

North East Derbyshire District Council

Standards Committee

24 January 2019

Review of the Council's Constitution

Report of the Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To recommend proposed amendments to the Council's Constitution for consideration by the Standards Committee prior to submission as part of the Annual Review of the Constitution to Council for adoption.

1 Report Details

- 1.1 The Constitution is the Council's 'rulebook'. It sets out how the Council operates and how it makes decisions. Council approved its latest version of the Constitution at the Annual Council meeting in May 2018. Council also approved amended Terms of Reference for the Strategic Alliance Joint Committee in September 2018. These changes have been implemented in the version that shall be published following this review of the Constitution.
- 1.2 One of the functions of the Standards Committee is to undertake an annual review of the Council's Constitution to ensure it is up to date and in line with legislation and current circumstances. The following areas have been identified for review:

Proposals contained within this report:

- Section 151 Officer Delegation additions
- Review of Licensing Committee Terms of Reference and Composition **(Appendix 2)**

Proposals still under review and will be reported to a future meeting:

- Review of Members Code of Conduct
- Review of Employee Code of Conduct
- Standards Committee Terms of Reference
- Review of JCG Terms of Reference
- Proper Officer Provisions – Delegation Scheme
- Minor wording changes or updating of job titles (housekeeping)

- 1.3 Details of the proposed amendments in relation to the first list of areas as above are attached at **Appendix 1**. This also outlines the rationale behind each proposal.
- 1.4 Where revised versions of each section have been produced, these are also attached as appendices, showing the tracked changes in comparison to the current documents.
- 1.5 Further amendments in addition to those set out in this report may also be proposed which will correct and up-date terminology, numbering issues and references to job titles but will not amount to substantive changes to the rules or articles.

2 Conclusions and Reasons for Recommendation

- 2.1 To ensure the Council has in place a fit for purpose Constitution which complies with English law.

3 Consultation and Equality Impact

- 3.1 The Chief Executive, Chief Financial Officer, Monitoring Officer and SAMT are consulted at various stages of the Constitution Review.
- 3.2 An Equality Impact Assessment has not been necessary as part of this review.

4 Alternative Options and Reasons for Rejection

- 4.1 Members may consider alternative options to each of the proposals put forward, where legally permitted.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 Failure to ensure the Constitution meets legal requirements can leave the Council open to challenge, as does failure to comply with the provisions of the Constitution. It is therefore essential that Constitution is regularly reviewed and given robust oversight.

5.2 Legal Implications including Data Protection

- 5.2.1 The Council is required under the Localism Act 2011 to prepare and keep up-to-date a constitution that contains its standing orders, code of conduct, such other information that the Secretary of State may direct and such other information that the authority considers appropriate.

5.3 Human Resources Implications

There are no human resources implications arising from the proposals within this review.

6 Recommendations

- 6.1 That the Committee consider the proposals for amendments to the Council's constitution as set out in Appendix 1 and 2 to the report and support that they be submitted to Council as part of the Constitution Review.
- 6.2 That the Committee give consideration to the list of areas of the constitution to be reviewed, edit it as necessary and agree for a further report to be submitted to the next meeting.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC:</i> Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <i>NEDDC:</i> Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the portfolio holder been informed	Yes
District Wards Affected	None
Links to Corporate Plan priorities or Policy Framework	Demonstrating good governance

8 Document Information

Appendix No	Title				
1	Summary of proposals and rationale				
2	Licensing Committee Report on Committee Structure				
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)					
None					
<table border="1" style="width: 100%;"> <thead> <tr> <th>Report Author</th> <th>Contact Number</th> </tr> </thead> <tbody> <tr> <td>N Calver, Governance Manager</td> <td>01246 217753</td> </tr> </tbody> </table>		Report Author	Contact Number	N Calver, Governance Manager	01246 217753
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Area of Review	Proposal and Rationale	Sections of the Constitution to be revised
Section 151 Officer Delegations	<p>Amendments to the delegation scheme are suggested so as to ensure that the Section 151 Officer has some authority over expenditure from the Transformation Fund and so that the use of earmarked reserves are restricted to authorisation by the Section 151 Officer. This in practice would be as simple as adding the S151 as a signatory on Delegated Decisions of this nature.</p> <p>The changes to the constitution are proposed to be:</p> <p>1 – addition of a further restriction to delegations to Heads of Service (page 63) as follows:</p> <p>(5) Delegated powers may only be exercised within approved budgets, unless a virement is permitted by the Financial Regulations. The use of the Invest to Save Reserve (NEDDC) or the Transformation Reserve (BDC) can only be authorised by the Section 151 Officer.</p> <p>2 – amendment to general powers delegated (page 65):</p> <p>9.14 To acquire, dispose of, grant and obtain rights in land and premises on such terms and conditions as considered appropriate where expenditure is within approved budgets.</p> <p>9.15 To acquire, dispose of, grant and obtain rights in vehicles and other equipment and property where expenditure is within approved budgets.</p>	Scheme of Delegation for Officers (page 61-79)

