

<b><u>REPORT TITLE</u></b>	<b><u>Review of the Council's Constitution</u></b>
<b><u>Submitted by:</u></b>	<b>The Monitoring Officer</b>
<b><u>Portfolio:</u></b>	<b>Communications, Policy and Partnerships.</b>
<b><u>Ward(s) affected:</u></b>	<b>All</b>

**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 Finance, Resources and Partnerships Scrutiny Committee as listed below:**

- I. That the redrafted Member Code of Conduct be agreed,
- II. That the revised Elected Member/Officer Relations Protocol be adopted,
- III. That having been reviewed by the Finance, Resources & Partnerships Scrutiny Committee the updated version of Appendix 12 (Contract Procedure Rules) of the Constitution be adopted by Full Council,
- IV. That the suggested wording relating to the appointment of Honorary Aldermen be included in the Constitution.
- V. That both sections in the constitution that refer to urgency provisions be replaced with one new urgency clause as suggested in the report.
- VI. That diarised meetings of the Scrutiny Chairs and Vice Chairs Group are no longer required.

**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 7<sup>th</sup> 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 2014/2015 and the recommendations contained within this report were considered and agreed by the Finance, Resources and Partnerships Scrutiny Committee at its meetings on 5<sup>th</sup> November 2014 and 21<sup>st</sup> January 2015.
- 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. **Revised Member Code of Conduct**

- i. The current Member Code of Conduct was last reviewed and updated in 2012 to reflect the introduction of the Localism Act 2011.
- ii. Since July 2013 the Council has subscribed to the 'Standards Exchange' which is a network run by Hoey Ainscough Associates. This enables us to access to a wide network of advice and support in terms of Standards issues. In addition Hoey Ainscough have provided a number of training sessions for members of both the Borough and Parish councils in respect of Standards issues and the Code of Conduct. The training provided was based around the Council's existing Code and whilst it was accepted that generally the Code covered what it needed to, there were certain aspects that could have been left open to interpretation. For this reason it was decided to review the current Code and benchmark this against other codes that were in place at various other authorities. Research was undertaken via the Standards Exchange and examples of other codes of conduct were obtained. Taking these into account a new Code has been re-written to reflect best practice.
- iii. The main principles in terms of standards of conduct remain the same – these have just been rewritten to give more clarity.
- iv. The one major change is that which relates to gifts and hospitality. Currently the value at which Members are required to record the receipt of any gift, benefit or hospitality is £100. Having reviewed a number of other codes our limit was found to be considerably higher than these. It was therefore decided to align the limit to the same as that of the officers which is £10. As a general reminder, Members are advised that any gift or hospitality that is offered, irrespective of whether or not it is accepted, should be formally recorded. The register is maintained by the Monitoring Officer.
- v. A copy of the revised Code (Appendix A) is attached for your information. Due to the fact the new Code has been completely re-written and in a different layout/style it was not possible to provide a tracked changes version.

- vi. In addition to being considered and agreed by the Finance, Resources and Partnerships Scrutiny Committee, the revised Code of Conduct was also considered and agreed by the Standards Committee at its meeting on 28<sup>th</sup> January 2015.

**Recommendation:** That the redrafted Member Code of Conduct be agreed.

**B. Revised Elected Member/Officer Relations Protocol**

- i. The revised protocol was considered by the Finance, Resources and Partnerships Scrutiny Committee at its meeting on 21<sup>st</sup> January 2015.
- ii. The aim of the Protocol is to guide elected Members and Officers of Newcastle under Lyme Borough Council in the conduct of their working relationships, in order to ensure that these relationships remain productive and positive.
- iii. A strong, constructive, and trusting relationship between elected Members and Officers is essential to the effective and efficient working of the Council as a whole.
- iv. It is recognised that relationships between elected Members and Officers are very varied and can often be complex. Therefore, the Protocol does not seek to be prescriptive and may therefore not cover all situations. However, it is hoped that the framework it provides will serve as a guide to dealing with a wide range of circumstances.
- v. The Protocol forms a key part of the Council's approach to corporate governance and its commitment to uphold good standards in public life.

**Recommendation:** That the revised Elected Member/Officer Relations Protocol be adopted

**C. Revised Contract Procedure Rules**

- i. As part of this on-going review of the Constitution, the Council's Standing Orders in Relation to Contracts (Appendix 12 of the Constitution) have been examined. The Standing Orders document is currently split into three parts:

Part I – Extract from Statutes;

Part II – Standing Orders for the Regulation of the Proceedings of the Council and Committees; and

Part III – Standing Orders in Relation to Contracts.

Following initial discussions between the Borough Council's Business Improvement Manager, the Monitoring Officer and the Legal Practice Administrator, Standing Orders relating to Contracts have been reviewed.

- ii. As a result of this review, it was found that there was duplication in Parts I and II of information already contained in the Constitution.
- iii. Following on from this review of Parts I and II, consideration was also given to Part III – Standing Orders in relation to Contracts – and it was agreed that these should be updated

and renamed Contract Procedure Rules (Appendix 12) so as to align with the format of the current Constitution. Parts I and II would therefore be discarded.

