of Head of Paid Service	The report is satisfactory.
Comments of Section 151 Officer	The report is satisfactory.

Comments of Monitoring Officer	The report is satisfactory.
Consultees	Statutory Officers. Head of Legal and Support Services. Partnership Manager.
Background papers	None.
Recommendations	THAT THE POLICY DEVELOPMENT GROUP PROVIDE COMMENTS TO THE MONITORING OFFICER ON THE DRAFT COUNCIL REPORT (18 JUNE 2013)

1.0 BACKGROUND

1.1 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Authority to reflect best practice. Members may recall that, in response to comments and suggestions made by members at Council, it was agreed that:

- (i) the Constitution underwent one main annual review - around the time of Annual Council;
- (ii) any remaining changes or matters arising after this date would be dealt with by way of one mid year review;
- (iii) further reviews or changes would only be suggested outside this process if legislation or national guidance required it;
- (iv) there was some "scrutiny" of the main annual review report whilst in draft and prior to its publication;
- (v) there would be informal consultation / engagement with members on the mid year and other reviews.

2.0 ROLE OF SCRUTINY

2.1 Following consideration of the Constitution it is considered that it would be appropriate to ask Policy Development Group to consider the draft Council report.

2.2 Scrutiny is asked to provide comments to the Monitoring Officer on the proposed changes.

3.0 DRAFT REPORT TO COUNCIL – 18 JUNE 2013

3.1 The report proposes changes to the Constitution in the following areas.

- (i) Meetings of Cabinet

The constitution currently provides that Cabinet will meet up to 10 times per year on dates and times to be agreed by the Leader.

The Leader has indicated that he wishes to increase the number of Cabinet meetings to 11 per year. In order to avoid the necessity of a constitutional amendment in the event that the number of Cabinet meetings is amended at some point in the future it is recommended that a general form of wording is used to allow flexibility for the Leader to determine the number of meetings of Cabinet.

The proposed amendment is attached at Appendix 1 of the draft report to Council

(ii) Write off Procedures

The Constitution currently provides delegated authority for the Chief Executive to authorise the writing off of debts up to a value of £1000 where all attempts to recover the monies outstanding have failed. This figure has not changed for a number of years.

At its meeting on 12 December 2012 Cabinet received and approved a report on the 'Revenues and Benefits Write off Policy', as part of a streamlining of procedures and policies within the framework of the Shared Revenues and Benefits Partnership. The report which was approved by Cabinet recommended that the authorised value for delegated write offs be increased to £10,000 and resolved that the Monitoring Officer should at the request of the Section 151 Officer prepare a report to Council requesting that the necessary constitutional amendment be approved.

The proposed amendments are contained at Appendix 2 of the draft report to Council

(iii) Highways Act 1980

The current constitution makes no specific delegation to Officers in respect of applications to divert footpaths under the Highways Act 1980 and all such applications, irrespective of whether or not there are any objections require the approval of Full Council..

Applications under this legislation are infrequent however in the absence of delegated powers delays are inevitable particularly for those applications where there are no objections. This compares with applications to divert footpaths under the Town and Country Planning Act which are delegated to Planning Committee and the Director of Services

For the reasons of business efficiency it is recommended that similar delegations be approved by Council in respect of applications to divert footpaths under the Highways Act 1980

The proposed amendments are contained at Appendix 3 of the draft report to Council

(iv) Access to Information – Exempt Information – Schedule 12A Local Government Act 1972

Following changes to the Standards regime arising from the enactment of the Localism Act 2011 the opportunity has been taken to remove parts of the wording that have been historically included in this section of the constitution which overlap with the statutory requirements. In the opinion of the Monitoring Officer

removal of the wording does not have any practical effect on the classes of information that are exempt from disclosure.