Area of Review	Proposal and Rationale	Sections of the Constitution to be revised
	<p>3 – to add a new delegation for the Section 151 (page 72):</p> <p>12.10 To authorise the use of earmarked reserves (Invest to Save Reserve – NEDDC or Transformation Reserve – BDC).</p> <p>4 – addition of a further requirement within the Virement rules within the Budget and Policy Framework and as SERCOP no longer exists a) has been rewritten (page 136):</p> <p>a) In order to comply with the CIPFA Code of Practice, the Council shall have budget heads based on its current organisational structure for both the General Fund and Housing Revenue Account.</p> <p>(b) Steps taken by the Cabinet, a Senior Officer or under joint arrangements (if any) discharging Executive functions to implement Council policy shall not exceed those budgets allocated to each budget head. However the Cabinet, or a Senior Officer shall be entitled to vire across budget heads where each individual virement does not exceed £50,000 in total and the aggregated total virement must not exceed £150,000 in any one year. Beyond that limit approval for any virement across budget heads shall require the approval of the Council.</p> <p>No officer may vire funds from the Invest to Save Reserve, authorisation of which is restricted to the Section 151 Officer.</p>	<p>Budget and Policy Framework Rules (page 133-137)</p>

Area of Review	Proposal and Rationale	Sections of the Constitution to be revised
	<p>5 – additions of a further requirement within the Virement rules within the Finance Rules (page 151)</p> <p>8.7 <u>Virements</u></p> <p>Once the budget has been approved, Cabinet or budget managers shall be entitled to vire across budget heads with the exception of salary related budgets. Virements from salary related budgets can only be utilised for the use of agency and consultancy work. The Accountancy Section shall be entitled to vire budgets for housekeeping purposes.</p> <p>No officer may vire funds from the Invest to Save Reserve, authorisation of which is restricted to the Section 151 Officer.</p>	Finance Rules (pages 138-161)
Section 151 Officer Delegations	<p>The following is a request for a further delegation to be added Section 151 officers delegations (page 72):</p> <p>12.11 – To determine that the Council voluntarily repay 141 Right to Buy receipts during periods when social housing schemes cannot be identified on which the receipts could be utilised, provided no interest is payable on repayment.</p>	Scheme of Delegation for Officers (page 67–79)
Licensing Committee Structure	<p>The proposal is to establish a 2 Committee with 2 Sub Committee structure with a revised terms of reference as detailed in the report attached at Appendix 2. The current TOR is detailed at pages 52-55 of the Constitution. The Licensing Committee will be meeting on 24th January to discuss proposed changes as set out in Appendix 2 and their views and recommendations will be reported verbally to the meeting of Standards Committee on 24th January.</p>	Functions Scheme - (page 33-60)

North East Derbyshire District Council

Licensing Committee

24 January 2019

Review of the Council's Constitution – The Council's Governance Arrangements for Discharging its Licensing Responsibilities.

Report of the Monitoring Officer

This report is public

Purpose of the Report

- To enable Members to contribute to the review of the Constitution and to recommend new governance arrangements for discharging the Council's licensing responsibilities.

1 Report Details

- 1.1 Standards Committee is considering the Council's governance arrangements for licensing as part of its review of the Constitution; and, in particular, whether in the light of legal opinion the current arrangements ought to be revised.
- 1.2 The Council has received legal advice that it should establish a specific governance body to deal solely with the Licensing Act 2003 and Gambling Act 2005. This ought to be separate from the committee exercising responsibility for all other aspects of the licensing function, such as taxi and scrap metal licensing.
- 1.3. Different authorities have responded to the need for specific Licensing Act and Gambling Act governance arrangements in a variety of ways. But a common approach has been to simply establish two committees, covering the different legal strands of responsibility.
- 1.4 It is proposed that Council be asked to do this by establishing a 'General Licensing Committee', which would deal with taxi and scrap metal licensing etc. and a 'Licensing and Gambling Acts Committee', with responsibility for licensed premises and club / gaming machine permits etc.
- 1.5 The existing Licensing Committee has fifteen Members. It is proposed that the two new committees consist of 14 Members each. The membership would be politically proportionate to the Council as a whole.

