

1. REVIEW OF THE CONSTITUTION

Submitted by: Head of Central Services and the Constitution Review Working Group

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.

RECOMMENDATION:

- a) That Council adopts the amendments to the Constitution recommended by the Constitution Review Working Group of Transformation and Resources.
- 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 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 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.
- 1.3 On 16th May 2012, the Council resolved to adopt amendments to the Constitution recommended by the Working Group and that the Group should carry out a continued review of the Constitution and that Constitutional review form part of the responsibilities of the Transformation and Resources Overview and Scrutiny Committee.
- 1.4 The Working Group has met a number of times in the 2012/2013 civic year. In addition, the Chair of the Working Group has conducted individual consultations with relevant Members and officers. One of the elements looked at was a consideration of the saying of prayers at Full Council. A questionnaire was issued to all elected Members and responses collated.

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) 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 practice from a number of other Constitutions.

Mayoralty Code of Practice (App 28) and Prayers

- 2.3 One of the elements looked at was a consideration of the saying of prayers at Full Council. A questionnaire was issued to all elected Members and the responses collated. A summary of responses is attached at Appendix A.
- 2.4 Further to the Bideford Town Council case, it is clear that 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. Prayers are not part of the agenda and the way in which prayers have been dealt with has been a decision for the Mayoralty each year.
- 2.5 The key point noted by the Working Group is that one Member is now unable to attend Full Council as they feel discriminated against by the saying of prayers.
- 2.6 It is therefore recommended that where the Mayor wishes for prayers, expressions of belief or reflections are to place, this will be prior to the commencements of the meeting and there will then be a 5 minute pause before the meeting commences.
- 2.7 It is also recommended that Clause 4b of the Mayoralty Code be amended to: *Chaplain/Celebrant – this is usually for the religious belief or conscience with which the Mayor is associated. It is the practice for the Chaplain/Celebrant to take part in the service on the Civic Sunday and should the Mayor wish to say prayers, expressions of belief or reflections prior to the commencement of Council Meetings. If such prayers, expressions of belief or conscience are to take place then there will be a 5 minutes pause before the meeting commences. The Chaplain/Celebrant should also be invited to take part in the annual Remembrance Day Parade.*
- 2.8 It is finally recommended that Clause 8b and 8c of the Mayoralty Code be amended to show only the titles of 'Mayor's Secretary', 'Mayoral Assistant' and 'Mayor's Chauffeur', by removing the actual names of officers. This will ensure that this section does not become outdated due to staffing changes, which is currently the case.

Substitute Members

- 2.9 Many local authorities operate a substitute system, which provides for the attendance at a committee or sub-committee meeting of a substitute Member whenever a regularly appointed Member cannot attend. It is helpful to ensure a quorum and political balance which in turn avoids decisions which are liable to be overturned or against the wishes of the majority. On the other hand, it is against the general principle of fixed membership and Members may have limited knowledge of the work of the particular committee.

- 2.10 The Constitution Review Working Group have considered different ways of allowing substitutes but are not yet ready to bring forward a full recommendation. Ideas under consideration currently include:
- (i) Substitutes could be provided for by authorising an officer to make changes to the standing appointments of committees and sub-committees on the instruction of the political groups. It would be recommended that at least 24 hours notice be given by the Group to allow the papers to be sent to the substitute in time for them to be read.
 - (ii) Alternatively, the Council could appoint substitutes for each committee or sub-committee, probably at the same time as it appoints the regular Members. These substitutes could build up knowledge and this then would allow for the maintenance of an accurate committee membership register. If substitutes were to be allowed, it would be recommended that 24 hours notice be given by the Group to ensure that papers are received (as above), and to avoid confusion with the original Member who would not then be eligible to attend that meeting as a Member.
 - (iii) Any Substitutes provision would not be allowed for any Committee Chairs and Vice-Chairs.
 - (iv) Substitutes for Regulatory Committees would be required to undergo specific training before carrying out their substitute roles.
 - (v) Substitutes would not be allowed for Full Council for obvious reasons.
- 2.11 It is therefore recommended that the Council approves in principal the use of substitutes and asks the Constitution Review Working Group to continue their work. Members are invited to contact the Working Group with their thoughts on this matter.

Cabinet Panels

- 2.12 The Constitution Review Working Group has explored the introduction of Cabinet Panels to understand how they are covered by the Constitution. They have received the following advice from the Monitoring Officer.
- Section 9E of the Local Government Act 2000 inserted by the Localism Act 2011 provides that the Leader of the Council may discharge any Executive functions or may arrange for the discharge of those functions by the Leader, by the Executive, by another Member of the Executive, by a committee of the Executive, by an area committee or by an officer of the Council. Your officers have amended the Constitution to reflect that and paragraph 1.6 of Appendix 8 of Part 4 now reads:
- “Executive functions shall be discharged by the Cabinet as a whole, by committees of Cabinet, by single Members or by officers in accordance with the procedures set out in the Responsibilities of the Cabinet and the Scheme of Delegation to Officers.”
- In order to clarify the position, ‘Executive’ should be inserted between ‘single Members’.
- 2.13 It is therefore recommended that the change be endorsed with the addition.
- 2.14 Whilst this explains the current position, the Constitution Review Working Group recommend that they continue to review the requirement for a distinct section within the Constitution covering the role and work of Cabinet Panels.

Scrutiny Chairs and Vice-Chairs

- 2.15 The Constitution Review Working Group wishes to explore the role of Health Scrutiny, as the very important work that this committee undertakes is not recognised in the Constitution alongside the other Overview and Scrutiny Committees. Despite the working practice of recognising the Chair of Health Scrutiny by giving equal importance alongside other Scrutiny Chairs and Vice-Chairs on the Overview and Scrutiny Coordinating Committee, it was noted

that the current Constitution provisions are wholly inadequate. Therefore the only change proposed currently is to remove Part 4, Appendix 10, Clause 5.3 in totality.

24 Hours Notice for Amendments

- 2.16 The Constitution Review Working Group has welcomed the introduction by the Mayor of Members giving twenty-four hour notice of substantive amendments to motions for Full Council. They have now reviewed whether this should be formalised within the Constitution. The advice from the Monitoring Officer has been that, whilst it is helpful to have notice of amendments, requiring every amendment to be the subject of a twenty-four hour notice period would prevent amendments which arise as a result of the debate. The Working Group therefore wishes to give further consideration to this issue and would welcome comments from all Members about striking an appropriate balance between Members having notice of amendments to ensure that due consideration can be given to these, whilst ensuring sufficient flexibility to permit revisions to be made to motions as a result of debate.

3. Options Considered

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 report.

4. Proposal

That Council adopt the amendments to the Constitution recommended by the Working Group.

5. Reasons for Preferred Solution

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

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. Equality Impact Assessment

Where impact has been identified it has been addressed.

9. 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.

12. Earlier Cabinet/Committee Resolutions

The current Constitution was adopted by resolution 20 at the Council meeting held on 11th July 2012.

14. Background papers

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