

REVIEW OF THE CONSTITUTION

Submitted by: Chair of the Transformation and Resources Overview and Scrutiny Committee

Portfolio: Customer Services and Transformation

Ward(s) affected: 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 adopt the amendments to the Constitution recommended by the Working Group.**
- (b) That the Working Group carries out a continued review of the Constitution.**
- (c) That 'Constitutional Review' forms part of the responsibilities of the Transformation and Resources Scrutiny Committee.**

Reasons

The proposed amendments are considered to improve the efficiency and accessibility of the Constitution and to ensure that it is up to date and fully complies with the Law. It is considered that further improvement can be achieved and it is considered that the Transformation and Resources Overview and Scrutiny Committee is an effective accountable and inclusive means of achieving this.

1. Background

- 1.1 The current form of the Council's Constitution originated in the modular constitution issued in 2000 by the former Office of the Deputy Prime Minister and was designed to meet the needs of the Executive arrangements imposed by the Local Government Act 2000. That model was adapted to suit the particular arrangements of this council.
- 1.2 At the Transformation and Resources Committee meeting on 7 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.
- 1.3 At that time the Constitution consisted of 16 Articles and 14 Appendices and the Working Group determined that it would not be possible to consider all of the contents. It was therefore decided to concentrate on the Standing Orders for the regulation of meetings.
- 1.4 Throughout 2010/11 the working group met on three occasions and submitted their initial recommendations to Cabinet. These recommendations included further scrutiny of the constitution by the working group. Cabinet resolved that the proposed amendments be referred back to the Transformation and Resources Overview and Scrutiny Committee for further consideration in the new Municipal Year.

- 1.5 The Transformation and Resources Scrutiny Committee therefore agreed to the Working Party continuing their review throughout the Civic Year 2011/12. The scope of the working party was widened to cover the whole constitution, with the aim of presenting a fully revised document to Full Council at its Annual General Meeting in May 2012. The intention being to shorten and simplify the document without significantly altering the rules under which Council operates.
- 1.6 The Working Party has since met 8 times in the 2011/12 Civic Year. In addition the Chair of the Working Party has conducted individual consultations with the relevant Cabinet Portfolio Holder and various Chairs of Scrutiny, Statutory and Regulatory committees.

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. The Working Party quickly identified that the Constitution needed a complete re-writing as legislative and other changes that have taken place over the past few years have either not been incorporated or added without the original sections being replaced, causing conflicting duplications. A prime example of this is the change to the 'Strong Leader and Cabinet' model, adopted by the Full Council in December 2010, which is not reflected in the current constitution. Early in its meetings the Working Party adopted the strap line that 'Our Council works well - in spite of the constitution'! This demonstrated the need for a full review.
- 2.2 The approach taken by the Working Party has been to:
- (i) Remove obvious duplications.
 - (ii) Identify contradictions and remove the parts that do not accord with local practise or law.
 - (iii) Remove obsolete, inaccurate or unnecessary references to law or processes.
 - (iv) Change dates and time specific items.
 - (v) Use the up to date officer and committee structures and be clear about for example job titles.
 - (vi) Simplify wording and improve the indexing.
 - (vii) To use flowcharts rather than narrative where appropriate.
 - (viii) Take best practise from a number of other constitutions.
- 2.3 Members considered that the requirement to stand to speak at Council meetings was inappropriate, especially in light of the Equality Act 2010. This has now been amended however the rule that a Member must address the Mayor with respect, stop speaking when the Mayor rises (or otherwise indicates) and only speak one at a time is retained. Of course, there is no rule that a speaking Member must remain seated, they may still stand.
- 2.4 A flowchart was designed to help members with the Rules of Debate. This flowchart was actually introduced at Full Council meetings a few months ago to gather feedback and has been well received by members. It is intended that this document will be issued with every Council Agenda going forward.
- 2.5 The Working Party examined the High Court ruling earlier this year concerning the saying of prayers at Bideford Town Council meetings. Local authorities have no power under section 111 of the Local Government Act 1972, or otherwise, to hold prayers as part of a formal local authority meeting, or to summon councillors to such a meeting at which prayers are on the agenda. The Working Party was satisfied that the current arrangements satisfy this ruling as prayers are not part of the agenda, and in addition the saying of prayers is a decision for the Mayoralty each year.

- 2.6 The Working Party is aware that some elected members have specific concerns regarding the Scheme of Delegation, particularly with regards to staffing matters. It was therefore agreed to defer a full review of the Scheme of Delegation until the 2012/13 Civic year. There were two main reasons for this decision. Firstly that the adoption of the revised Constitution by Full Council should not be delayed, or defeated, by a debate on one single section. Secondly that if any changes to the Scheme of Delegation were recommended, and later adopted, then these might require a lengthy review of staffing policies and procedures. The recommendations of such a review will not have to wait until May 2013, as it would be possible to bring this item to Full Council at any time during the Civic Year.
- 2.7 The Localism Act 2011 repealed the requirement for local councils to have a Petitions Scheme, and gives councils the choice of whether or not to have such a scheme. In the light of this, the Working Party has made no suggested amendments to the current Petitions Scheme but recommend that they are allowed to add this to their ongoing review.
- 2.8 The Working Party is very concerned that the Constitution has been allowed to become outdated and to ensure that this does not happen in future it is recommended that Constitutional Review forms part of the responsibilities of the Transformation and Resources Scrutiny Committee. This will avoid the need for such a lengthy and involved full review in the future and ensure that the Constitution remains up to date.
- 2.9 The Constitution has been reformatted, and a paper version of the new document is in the Members' Room and also in electronic form on the Members' website. The Working Party is recommending that in their ongoing review that they examine the best way for the Constitution to be made available to Members. There is an aim for the document to be a fully interactive electronic version, with a search function and for future amendments to be added easily without the need for a manual re-pagination.

3. **Options Considered**

- 3.1 It is a legal requirement that the Council has a Constitution that accords with the Law. The amendments and further work options are set out in the body of the report

4. **Proposal**

- (i) That Council adopt the amendments to the Constitution recommended by the Working Group.
- (ii) That the Working Group carries out a continued review of the Constitution.
- (iii) That 'Constitutional Review' forms part of the responsibilities of the Transformation and Resources Scrutiny Committee.

5. **Reasons for Preferred Solution**

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

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

- 6.1 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 transforming the Council to achieve excellence.

7. **Legal and Statutory Implications**

7.1 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.

8. **Equality Impact Assessment**

8.1 Where impact has been identified it has been addressed.

9. **Financial and Resource Implications**

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

10. **Major Risks**

10.1 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

11. **Sustainability and Climate Change Implications**

11. Where such considerations arise they have been will be considered.

12. **Key Decision Information**

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

13. **Earlier Cabinet/Committee Resolutions**

13.1 The Current constitution was adopted by minute 9/2012.

14. **Background Papers**

The Constitution, the minutes of the Transformation and Resources Overview and Scrutiny Committee, the minutes of the Constitution Working Group the minutes of Cabinet.