

<u>REPORT TITLE</u>	<u>Review of the Council's Constitution</u>
<u>Submitted by:</u>	Head of Business Improvements, Central Services and Partnerships
<u>Portfolio:</u>	Communications, Policy and Partnerships.
<u>Ward(s) affected:</u>	All

Purpose of the Report

To improve the efficiency and accessibility of the Constitution and to ensure that it is up to date and fully complies with the law.

Recommendations

- a) **That Council adopts the amendments to the Constitution recommended by the Constitution Review Working Group and endorsed by the Transformation and Resources Overview and Scrutiny Committee.**
- b) **That the Constitution Review Working Group continues its review of the constitution.**

Reasons

The proposed amendments are considered necessary to improve the efficiency and accessibility of the Constitution and to ensure that it is up to date and fully complies with the law.

1. **Background**

- 1.1 At the Transformation and Resources Committee meeting on 7th June 2010 it was resolved to set up a working group to review the Constitution. The initial purpose of the review was to improve the Constitution so as to increase the understanding and accessibility of Members, officers and the public by recommending amendments and the removal of unnecessary provisions.
- 1.2 The Working Group has continued to meet throughout 2013/2014 and the recommendations contained within this report were considered and agreed by the Transformation and Resources Overview and Scrutiny Committee at it's meetings on 22nd January and 26th March 2014.
- 1.3 The recommendations are intended to enhance the democratic processes of the Council; ensure that the Council is acting in accordance with statute; and ensure the Council's Constitution reflects the current processes of the Council. A full discussion on the recommendations will ensure any changes are fully thought through, transparent and robust. It is recognised that some of the new processes may need to evolve over time to further enhance the democratic process

2. **Issues**

- 2.1 The Constitution is the set of rules that describe and constrain how the Council operates, how its decisions are made and the procedures to be followed.
- 2.2 The approach taken by the Working Group has been to:

- (i) Remove obvious duplications
- (ii) Identify contradictions and remove the parts that do not accord with local practice or law
- (iii) Remove obsolete, inaccurate or unnecessary references to law or processes
- (iv) Simplify wording and improve the indexing
- (v) Take best practice from a number of other Constitutions.

3 **Options Considered**

a). **Scrutiny Chairs/Vice Chairs Group**

The Working Group has had extensive discussions regarding the Overview and Scrutiny Co-ordinating Committee. They reached the conclusion that much of the work of this committee could be completed outside of the formal local government committee structures.

In its place, therefore, an informal Scrutiny Group would be setup, the Membership of which would consist of the Chairs and Vice Chairs of all the Scrutiny Committees. Group Leaders would also be invited to attend the meeting. Senior officers and Cabinet Members would be asked to certain meetings to discuss the scrutiny process and advise on topics on the various scrutiny work plans. The committee has previously considered areas which were considered to be cross-cutting such as the Community Centre Review. The Scrutiny Chairs' Group in future could agree which committee would be most suitable to consider topics which are believed to cross the remit of two or more scrutiny committees.

The Scrutiny Chairs' meeting would be diarised and informal agendas sent out in advance of the meeting, with notes taken on the actions coming out of each meeting. The Chair of each Scrutiny Committee could provide an update to their respective committees as and when required. The suggestion has also been made that the group could rotate the chair of the meeting on a regular basis.

RECOMMENDATION

That the Overview and Scrutiny Co-ordinating Committee should be replaced with an informal Scrutiny Chairs' Group meeting at least bi-monthly

b). **The Finance, Resources and Partnerships Scrutiny Committee**

The Constitution Review Working Group discussed the title of the current Transformation and Resources Overview & Scrutiny Committee. It has been suggested that this title no longer reflects the Council's corporate priorities. The remit of the Committee could be extended to include matters relating to the priority of the Council to become a Co-operative Council. This suggested change reflects the corporate priority of 'becoming a co-operative council delivering high quality community driven services' (replacing the former priority of 'transforming the Council to achieve excellence'). The Working Group therefore recommended that the title of the committee should change to 'The Finance, Resources and Partnerships Overview & Scrutiny Committee.'

RECOMMENDATIONS:

1. That the Transformation and Resources Overview & Scrutiny Committee be renamed the 'Finance, Resources and Partnerships Scrutiny Committee.'

