

4 February 2015

Ordinary Council

Constitution Update

Report of: Christopher Potter – Monitoring Officer and Head of Support Services

Wards Affected: All

This report is: Public

1. Executive Summary

1.1 The purpose of this report is to update Members on the present review of the Constitution.

1.2 Under section 9P of the Local Government Act 2000 the Council is under a statutory duty to keep its Constitution under review so as to keep it up to date and this review is currently taking place by the Council's Monitoring Officer in conjunction with Members of the Constitution Working Party.

2. Recommendation(s)

2.1 To note the progress made.

2.2 That the Action Plan and Timetable be agreed.

3. Introduction and Background

3.1 The Local Government Act 2000 brought into effect the requirement to prepare a document (known as a Constitution) and to keep it up to date.

3.2 The Council at its meeting on 20 March 2013 noted (minute 528) the principles of the then Governance Working Group (set up in August 2012) which were:

- Faster decision-making process
- Quality not quantity of debate
- Regular cycle of meetings
- Strengthening the role of overview and scrutiny
- Governance structure that mirrors the business of the Council

- No reduction in democracy
- Delegated powers
- Strengthening the role of Ordinary Council

- 3.3 The Council revised its Constitution on 15 May 2013 and there have been further revisions on 23 October 2013, 7 April 2014, 11 June 2014 and 2 July 2014.
- 3.4 Members are also reminded that Peer Review undertaken by the Local Government Association made a number of comments in its letter of February 2014 including 'the need for training on the Constitution as neither members nor staff appear to fully understand it and officers need to better understand delegations' (page 9 of the Letter). It stressed that there 'needs to be clear boundaries to avoid lines between officers and members becoming blurred such that members focus on policy issues and avoid getting drawn into detail with officers' (page 10 of the Letter).
- 3.5 The present review was commenced by the Monitoring Officer on 1 August 2014 upon him taking up his office with the Council. Since then the Monitoring Officer has compiled a list of all other 31 district councils operating a 'committee system' form of local authority governance and has undertaken best practice checks comparing and contrasting with other benchmark councils.
- 3.6 As Members have already rightly invested a great deal of time and money into the Council's Constitution due to its significance, the approach taken by the Monitoring Officer has been to audit the existing entire Constitution by going back to the source legislative provisions and Government guidance. Footnotes have been added to the working draft with tracked changes so that a proper audit trail exists so that the authoritative basis is open and transparent. This also has the advantage of at the same time creating training material to ensure that Members and Officers are supported and indeed to specifically address the comments made by the Peer Review.
- 3.7 This has proven a time consuming process but has led to positive outcomes through greater understanding of what amendments are required and what remain a matter of choice for all 37 Members to agree upon after receiving advice from the Constitution Working Group and the Monitoring Officer.
- 3.8 The audit by the Monitoring Officer has revealed a spectrum of issues from the very minor to the not so minor. For example, there has been

repeated incorrect reference to the numbers of sections of legislative provisions such as section 37 of the Local Government Act 2000 when it should be section 9P of the Local Government Act 2000 (changed by the Localism Act 2011). At Article 13.1.2 of the Constitution there is reference to a requirement for a two-thirds majority of members present and voting to suspend the Council Procedure Rules in Part 4 of the Constitution. This is an incorrect statement of the position as only a simple majority vote is required in this context.

- 3.9 This report is not intended to present the work being presently undertaken in full detail as that would negate the role of the Constitution Working Group. The intention is merely as stated to inform the Council as to the progress being made.
- 3.10 Under Article 12 of the present Constitution the Council agreed at 12.2 (b) ‘that there should be a Constitution Working Group appointed by and reporting to the Council to undertake a fundamental review [of] the Constitution and [to] recommend changes to the Council’.
- 3.11 Article 12.1 (c) of the Constitution states that: ‘Amendments to the Constitution will normally only be considered by the Council following a report and recommendation from the Audit and Scrutiny Committee, or Constitution Working Group and having received the advice of the Monitoring Officer.’
- 3.12 Regard is to be had to advice from the Monitoring Officer on any proposals relating to the Constitution and ‘the Monitoring Officer may submit a report direct to the Council in any case where his/her advice is not accepted’ (Article 12.2(c)).
- 3.13 As a result the current cross party Constitution Working Group has met with the Monitoring Officer in attendance to give advice in October 2014, November 2014, December 2014 and January 2015. At the initial meeting the approach being taken as regards the creation of an audit trail for all to follow was outlined by the Monitoring Officer. Members were invited to outline their experience of how effective the current Constitution was believed to be in facilitating local authority business. At subsequent meetings of the Constitution Working Group the Monitoring Officer provided updates on the progress made through his working page by page through the Constitution.
- 3.14 The next phase is to advise Members of the Constitution Working Party of those precise changes required by law and those where it is a matter of choice and indeed style so that their views can be reported to Council.

- 3.15 Monthly meetings are therefore now being scheduled in order to focus on the need for any specific changes required by legislative provision and those changes which Members might wish to see implemented as a matter of choice. Please see the attached Appendix setting out the Action Plan and Timetable.

4. Issue, Options and Analysis of Options

- 4.1 A Council's Constitution must by law contain a copy of the Council's current standing orders, a copy of the Council's Members' Code of Conduct and such other information as the Secretary of State may direct and such other information that the Council considers appropriate.
- 4.2 The purpose of the Constitution is already set out in Article 1.3 of the current Constitution but in effect it is the Council's internal rule book.
- 4.3 Any Constitution should be designed to better facilitate action so that the Council can deliver its expressed vision and its relative and often inter-related corporate priorities.
- 4.4 Given the situation which is facing all local authorities, it is vital that the Constitution supports the Council's strategic position and better reflects the present and future operating environment which is likely to involve even greater shared arrangements and commissioning of services.

5. Reasons for Recommendation

- 5.1 Members need to be informed as to the review of the Constitution.

6. Consultation

- 6.1 Members of the Constitution Working Group.

7. References to Corporate Plan

- 7.1 The Constitution fundamentally underpins and supports the entire Corporate Plan.

8. Implications

Financial Implications

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8.1 No financial implications arising directly from this report.

Legal Implications

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8.2 The Council is required under section 9P of the Local Government Act 2000 (originally section 37 of that Act) to prepare and keep its Constitution up to date.

8.3 The Constitution supports effective corporate governance and is at the very core of the Council's activities.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

8.4 The Council is at significant risk of legal challenge if it operates in breach of the law and its Constitution.

8.5 More fundamentally, failure to appreciate the positive nature of a Constitution and its crucial role in facilitating local authority business will result in a dysfunctional organisation to the detriment of the public interest.

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

9.1 None.

10. Appendices to this report

- Appendix A – timetable and Action Plan

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