

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

POLICY DEVELOPMENT GROUP - 1 OCTOBER 2014

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 and recommendation to Council on proposed amendments arising from the Annual Review of the Constitution.
Reason for Decision	To comply with the Constitutional update procedure agreed by Council.
Council Priorities	Value for Money
Implications:	
Financial/Staff	None.
Link to relevant CAT	None.
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.
Background papers	Report to Policy Development Group 16 July 2014. Local Government Act 1972.
Recommendations	<p>THAT POLICY DEVELOPMENT GROUP:</p> <p>1. NOTES THE REPORT AND COMMENTS ON THE SUGGESTED AMENDMENTS TO THE CONSTITUTION</p> <p>AND</p> <p>2. MAKES RECOMMENDATIONS TO COUNCIL FOR ADOPTION.</p>

1. 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 midyear 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 midyear and other reviews.

2. ROLE OF SCRUTINY

2.1 Where amendments are identified and proposed, Policy Development Group is asked to consider and comment on the suggested amendments before the amendments are considered by Council.

3. PROCESS OF REVIEW

- 3.1 As indicated at 1.1 above, updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Authority to reflect best practice.
- 3.2 Each year a survey of officers is undertaken and they are invited to submit proposed amendments for consideration by the Monitoring Officer which arise from legislative changes, organisational changes or for reasons of business efficiency.
- 3.3 In parallel with this process the Legal Services team review any proposed legislation which is likely to require amendments to the Constitution.

4. REPORT OF THE INITIAL OUTCOME OF THE 2014 REVIEW

- 4.1 Members will recall that the Head of Legal and Support Services presented a report to Policy Development Group on 16 July 2014 recommending that the annual review of the Constitution was postponed for the reasons set out at paragraphs 4.2 to 4.7 in the report. A copy of the report is a background paper.
- 4.2 The Head of Legal and Support Services is now able to report that the anticipated legislation referred to in her report of 16 July (The Openness of Local Government Bodies Regulations 2014) (the Regulations) was enacted with immediate effect on 6 August 2014. The most immediate impact of those Regulations was that all meetings of the Council may now be recorded.

5. RECORDING OF COUNCIL MEETINGS - AMENDMENTS TO THE CONSTITUTION

- 5.1 Currently the Constitution is silent on the recording of meetings and as a result of the legislative changes it is felt appropriate to amend the Council Procedure Rules. In addition, the non-statutory guidance issued with the Regulations advises that it would be appropriate for councils to adopt a protocol on recording meetings in order that elected members, members of the public and the press are aware of the parameters within which recording will be permitted.
- 5.2 As the Regulations became effective immediately, officers have put in place interim arrangements to ensure that the Council complied with its duties but consider that it is appropriate that members comment on and approve the draft protocol that is currently being applied.
- 5.3 It is proposed that Standing Order 9 of the Council Procedure Rules (Smoking at Meetings) is deleted as this is no longer necessary as a result of legislative changes (Regulations made under the Health Act 2006) and replaced with a new Standing Order 9 (Recording of Meetings). Examples of the track-changed amendments are contained at Appendix 1.
- 5.4 In addition, a copy of the draft protocol to allow persons to film, photograph or make sound recordings, etc of proceedings at Council meetings is attached at Appendix 2 for comment and recommendation to Council. Also included are drafts of the resultant changes to the agenda front sheet, etc which members are asked to note.

6. DECISION RECORDS

6.1 The Regulations published on 6 August 2014 also introduced new requirements in respect of the publication of decision records where officers make decisions under delegated powers from Council whereas currently decision records are only required where officers exercise delegated powers from Cabinet.

6.2 The requirements are that a decision record is now required:

where an officer makes a delegated decision following a delegation from Council, a committee, sub-committee or a joint committee in the following circumstances:

- (a) under a specific delegation;
- (b) under a general authorisation to officers to take such decisions and the effect of the decision is to:
 - (i) grant a permission or licence;
 - (ii) affects the right of an individual;
 - (iii) award a contract or incur expenditure which in either case materially affects the council's financial position.

A large number of these decisions are already published e.g. planning permissions; licensing decisions etc and officers are currently looking at how the publication of such decisions can be improved.

6.3 The Council's Rules of Procedures at Part 4 Section 4.4 Paragraph 8 of the Constitution have been amended to reflect this change. A track change amendment is attached at Appendix 2.

7. CHANGES TO THE CONSTITUTION - ANNUAL REVIEW 2014

7.1 There are a small number of requests to amend the Constitution to reflect organisational changes following departmental restructures, the correction of grammatical errors, changes in legislation and for the purposes of clarity which the Head of Legal and Support Services has delegated authority to deal with. In addition, the Head of Legal and Support Services wishes to bring the following matters to the attention of members.

8. MEMBERS INTERESTS

8.1 The Head of Legal and Support Services considers that it would be useful for members if the Constitution was more specific in relation to members' interests under the Code of Conduct and, in particular, what constitutes a Disclosable Pecuniary Interest and a Disclosable Non-Pecuniary Interest.