2. That the remit be changed to reflect the work being done under the Council's corporate priority of 'becoming a Co-operative Council delivering high quality community driven services'.

c). **Health Scrutiny Committee**

The Constitution Working Group has given consideration to the governance arrangements of the Health Scrutiny Committee. The current Borough Council Health Scrutiny Committee consists of seven Members and does not have a Vice Chair. It is felt that there will be benefit to the democratic process if the membership of this committee is increased to eleven in line with the other scrutiny committees of the Council. The committee should also expand its remit to cover work areas where there is apparent duplication with the other Scrutiny Committees, in particular the Cleaner, Greener and Safer Communities Scrutiny Committee and the Active and Cohesive Scrutiny Committee. It should be noted that the current Health Scrutiny Committee is technically a Joint Committee with the County Council and is subject to a 'Joint Code of Working Agreement' with them. There is one County Council representative on the committee and this arrangement would remain in place even if the total membership of the Borough's Health Committee was increased.

The Working Group came to the view that the Health Scrutiny Committee should cover the topic of health improvement (currently with the Active and Cohesive Scrutiny Committee). The Group also felt that alcohol and drugs, from a public health perspective and sometimes considered by the Cleaner, Greener and Safer Communities Scrutiny Committee should be solely within the remit of the Health Scrutiny Committee. Specific health issues relating to old people should also be covered by the Health Scrutiny Committee and removed from the remit of the Cleaner, Greener and Safer Scrutiny Committee with the Active and Cohesive Scrutiny Committee taking on issues relating to social and cultural aspects of older people. To better reflect this extended remit it is proposed that the Committee change its name to the Health and Well-Being Scrutiny Committee. The suggested terms of reference are below: -

Health and Well-Being Scrutiny Remit

- Commissioning of and provision of health care services, whether acute or preventative/early intervention affecting residents of the borough of Newcastle under Lyme
- Staffordshire Health and Well Being Board and associated committees, sub-committees and operational/commissioning groups
- North Staffordshire Clinical Commissioning Group (CCG)
- Staffordshire County Council Public Health
- Better Care Fund
- University Hospital North Staffordshire (UHNS)
- Combined Healthcare and Stoke and Staffordshire NHS Partnership
- Other health organisations within the Borough area such as GP surgeries
- NULBC Health and Well-Being Strategy and Staffordshire Health and Well Being Board Strategy 'Living Well in Staffordshire 2013-2018'

- Health Improvement (including but not exclusively) diet, nutrition, smoking, physical activity, poverty (including Poverty & Licensing Policy)
- Specific health issues for old people
- Alcohol and drug issues
- Formal consultations
- Local partnerships (e.g. Newcastle Partnership)
- Matters referred directly from Staffordshire County Council
- Referring matters to Staffordshire County Council for consideration where a problem has been identified within the Borough of Newcastle-under-Lyme

RECOMMENDATIONS

1. That the Health Scrutiny Committee expands its remit to include health improvement and alcohol & Drug issues with new terms of reference agreed which should not contradict the Joint Code of Working with the County Council.
2. That the Membership of the Committee is extended to 11 Members and that a Vice Chair is appointed.
3. That Staffordshire County Council is notified of the new arrangements.
4. That the Committee is renamed the 'Health and Well-Being Scrutiny Committee.'

d). Scrutiny Committee Remits

A recommendation came from the Working Group for the remits of all the Scrutiny Committees to be listed on their work plans. This measure has now been implemented and each committee chair will ask their own committee to feedback on the current remits. . Any changes to these will be reported to Full Council.

e). Scrutiny Committee Mechanisms

RECOMMENDATION

The Working Group recommends that the word "overview" be removed from all scrutiny committee titles

f). Items on the Work Plan

RECOMMENDATION

That a Member of the Council is entitled to ask for an item to be included on the work plan of a committee and that the Chair must give a valid reason if this request is to be declined.

g). Public Question Time

The Constitution Working Group recognises that there is currently no provision for the public to be able to ask questions at a Scrutiny Committee meeting. The Working Group was of the

unanimous view that a member of the public should be able to serve notice of a question which falls within the remit of a Scrutiny Committee. The Working Group further proposes that a member of the public should be able to ask a question if they served it with two clear working days' notice. The chair would be able to use their discretion if the deadline was missed. The item allowing for a public question time would therefore become a standing one similar to apologies for absence. A limit of a total of three questions per meeting would be permitted, with the relevant chair having the ultimate decision on the permissibility of the questions (in order to avoid any legal issues arising). Consideration has also been given to whether the practice should be introduced to Cabinet meetings.