The proposed amendments are contained at Appendix 4 of the Draft report to Council

3.2 The report and appendices are attached at Appendix A.

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COUNCIL – 18 JUNE 2013

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Contacts	<p>Councillor Nick Rushton 01530 412059 nicholas.rushton@nwleicestershire.gov.uk</p> <p>Chief Executive 01530 454500 christine.fisher@nwleicestershire.gov.uk</p> <p>Head of Legal and Support Services 01530 454762 elizabeth.warhurst@nwleicestershire.gov.uk</p>
Purpose of report	To seek Council's approval of the proposed amendments to the Constitution.
Council Priorities	Value for Money
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Assessment</p> <p>Human Rights</p> <p>Transformational Government</p>	<p>None.</p> <p>A clear and up to date Constitution will minimise the risk of the Authority failing to comply with statutory requirements and assist in delivering its priorities and objectives.</p> <p>Not applicable.</p> <p>Not applicable.</p> <p>Clear and robust governance arrangements and procedures assist with the effective and efficient delivery of services and proper decision making.</p>
Comments of Head of Paid Service	The report is satisfactory
Comments of Section 151 Officer	The report is satisfactory

Comments of Monitoring Officer	As author of the report, the report is satisfactory.
Consultees	Chief Executive Head of Legal and Support Services Policy Development Group
Background papers	Report to Policy Development Group – 23 May 2013 Minutes of Policy Development Group – 23 May 2013
Recommendations	<ol style="list-style-type: none"> 1. THAT COUNCIL CONSIDERS THE COMMENTS OF POLICY DEVELOPMENT GROUP ON THE PROPOSALS 2. THAT COUNCIL AGREES THE PROPOSED CHANGES TO THE CONSTITUTION FOR IMPLEMENTATION WITH IMMEDIATE EFFECT. 3. THAT COUNCIL AUTHORIZES THE HEAD OF LEGAL AND SUPPORT SERVICES TO MAKE THE AGREED AMENDMENTS TO THE CONSTITUTION AND RE-ISSUE THE DOCUMENT.

1.0 INTRODUCTION

- 1.1 The Local Government Act 2000 requires each Local Authority to prepare, keep up to date and publicise the document known as the Constitution.
- 1.2 The Constitution should be logical, integrated and accessible to members, officers, local people and anyone else interested in the way a local authority makes its decisions. There is also a statutory requirement on the Council's Monitoring Officer to keep the Constitution up to date, and accordingly the update of the Constitution is an on-going process.

2.0 BACKGROUND

- 2.1 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Authority to reflect best practice. Members may recall that, in response to comments and suggestions made by members at Council, it was agreed that:
 - (i) the Constitution underwent one main annual review - around the time of Annual Council;
 - (ii) any remaining changes or matters arising after this date would be dealt with by way of one mid year review;

- (iii) further reviews or changes would only be suggested outside this process if legislation or national guidance required it;
- (iv) there was some “scrutiny” of the main annual review report whilst in draft and prior to its publication;
- (v) there would be informal consultation / engagement with members on the mid year and other reviews.

3.0 CHANGES TO THE CONSTITUTION

3.1 The proposed changes to the Constitution are detailed below.

(i) Meetings of Cabinet

The constitution currently provides that Cabinet will meet up to 10 times per year on dates and times to be agreed by the Leader.

The Leader has indicated that he wishes to increase the number of Cabinet meetings to 11 per year. In order to avoid the necessity of a constitutional amendment in the event that the number of Cabinet meetings is amended at some point in the future it is recommended that a general form of wording is used to allow flexibility for the Leader to determine the number of meetings of Cabinet.

The proposed amended wording is attached at Appendix 1 of the report.

(ii) Write off Procedures

The Constitution currently provides delegated authority for the Chief Executive to authorise the writing off of debts up to a value of £1000.00 where all attempts to recover the monies outstanding have failed. This figure has not changed for a number of years.

At its meeting on 12 December 2012 Cabinet received and approved a report on the ‘Revenues and Benefits Write off Policy’, the first of a series of reports intended to streamline policies within the framework of the Shared Revenues and Benefits Partnership. The report recommended that the authorised value for delegated write offs be increased to £10,000.00 and resolved that the Monitoring Officer should at the request of the Section 151 Officer prepare a report to Council requesting that the necessary constitutional amendment be approved.

The proposed amendments are contained at Appendix 2 of the report.

(iii) Highways Act 1980

The current constitution makes no specific delegation to Officers in respect of applications to divert footpaths under the Highways Act 1980 and all such applications, irrespective of whether or not there are any objections require the approval of Full Council.

Applications under this legislation are infrequent however in the absence of delegated powers delays are inevitable particularly for those applications where there are no objections. This compares with applications to divert footpaths under the Town and Country Planning Act which are delegated to Planning Committee and the Director of Services.