8.2 Members will recall that at the time that the current Code of Conduct was adopted in June 2012 (resulting from the changes brought about by the enactment of the Localism Act 2011), the Code required members to declare an interest of a type prescribed in Regulations made by the Secretary of State. To date the Secretary of State has prescribed Disclosable Pecuniary Interests by way of The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464. Although no regulations have been made relating to Disclosable Non Pecuniary Interests, members will also

recall that the Cross Party Working Group which was established to consider the Code before its adoption made recommendations relating to such interests which were subsequently adopted by Council and are included on the current Members' Register of Interests form.

- 8.3 In the interests of clarity the Head of Legal and Support Services is of the opinion that the Code should contain specific details of both pecuniary and non-pecuniary interests and track changed amendments to the Code are attached at Appendix 3.

9. APPOINTMENTS COMMITTEE

- 9.1 The current delegations to the Appointments Committee are attached at Appendix 4.
- 9.2 As a result of several management restructures that have occurred over the years, which have resulted in a "flatter" management structure, there is more direct reporting by Team Managers to Statutory and Non-Statutory Chief Officers. A consequence of this is that in order to comply with the Constitution all Team Managers reporting to a Statutory or Non- Statutory Chief Officers are required to appear before an Appointments Committee.
- 9.3 Following informal discussions with the Group Leaders some members have expressed the view that it is unnecessary to convene the Appointments Committee for some Team Managers' posts and not others merely because the post reports directly to a Statutory or Non Statutory Chief Officer.
- 9.4 Therefore a number of recommendations are proposed to both streamline the Appointments process (and ensure that the Appointments Committee is only convened in respect of senior positions) and make the administration of the Committee more effective and efficient. Those recommendations include the election of a Chairman for the municipal year, the appointment of substitutes and specifying which appointments will require an Appointments Committee and/or the approval of members.

9.5 Appointment of a Chairman

It is recommended that in line with other committees and sub-committees of the Council (other than Licensing Sub-committees) a Chairman and Deputy Chairman are appointed at the start of the year at Annual Council to Chair the Committee for the subsequent municipal year.

- 9.6 Council will be asked to appoint a Chairman and Deputy Chairman for the remainder of this municipal year at its meeting on 16 November 2014.
- 9.7 It has also been suggested that if appointed the Chairman's right to a second or casting vote should be restricted. However, the right to such a vote is governed by Section 4(3) of the Local Government Act 1972 which cannot be dis-applied.

9.8 Substitutes

- 9.9 In line with other committees, members have the ability to appoint substitutes to the Appointments Committee in line with the Council's approved "Members' Substitute Scheme". Given the role of the Appointments Committee in appointing to senior positions within the Council, it is recommended that substitute members are drawn from Cabinet and members of the Shadow Portfolio Holders Group.

10. Amendment to the functions of the Appointments Committee

- 10.1 As set out at 9.2 above, the Appointments Committee is currently involved in the appointment of all Team Managers who, because they report directly to a Statutory or Non-Statutory Chief Officer, are considered to be deputy chief officers. (A full definition of Statutory and Non-Statutory Chief Officers can be found at Pages 190-193 of the Constitution.)
- 10.2 Having taken on board the views of members that this approach is not always necessary or appropriate, it is recommended that the scope of such involvement is amended so as to ensure that, whilst the requirements of the Local Government and Housing Act 1989 and associated Regulations relating to the involvement of members in staffing matters is complied with, the Appointments Committee is only required to sit where necessary.
- 10.3 It is therefore recommended that the Appointments Committee will be involved in staff appointments on the following basis:
1. Head of Paid Service - by the Appointments Committee and approval of full Council.
 2. Directors - by the Appointments Committee and approval of Executive members.
 3. Heads of Service - including the Section 151 Officer and Monitoring Officer by the Appointments Committee and approval of Executive members.
- 10.4 The Head of Paid Service will be responsible for the appointment of all other members of staff in accordance with the requirements of the legislation identified at 10.2 above
- 10.5 Consequential amendments to the Officer Employment Procedure Rules are required and are shown at Appendix 5.
- 10.6 **Appointments to Shared Services / Joint Working Arrangements**
- 10.7 Members will be aware that the Council participates in a number of formal shared service arrangements, the largest being the Leicestershire Revenues and Benefits Partnership which operates under a specific contractual agreement between the participating authorities, all of which have differing constitutional requirements in relation to the appointment of staff.
- 10.8 In addition, there are a number of examples where the Council has undertaken strategic working on an ad-hoc basis which has also identified differing constitutional requirements. As such strategic working is likely to continue in the future, in the interests of consistency, effectiveness and efficiency in recruitment to such posts, it is recommended that appointments to a shared services / joint working arrangements should take place outside of the above Appointments Committee arrangements.