RECOMMENDATIONS

1. That Public Question Time for Scrutiny Committees and Cabinet is incorporated into the Council's Constitution.
2. That a member of the public should serve two clear days' notice in writing of any such question to the appropriate Committee Officer.
3. That the chair should assess the permissibility of the questions. The chair's decision will be final.
4. That a maximum of three public questions is asked at any one Scrutiny Committee meeting or Cabinet meeting, but no right of reply to the response will be permitted from members of the public, nor any follow-up questions by the original questioner or any other individual. The individual asking the question can ask one question only during the meeting
5. That a maximum time of three minutes is provided for each person to ask an initial question or make an initial statement to the Committee.
6. That a rule be included to disallow any questions that are deemed to be repetitious or vexatious.

h). Portfolio Holder Question Time

The Constitution Working Group acknowledges that Portfolio Holder Question Time has been trialled at some of the Scrutiny Committees and has been received favourably to date. It is not proposed that this become a standing item but could perhaps be held every six months or so at the discretion of the chair of each of the Scrutiny Committees. Portfolio Holder Question Time provides an opportunity for the Portfolio Holder to talk about their priorities and work objectives and a chance to inform the Scrutiny Committee of any issues or concerns that they may currently be facing within their portfolio. It is also an opportunity for them to flag up areas within their remit that they think may benefit from scrutiny in the future, including policy development. Portfolio Holder Question time is also an opportunity for scrutiny committee members to ask questions to the portfolio holder. This in turn could help inform the Committee's work plan, if appropriate.

RECOMMENDATION

That the concept of Portfolio Holder Question time at Scrutiny Committees is ratified in the Council's constitution.

i). **Chairing of Meetings**

Whilst the Constitution Review Working Group recognises that Member training and development is not strictly within their remit, the subject has arisen within the discussions. The Working Group recognises that some Scrutiny Chairs and Vice Chairs are fairly new in their positions. As a result, the Working Group wishes to ensure that all Scrutiny Chairs and Vice-Chairs are offered learning and development opportunities, which could include in-house training; observing meetings at other Councils; and attending official external courses. The Centre for Public Scrutiny also offers a number of useful guides.

RECOMMENDATION

That learning and development opportunities for Chairs and Vice-Chairs of Scrutiny be enhanced within current budget constraints.

j). **Cabinet Panels**

A definition of Cabinet Panels and their purpose has been received and considered by the Working Group. This has been revised and can be included as part of the proposals to amend the Constitution. This document is attached as an Appendix.

RECOMMENDATION

That Cabinet Panels be formally recognised in the Council's Constitution (detailing how and why they are set up; how their work is communicated; the need for terms of reference; and details on their membership)

k). **Dispensations**

The Constitution Review Working Group identified that Dispensations were not included in the Constitution. A document has therefore been produced and is attached as an Appendix. It outlines the purpose and effect of dispensations; the procedure for requesting them and the criteria applied in determining dispensation requests and the terms of these dispensations.

RECOMMENDATION

That Dispensations be added to the Constitution.

l). **Staffing – Terms of Reference**

The Constitution Working Group recommended that Item number 2...

"To make representations to the Local Government Association and/or the Government or other organisations about any matter relating to employees of the Council"...

be removed from the Constitution.

This has been proposed as the practice of the Council is for group leaders to raise matters relating to employees via their respective LGA political grouping.

RECOMMENDATION

That item 2 be removed from the Constitution

m). **Pre-Cabinet Scrutiny**

The Constitution Review Working Group acknowledges that pre-Cabinet scrutiny is an area where the Scrutiny process can have a positive impact. The pre-Cabinet approach can help inform decisions and reassure the Council that the decision making process is robust, fair and transparent. It is evident from looking at the work plans of all of the Scrutiny Committees that this is being developed already. The Working Group also wishes to include a statement in the Constitution that formally recognises the important function of pre-Cabinet Scrutiny.