For the reasons of business efficiency it is recommended that similar delegations be approved by Council in respect of applications to divert footpaths under the Highways Act 1980.

The proposed amendments are contained at Appendix 3 of the report.

- (iv) Access to Information – Exempt Information – Schedule 12A Local Government Act 1972

Following changes to the Standards regime arising from the enactment of the Localism Act 2011 the opportunity has been taken to remove parts of the wording that have been historically included in this section of the Constitution which overlap with the statutory requirements. In the opinion of the Head of Legal and Support Services removal of the wording does not have any practical effect on the classes of information that are exempt from disclosure.

The proposed amendments are contained at Appendix 4 of the report.

4.0 COMMENTS FROM POLICY DEVELOPMENT GROUP

4.1 The draft Council Report was considered by Policy Development Group on 23 May 2013.

4.2 The following questions and comments were made (as drawn from the minutes of that meeting, which are attached at Appendix 5):

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- (b) If every member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

If the exercise of an executive function has been delegated to a Committee of the Cabinet, an individual member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made or otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

1.6 Meetings of the Cabinet

- (a) ~~The Cabinet will meet up to 10 times per year on dates and at times to be agreed by the Leader. In accordance with the programme of meetings agreed at Annual Council under Part 3 Section 5 Paragraph 1.18 of the Council's Constitution, and at such other times as are agreed by the Leader or Deputy Leader and duly publicised.~~

The Cabinet will normally meet at the Council's main offices or at another location to be agreed by the Leader.

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- (b) Meetings of the Cabinet will be subject to the Access to Information Procedure Rules and any other relevant procedure rules in this Constitution.

1.7 Quorum

The quorum for a meeting of the Cabinet, or a Committee of it, shall be one quarter of the total number of members of the Cabinet or three members, whichever is the larger.

1.8 How are Decisions to be taken by the Cabinet?

- (a) Executive decisions which are the responsibility of the Cabinet as a whole will be taken at a meeting convened in accordance with the Access to Information Rules in Part 4 of the Constitution.
- (b) Where executive decisions are delegated to a Cabinet member or a Committee of the Cabinet, the rules applying to executive decisions taken by them shall be in accordance with the Access to Information Rules in Part 4 of the Constitution.

2. HOW ARE CABINET MEETINGS CONDUCTED?

2.1 Who Presides?

If the Leader is present he/she will preside. In his/her absence, then the Deputy Leader shall preside. In the absence of both the Leader and the Deputy Leader, then a person appointed by those present shall preside.

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15. To ensure that the promotion of the rights, welfare and interests among all groups in society is given equal and primary consideration in all aspects of the Council's work and services.
16. To carry out the Authority's responsibilities for improving the economic, social and environmental well-being of the District and increasing the availability and equality of access to employment.
17. To review and monitor the Authority's strategy and overall implementation on e-Government, telecommunications, information systems and information technology, making recommendations to the Council as required.
18. To oversee the provision of all the Council's services other than those functions reserved to the Council.
19. To manage and maintain the Authority's housing stock.
20. To manage and maintain the Authority's other property portfolio.
21. To collect the Council Tax, National Non-Domestic Rates, periodic income and sundry debts.
22. To provide, manage and keep under review the concessionary bus fares scheme.
23. To exercise the Authority's powers for planning and responding to civil emergencies.
24. To exercise the Authority's functions as Local Planning Authority (except to the extent that those functions are by law the responsibility of the Council), including supplementary planning guidance, and designating conservation areas.
25. To oversee the Authority's overall policy on the voluntary and community sector.
26. To approve the purchase, sale or appropriation of land and buildings where the market value of the transaction exceeds £30,000 and to approve leasing (or otherwise) property where throughout the term the annual rental will exceed £40,000.
27. To authorise the making of compulsory purchase and control orders.
28. To write off debts of more than ~~£1,000~~ £10,000.
29. To write off stocks, stores and other assets and to write off any losses of money or stores or to settle claims.