- iv. In accordance with current best practice, Appendix 12 has now been updated and amended and a copy is attached as an appendix.

**Recommendation:** That having been reviewed by the Finance, Resources & Partnerships Scrutiny Committee the updated version of Appendix 12 (Contract Procedure Rules) of the Constitution be adopted by Full Council.

**D. Protocol for conferring the title of Honorary Aldermen**

- i. Under Section 249 of the Local Government Act 1972, a principal council may confer the title of Honorary Alderman on persons who have, in the opinion of the Council, rendered eminent services to the Council as past members of that Council, but who are not then Members of the Council.
- ii. Whilst the statutory provisions give an indication of the type of person upon whom the title of Honorary Alderman might be conferred many councils have adopted criteria which help guide these considerations to ensure that persons nominated meet the statutory provisions.
- iii. The following wording is recommended for inclusion in the Council's Constitution:

**That an Honorary Alderman shall at least:**

- a) Not be a serving Member of the Council
- b) Be a person of distinction who has rendered eminent services to the Council and the community
- c) Have served a period of not less than twelve years on the Council which may be continuous or discontinuous
- d) Have normally held a substantive office on the Council such as; Mayor, Committee Chair, Group Leader, or Cabinet Member

The title of Honorary Alderman is conferred on persons who meet these criteria and who are nominated and appointed by not less than a two thirds majority of Members voting at a special meeting of the Council called for this purpose.

There is a presumption that where the criteria are met by a nominated individual the appointment at Full Council will be agreed without debate. Due process will be undertaken with the aim of ensuring that this will happen.

**Recommendation:** That the above wording be included in the Constitution.

**E. Urgency Provisions**

- i. At present in the Constitution there are 2 sections relating to matters of urgency which are duplicated:

**APPENDIX 4:**

## Matters of Urgency

1. *In the event of a matter which is not delegated by this Officer Scheme of Delegation requiring action when there is no scheduled meeting where the matter would be considered by the appropriate Cabinet or committee (and where the matter does not make or change policy), the Chief Executive or an Executive Director or the Monitoring Officer having consulted with the Leader or a Cabinet portfolio holder or the Chair of the appropriate committee (or in their absence the Vice Chair) shall have delegated authority to take such action*

2. *In the case of 1 above, the actions taken shall be reported to the next available meeting of the Council or committee as appropriate.*

### **and in PART 2, Section 7.6**

*When a decision regarding a Cabinet function requires attention as a matter of such urgency that formal reporting to Cabinet is not possible, the Leader or the Chief Executive or the Section 151 Officer or the Monitoring Officer or the appropriate Executive Director may take that decision in consultation with a member of Cabinet (not being the Leader in the case of a Leader decision)*

### **Recommendation:**

That both sections shown above be replaced with one new urgency clause as follows:

*When a decision regarding a Cabinet or Committee function requires attention as a matter of such urgency that formal reporting to a meeting of Cabinet is not possible, in accordance with normal Cabinet reporting procedure a written report on the matter must be prepared setting out the reasons for the urgency.*

*Before drafting such a report, the individual responsible should first take advice from the Monitoring Officer, the s.151 Officer and, if necessary, the Legal team.*

*Any such advice given should be in written form and should be recorded appropriately.*

*The reasoning behind the required urgent decision (including the reasoning behind the urgency) and the consequences of that decision should be included in the written report, and the report should be appropriately signed off by the Chief Executive (Head of Paid Service) or an Executive Director. This sign off process should be completed having first consulted with the Leader and one other Cabinet portfolio holder. In a case where the decision maker is the Leader he/she should consult with the Deputy Leader and one other Cabinet Member.*

*The report setting out the urgent decision and the reasons for it should be made available publicly and therefore should be published in the usual way.*

*The report should also be presented at the next available meeting of the relevant Committee (usually the Cabinet) for formal ratification by the Cabinet and the decision should be recorded in the usual way.*

## **F. Scrutiny Chairs and Vice Chairs Group**

i. The Working Group had previously considered and recommended the abolition of the formal Overview and Scrutiny Co-ordinating Committee in favour of an informal Scrutiny Chairs and Vice Chairs Group. Having liaised with the Chairs and the Vice Chairs of the Scrutiny Committees there was agreement that diarised meetings of the new informal committee were not required.

ii. Should any concern arise regarding duplication or overlap of subject matter the Scrutiny Officer or Democratic Services Manager will liaise with the relevant Chairs to arrange an ad hoc meeting with the relevant Chairs or in extreme circumstances a meeting of all the Chairs and Vice Chairs.

The recommendation will not change the constitution but amend a convention that was previously agreed by the Constitutional Review Working Group.

**Recommendation:** That diarised meetings of the Scrutiny Chairs and Vice Chairs Group are no longer required.

#### 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.

#### 5. **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.

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.

#### 6. **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.

#### 7. **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.

#### 8. **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.

#### 9. **Key Decision Information**

The Constitution affects all decisions and therefore all wards.

#### 10. **List of Appendices**

Revised Member Code of Conduct

Revised Elected Member/Officer Relations Protocol  
 Revised Contract Procedure Rules

11. **Background Papers**

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

12. **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.*

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