

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COUNCIL – 11 NOVEMBER 2014

Title of report	UPDATE TO THE COUNCIL'S CONSTITUTION
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Purpose of report	To seek Council's approval of the proposed amendments to the Constitution.
Council Priorities	Value for Money
Implications: Financial/Staff Link to relevant CAT Risk Management Equalities Impact Assessment Human Rights Transformational Government	None. None. 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. Not applicable. Not applicable. 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 Deputy 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 – 1 October 2014, as Appendix 6 to this report. Minutes of Policy Development Group – 1 October 2014, as Appendix 7 to this report.
Recommendations	<ol style="list-style-type: none"> 1. THAT COUNCIL CONSIDERS THE COMMENTS OF POLICY DEVELOPMENT GROUP ON THE PROPOSALS (SECTION 5) 2. THAT COUNCIL AGREES THE PROPOSED CHANGES TO THE CONSTITUTION FOR IMPLEMENTATION WITH IMMEDIATE EFFECT AND: <ol style="list-style-type: none"> A) APPOINTS A CHAIRMAN FOR THE APPOINTMENTS PANEL FOR THE REMAINDER OF THE MUNICIPAL YEAR; B) RECEIVES NOMINATIONS AND APPOINTS SUBSTITUTES TO THE APPOINTMENTS PANEL IN ACCORDANCE WITH THE COUNCIL’S SCHEME FOR SUBSTITUTES 3. THAT COUNCIL AUTHORISES 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

The proposed changes to the Constitution are detailed below.

3.1 RECORDING OF COUNCIL MEETINGS - Amendments to the constitution

3.2 The Openness of Local Government Bodies Regulations 2014 (the Regulations) were published on 6 August 2014 and gave a right to record Council meetings although there is no legal requirement on the council that it should webcast its meetings. The duty on the Council is to provide reasonable facilities to enable any person to report on the meeting by means of filming, photographing or making an audio recording or by any other means. The general consensus across local authorities is that reasonable facilities are provided by setting aside an area for the use of persons who wish to report on the meeting e.g. a media area.

When members of members of Policy Development Group considered the report at its meeting on 1 October 2014 it was suggested that in order to avoid any issues regarding the misinterpretation of members comments arising from public recordings of Council meetings, the Council should consider the introduction of audio recording via the current public address system installed in the Council Chamber . As requested officers are currently investigating the cost, practical issues and resource implications of installing such audio recording equipment in the Council Chamber and will seek to report back to Council at its meeting on the resource implications.

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 there is also no requirement for a person reporting on a meeting to seek permission to do so and 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.

- 3.3 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.
- 3.4 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.
- 3.5 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. Also included are drafts of the resultant changes to the agenda front sheet etc which Members are asked to note.

4.0 DECISION RECORDS

- 4.1 The Regulations 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.
- 4.2 The requirements are that a decision record is now required;
 - (a) Where an Officer makes a delegated decision following a delegation from Council, a committee, sub-committee or a joint committee in the following circumstances;
 - (i) Under a specific delegation
 - (ii) Under a general authorisation to officers to take such decisions and, the effect of the decision is to-
 - (a) Grant a permission or licence;
 - (b) Affects the right of an individual;
 - (c) 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.

- 4.3 The Council's Rules of Procedure 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 3.

5.0 MEMBERS INTERESTS

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

- 5.2 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 Member's 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 established to consider the Code before it's adoption made recommendations relating to such interests which were subsequently adopted by Council and are included on the current Member's Register of interests form.

- 5.3 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 4.

6.0 APPOINTMENTS COMMITTEE

- 6.1 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 Officer are required to appear before an Appointments Committee.

- 6.2 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.

- 6.3 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.

6.4 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 is appointed at the start of the year at Annual Council to chair the Committee for the subsequent municipal year.

6.5 Council will be asked to appoint a Chairman for the remainder of the municipal year at its meeting on 11 November.

6.6 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.

6.7 Substitutes

6.8 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.

7.0 Amendment to the functions of the Appointments Committee

7.1 As set out at 6.1 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).

7.2 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 Section 101 of the Local Government Act and the Local Authorities (Standing Orders) (England) Regulations 2001(which deals with the involvement of Members in Staffing matters) the Appointments Committee is only required to sit where necessary.

7.3 It is therefore recommended that the Appointments Committee will be involved in permanent 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

7.4 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 7.2 above

7.5 Consequential amendments to the Officer Employment Procedure Rules are required

and are shown at Appendix 5.

7.6 Appointments to Shared Services

7.7 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.

7.8 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 Appointment Committee arrangements.

8.0 Organisational Changes

8.1 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.

9.0 COMMENTS FROM POLICY DEVELOPMENT GROUP

9.1 The report was considered by Policy Development Group 1 October 2014. The report is attached at Appendix 6.

9.2 The following questions and comments were made (as drawn from the minutes of that meeting, which are attached at Appendix 7):

9.2.1 It was suggested that in order to avoid any issues regarding the misinterpretation of Members comments arising from public recordings of Council meetings, the Council should consider the introduction of audio recording via the current public address system installed in the Council Chamber(Officers are currently investigating the cost and practical implications of installing audio recording equipment in the Council Chamber):

and

9.2.2 It was suggested that it would be more appropriate that if and when Member comments were required in relation to an appointment that was given by members of the Appointments Panel rather than the Executive. Regulation 5 of the Local Authorities (Standing Orders) (England) Regulations 2001/3384 regarding Provisions to be Incorporated in Standing Orders relating to Staff requires that any such comments from members should come from the Executive.