- 1.6 It is important to ensure that the different aspects of licensing continue to be dealt with holistically under the new governance arrangements. For this reason it is recommended that both committees have the same membership, so that their Members can continue to oversee all aspects of the licensing function.
- 1.7 In practice, the committees would meet two or three times a year on the same date. The General Licensing Committee would take place first, followed immediately by the Licensing and Gambling Acts Committee. Consequently, it would continue to feel like a single meeting.
- 1.8 The functions of the new committees would have to be incorporated into the Council's constitution. It is suggested that the functions of the General Licensing Committee be:
- (a) To consider all licensing matters not covered by the Licensing Act 2003 and the Gambling Act 2005, including Private Hire and Hackney Carriage Drivers, Vehicles and Operators;
 - (b) To make any minor changes and updates to the Council's Hackney Carriage and Private Hire Vehicles, Drivers and Operators Policy following adoption by Council;
 - (c) To make any minor changes and updates to other relevant licensing policies as required
- 1.9 It is also suggested that the functions of the Licensing and Gambling Acts Committee be:
- (a) To consider all licensing matters related to the Licensing Act 2003 and the Gambling Act 2005;
 - (b) To make any minor changes and updates to the Statements of Policy under both the Licensing Act 2003 and the Gambling Act 2005 that are required following the adoptions by Council of both statements;
 - (c) To recommend to Council to resolve whether to issue a Casino Licence

The Sub-Committee Arrangements

- 1.10 Both of the new committees would have their own sub-committees, which would discharge specific responsibilities of the parent committees. Under this approach, the membership of the two sub-committees would be determined at Annual Council. Seven Members would be appointed to serve on one of the sub-committees and seven on the other.
- 1.11 The General Licensing Sub-Committee (which is likely to face an ongoing high volume of taxi licensing work) will meet monthly – as the current Licensing Sub-Committee (Taxis) generally does. These meetings would be included in the Council's schedule of meetings. The Licensing and Gambling Acts Sub-Committee, by contrast, would have a far more limited workload and therefore meet less frequently. Its meetings would be organised as and when required.

- 1.12 The Council's quorum rules would apply to the meetings of both sub-committees. This means that only three of the seven Members would have to attend for it to be quorate. This should help to reduce the pressure on Members – often at very short notice – to attend sub-committee meetings to ensure that they can take place.
- 1.13 Again, The functions of the sub-committees would have to be incorporated into the Council's constitution. It is suggested that the functions of a General Licensing Sub Committee be:
- (a) To consider all hackney carriage and private hire licensing issues which are referred to it;
 - (b) To consider matters concerning the discharge by the Council of its licensing function under the Local Government (Miscellaneous Provisions) Act 1982 (as amended);
 - (c) To consider scrap metal sites and operators licences.
- 1.14 The suggested functions of a Licensing and Gambling Acts Sub-Committee should be:
- (a) To consider matters concerning the discharge by the Council of its licensing functions under the Licensing Act 2003;
 - (b) To consider matters concerning the discharge by the Council of its licensing functions under the Gambling Act 2005

2 Conclusions and Reasons for Recommendation

- 2.1 Revising the Council's licensing governance arrangements in this way would bring them into line with best practice under the legislation.

3 Consultation and Equality Impact

- 3.1 The proposed changes have no equality impact implications.
- 3.2 Licensing Committee are consulted by way of this report. Any proposals submitted by Licensing Committee to change the licensing governance arrangements will be reported to Standards Committee. Standards Committee will consider this matter as part of the review of the constitution and recommend changes to Council for adoption and implementation in May 2019.

4 Alternative Options and Reasons for Rejection

- 4.1 The no-change option is not recommended. Maintaining the current governance arrangements, of a single, all-purpose Licensing Committee, would leave the Authority open to appeals against its decisions on Licensing Act and Gambling Act issues, because these decisions had not been taken by a committee with specific responsibility for them.

5 Implications

5.1 Finance and Risk Implications

5.1.1 NA

5.2 Legal Implications including Data Protection

5.2.1 NA

5.3 Human Resources Implications

5.3.1 NA

6 Recommendations

6.1 That Licensing Committee endorses the proposed revision to the licensing governance arrangements, along the lines set out in this report;

6.2 That the proposed revised governance arrangements be submitted to Standards Committee for consideration as part of the Council's Constitution Review.

7 Decision Information

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Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	NA
Links to Corporate Plan priorities or Policy Framework	NA

8 Document Information

Appendix No	Title
1	Diagram of the two committee model
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Nicola Calver, Governance Manager	01426 217753