RECOMMENDATION

That a statement be written into the Constitution formally acknowledging the importance of pre-Cabinet Scrutiny as a function of Scrutiny Committees.

n). **Policy Development**

The Working Group acknowledges that policy development is an important area where Scrutiny Committees can have a positive impact. Draft policies are often received by Scrutiny before being finalised, allowing Members to have an input into the process. As part of Portfolio Holder Question Time sessions, the Portfolio Holder is asked to consider areas that may benefit from the input of Scrutiny in the field of policy development. Whilst the Working Group acknowledges that policy development and review is already referred to as a Scrutiny function in the Constitution the Working Group also wishes Council to reaffirm this as an important part of Scrutiny's work

RECOMMENDATION

That Members reaffirm the importance of policy development as a part of the Scrutiny process.

o). **Officer Presentations at Scrutiny Committees**

The LGA Peer Review in 2013 recommended that officer presentations at Scrutiny Committees should be limited to 15 minutes. Whilst the Working Group sees a benefit in limiting presentations to allow a full debate by Members of each committee, it also believes that the Chair should have discretion to waive such a limitation if there is good reason to do so and that the recommendation should cover all presentations, not just those given by officers. The group was unsure as to whether a section relating to this should be included in the Constitution or whether it was sufficient to communicate this to those giving presentations at the time of their invitation.

RECOMMENDATION

That presentations to Scrutiny Committees be limited to 10 minutes unless permission is sought from the Chair to extend the time of the presentation before the start of the meeting.

p). **Changing the Constitution – Process**

The Constitution Working Group felt that there should be a nominated Council officer responsible for updating the Constitution. They also considered the definition of a 'minor change'. They concluded that 'minor changes' should be defined as administrative errors, typing mistakes, omissions etc and should only be taken to Council on annual basis, with changes made to the Constitution in the interim by the nominated officer.

The Constitution currently contains the following paragraph regarding approval of changes:-

'Changes to the Constitution will only be approved by the Full Council after consideration of the proposal by the Monitoring Officer, save that the Monitoring Officer may make consequential changes to the Constitution, to reflect resolutions of the Council or Cabinet or decisions properly made under delegated powers and changes of fact and law subject to regular notification of Members to such changes.'

The group recommends that the following wording be removed:

'[o]r Cabinet or decisions properly made under delegated powers and changes of fact and law subject to regular notification of Members to such changes.'

Therefore, with the exception of consequential changes as defined above (including minor changes); it is only Full Council that can authorise a change in the Constitution. Committees and working groups can continue to recommend changes to Full Council. Any minutes which include decisions where changes to the Constitution are made will be sent to the nominated officer responsible for ongoing updates of the Constitution, and this will include policy changes and updates. Changes to the Scheme of Delegation relating to officers will be amended and recorded by the nominated officer subject to the approval of the Monitoring Officer. A change in the Scheme of Delegation relating to officers will be seen as a consequential change and therefore will not require approval by Full Council. Regular notification of such changes would be reported to Members in line with the current provision in the Constitution.

The Working Group were of the view that the Constitution should be made available in PDF format so it is easier to navigate and copies of the Constitution should be provided to newly-elected Members at their induction by the Democratic Services section.

RECOMMENDATIONS

1. That an officer is nominated to make the necessary approved changes to the Constitution.
2. That the following wording from the current Constitution relating to the approval of changes be removed:

'[o]r Cabinet or decisions properly made under delegated powers and changes of fact and law subject to regular notification of Members to such changes.'

3. That 'minor changes' to the Constitution should be defined as administrative errors, typing mistakes, omissions etc and should only be reported to Council on an annual basis, with the necessary changes made to the Constitution in the interim.
4. That any changes to the Scheme of Delegation relating to officers will be amended and recorded by the nominated officer subject to the approval of the Monitoring Officer. A change in the Scheme of Delegation relating to officers will be seen as a consequential change and therefore not require approval by Council.
5. That regular notification of changes in the Constitution will be reported to Members in line with the current provision in the Constitution
6. That, with the exception of 'minor changes' and consequential changes (as already defined within the Constitution), it is only Council that can authorise a change in the

Constitution. Committees and working groups can continue to recommend changes to Council.

7. That all changes to committee membership be reported to the next available Council, unless otherwise required

q). **Scheme of Delegations**

The Scheme of Delegation is currently being updated by relevant officers prior to being forwarded to Full Council for agreement

r). **Substitutes**

Full Council have already established their support for substitutes in principle. The Constitution Review Working Group has also looked at the actual process for substitutions. The Working Group propose that, at the Annual Council Meeting when the Membership for each Committee is put forward, that substitutes for each Committee are also confirmed.