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30. To write off as non-refundable credits on accounts of more than £1,000-10,000
31. To accept tenders and award contracts, including those which exceed budgetary provision and are within the Council's agreed budget (see paragraph 4, Budget and Policy Framework Procedure Rules for Urgent Decisions outside the Council's Budget and Policy Framework).
32. To receive reports on contract overspends in accordance with limits set out in the Financial Procedure Rules and agree the action to be taken.
33. To give grants or loans to charitable, voluntary bodies or other bodies where permitted by law.
34. To promote and develop international exchanges and links with towns and cities in other countries.
35. To exercise the powers and duties of the Authority under Sections 13 and 14 of the Public Order Act 1986.
36. To be the focus for forming partnerships with other local, public, private, voluntary and community sector organisations to address local needs.
37. To confer with other local authorities, government departments, statutory bodies, voluntary bodies, the police or other external agencies in order to discharge the responsibilities vested in the Cabinet.
38. To resolve any matters in dispute between Cabinet members.
39. To determine and deal with all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by the Cabinet.
40. To make decisions where no other tier of government has responsibility or where a policy or strategy does not exist.
41. To approve any waiver of Contract Procedure Rules, in accordance with a written report which has been approved by the Monitoring Officer and a report for information to the next convenient meeting of the Policy Development Group.
42. Dealing with any petitions referred to Cabinet in accordance with the Council's adopted petition scheme.
43. To oversee the Authority's Food Law and Enforcement Service Plan

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To designate "Proper Officers" for the purpose of particular statutory functions and to make any changes needed to the table at Section 7 in Part 3 of the Constitution.

7. SPECIFIC DELEGATION TO OFFICERS IN CONSULTATION WITH OTHERS

(a) Chief Executive

Consideration of pastoral measures and to respond after consultation with ward members.

In consultation with the Director of Services, to negotiate and conclude agreements under Section 106 of the Town and Country Planning Act 1990 along lines previously approved by Planning Committee.

Subject to consultation with the Highway Authority and the police and ward members, to make orders under Section 21 of the Town Police Clauses Act 1847 relating to the temporary closures of streets and temporary direction of traffic.

Subject to consultation with ward members, the Director of Services to make public path orders under the Town and Country Planning Act 1990 and to confirm unopposed orders.

Subject to consultation with ward members, the Director of Services to make public path orders under the Highway Act 1990 and to confirm unopposed orders

In consultation with the Chairman of the Cabinet, ward members, the Director of Services, Ashby Town Council and the Highways Authority, to agree the grant of a licence, its terms and conditions for the operation of the annual Statutes Fair at Ashby de la Zouch.

Subject to consultation with ward members, the Director of Services to respond to consultations made by Leicestershire County Council with regard to proposed public footpath orders where the orders are unopposed.

To determine applications for bonfires on Council land subject to consultation with ward members, the Director of Services as appropriate and Fire Officer.

Subject to consultation with the Director and relevant Heads of Service and ward members, to approve and issue licences for the temporary use of Council owned land.

Following consultation with the Director, to reject applications to purchase Council owned land.

The approval of lease cars to employees.

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Functions	Matters Reserved for a Decision
Footpath Diversion Orders under the Highways Act 1980.	To determine matters referred to it following the receipt of objections or other representations.

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5. LICENSING COMMITTEE

Membership: Seventeen councillors

Quorum: Five councillors

Functions	Matters Reserved for a Decision
<p>To consider all outstanding licensing matters.</p> <p>To recommend to Council to resolve not to issue a casino licence.</p>	<p>To determine all licensing matters referred to with the exception of:</p> <p>(i) The Statements of Licensing Policy under both the Licensing Act 2003 and the Gambling Act 2005;</p> <p>(ii) the power to resolve not to issue a casino licence which shall be reserved to Council.</p>

5.1 LICENSING SUB-COMMITTEE

Membership: Three councillors

Quorum: Three councillors

Functions	Matters Reserved for a Decision
To consider matters concerning the discharge by the Council of its licensing functions under the Licensing Act 2003.	Application for a personal licence where there are relevant unspent convictions;
	<p>The review of a premises licence or club premises certificate;</p> <p>Decision to object when the local authority is the consultee and not the relevant authority considering the</p>

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Description of Exempt Information (defined terms underlined)	Interpretation	Qualification
<p>6. Information which reveals that <u>the authority</u> proposes -</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment</p>	<p>The <u>authority</u> is a reference to the principal council or, as the case may be, the board, committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined [etc]</p>	<p>Exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>		<p>Exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>
<p>8. Information relating to the personal circumstances of any person</p>		
<p>9. Information which is subject to any obligation of confidentiality</p>		
<p>10. Information which relates in any way to matters concerning national security</p>		