The Working Group considered a number of options including

- That, for every Member on the each committee, there can be one substitute. For example, if there were 7 Labour Members, 2 Conservative Members and 1 Liberal Democrat, there would be 7 Labour substitutes, 2 Conservative substitutes and 1 Liberal Democrat substitute; and
- Not to have a substitute for every member on a committee

The Working Group also considered whether training for all substitutes will be required for regulatory committees.

In addition, nominated substitutes could represent any Member of the same political group.

The Working Group proposed that at least 24 hours notice should be served to the Chair of the Committee by the Member apologising. Where possible, it is the responsibility of the Member apologising to arrange a substitute and this responsibility should not be delegated to an officer of the Council.

RECOMMENDATIONS

1. That the principle of substitutes being nominated for Members missing committee meetings is agreed
2. That for every Member of a committee, there can be one substitute nominated
3. That any Member who is due to miss a meeting needs to inform the Chair of the relevant committee 24 hours before the committee is due to meet (and that it is the Member concerned who does this)
4. That at any one meeting there should be no more than two substitutes per political grouping present
5. That training is provided for nominated substitutes on regulatory committees

6. That, where there are Planning Committee site visits involved, substitutes should be allowed to attend and vote at the Planning Committee even if they have not been on the site visit

Transformation & Resources O & S Committee agreed to recommendations 1-5 but agreed that recommendation 6 should not be implemented at this time, pending further work on the implications of such as change.

s). **Employee Consultative Committee Constitution Change.**

RECOMMENDATION

That Section 1.1 of the Employees' Consultative Committee Constitution and Function be amended as follows:

The committee shall consist of 15 members, 7 of whom (hereinafter referred to as 'the Employer's Side) shall be appointed by the Borough Council and 8 of whom (hereinafter referred to as 'the Employees side) shall be employees appointed by the recognised trades unions in accordance with paragraph 13.

4. **Proposal**

The report provides a number of recommendations for Members to consider and the background to explain how the Constitution Review Working Group has come to put forward these recommendations. The Constitution Review Working Group's 'parent' Committee is the Transformation and Resources Overview and Scrutiny Committee which has also endorsed all of the recommendations listed in the report.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

The Constitution governs the way the Council works. These changes are intended to enable the public, Members and officers to engage more effectively with the decision making processes of the Council and also ensure that processes are lawful. Improvements to processes are key to the corporate priority of becoming a Co-operative Council.

An effective Constitution contributes to the overall ethical wellbeing of the Council, and helps to ensure a culture of high ethical standards, which the public and the Council's partners can have confidence in. This will thereby also contribute to the Council's priority of becoming a Co-operative Council.

7. **Legal and Statutory Implications**

The Council is required by common law and statute (principally the Local Government Acts 1972 and 2000, and the Local Government and Housing Act 1989) to regulate its proceedings and to have an up to date Constitution which is fit for purpose.

8. **Major risks**

That the Constitution will be inaccessible, procedures will be inefficient or decisions are vitiated by reason of unlawful procedure with consequential damage to the reputation, finances and objectives of the Council.

10. **Financial Implications**

No significant additional resources will be required in relation to the recommendations. The Constitution provides the framework and rules for ensuring value for money.

11. **Key Decision Information**

The Constitution affects all decisions and therefore all wards. The majority of the Constitution deals with non-Executive matters.

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13. **List of Appendices**

Cabinet Panels
Dispensations

14. **Background Papers**

The Constitution
Minutes of the Transformation and Resources Overview and Scrutiny Committee
Minutes of the Constitution Working Group

15. **Management Sign-Off**

Each of the designated boxes need to be signed off and dated before going to Executive Director/Corporate Service Manager for sign off.

	Signed	Dated
Financial Implications Discussed and Agreed <i>Lead Officer – Dave Roberts</i>		
Risk Implications Discussed and Agreed <i>Lead Officer –Mark Bailey</i>		
Legal Implications Discussed and Agreed <i>Lead Officer – Mark Bailey</i>		
Equalities Implications Discussed and Agreed <i>Lead Officer – Mark Bailey</i>		
H.R. Implications Discussed and Agreed <i>Lead Officer –</i>		
Report Agreed by: Executive Director/ Head of Service		