

**North East Derbyshire District Council**

**Standards Committee**

**19 February 2019**

**Review of the Council's Constitution**

**Report of the Head of Corporate Governance and Solicitor to the Council & Monitoring Officer**

This report is public

**Purpose of the Report**

- To consider the list of areas for review within 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 2019.

1.2 Standards Committee at its meeting on 19th September 2019 agreed the following areas for review:

- JCG Terms of Reference
- Contract Procedure Rules – Contract Formalities
- Standards Committee Terms of Reference
- Review of Employee Code of Conduct
- Employment Rules
- JEAC Terms of Reference
- Questions and Motions to Council (limitations)
- Delegation Scheme (MO Delegations)
- Authorisation to spend from reserves by Cabinet
- Minor wording changes or updating of job titles (housekeeping)

1.3 Additional areas have also been identified:

- Exempt Session Rules
- Spending of Reserves by Cabinet
- Motions Processes and Deadlines
- Discharge of Executive Decisions
- Terms of Reference for newly established Boards
- Independent Persons Terms of Office
- Scrutiny Arrangements

- 1.4 The following table sets out how these areas of review will be considered over the municipal year and where the matters need to be considered by other Committees for consultation, these have been identified.

<b>Area for Review</b>	<b>Lead Officer</b>	<b>Dates for Consideration</b>
Standards Committee Terms of Reference	Governance Manager	Standards Committee 19th September 2019
Joint Employment and Appeals Committee Terms of Reference	Monitoring Officer	Standards Committee 19th September 2019
Questions and Motions to Council (limitations)	Deputy Monitoring Officer	Standards Committee 19th September 2019
Contract Procedure Rules – Contract Formalities	Monitoring Officer	Standards Committee April 2020
Delegation Scheme (MO Delegations)	Monitoring Officer	Standards Committee February 2020
Review of Employee Code of Conduct	HR and Organisational Development Manager	JCG Standards Committee April 2020
JCG Committee Terms of Reference	HR and Organisational Development Manager	JCG Standards Committee April 2020
Employment Rules	HR and Organisational Development Manager	JCG Standards Committee April 2020
Exempt Session Rules	Governance Manager	Standards Committee February 2020
Spending of Reserves by Cabinet	Monitoring Officer and S11 Officer	Standards Committee February 2020
Motions Processes and Deadlines	Monitoring Officer	Standards Committee February 2020
Discharge of Executive Decisions	Monitoring Officer / Legal Team	Standards Committee April 2020
Terms of Reference for newly established Boards	Monitoring Officer / Governance Manager	Standards Committee April 2020
Independent Persons Terms of Office	Deputy Monitoring Officer	Standards Committee April 2020
Scrutiny Arrangements	Monitoring Officer / Scrutiny Officer	Standards Committee April 2020
Final report and any remaining issues for the year.	Governance Manager	Standards Committee April 2020
Minor wording changes or updating of job titles (housekeeping)	Governance Officers	Once final draft version produced

1.5 The highlighted review areas in the above table are detailed in **Appendix 1**. This sets out the proposal and rationale and the sections of the Constitution to be amended.

## **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.

2.2 The rationale for each proposal as part of the review is set out in Appendix 1.

## **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 Equality Impact Assessments may be carried out in relation to specific areas of review where the need arises. Details of any equality issues will be address in relation to each area of review.

## **4 Alternative Options and Reasons for Rejection**

4.1 Members may consider alternative options to any 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**

5.3.1 There are no human resources implications arising from the proposals within this report. Some areas for review may impact on staff. These implications will be addressed in relation to the specific areas for review.

## 6 Recommendations

- 6.1 That the Committee give consideration to proposals for review in Appendix 1 and support the submission of the proposals to Council as part of the Constitution Review in May 2020.

## 7 Decision Information

<p><b>Is the decision a Key Decision?</b>  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:</p> <p><i>BDC:</i>      <i>Revenue - £75,000</i>      <input type="checkbox"/>                    <i>Capital - £150,000</i>      <input type="checkbox"/></p> <p><i>NEDDC:</i>    <i>Revenue - £100,000</i>      <input type="checkbox"/>                    <i>Capital - £250,000</i>      <input type="checkbox"/></p> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	No
<p><b>Has the portfolio holder been informed</b></p>	Yes
<p><b>District Wards Affected</b></p>	None
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	Demonstrating good governance

## 8 Document Information

Appendix No	Title
1	Areas for Review – Proposals and Rationale:
<p><b>Background Papers</b> (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)</p>	
None.	
<b>Report Author</b>	<b>Contact Number</b>
Nicola Calver, Governance Manager	01246 217753

<b>APPENDIX 1</b>  <b>Area of Review</b>	<b>Proposal and Rationale</b>	<b>Sections of the Constitution to be revised</b>
<p>(a) Delegation Scheme authority to implement legal changes.</p>	<p>From time to time, there are changes in legislation, government guidance or other regulatory changes that impact on Council policies. Currently, all such changes must be brought to Cabinet or Council for approval (depending on the nature of the policy) even though in the vast majority of these cases, there is no discretion for Members and the amendments must be accepted.</p> <p>This can prove difficult where changes must be implemented within a short timescale and cannot practically be reported to Members in time. It is therefore proposed that the power to make amendments to policies be delegated to Directors and Heads of Services in the Delegation Scheme.</p> <p>Where there is any discretionary element to the changes or the impact of the changes in legislation etc. are significant, these can still be reported to Members.</p> <p>The proposed wording of the delegation is:</p> <p><b>To make amendments to Council policy, subject to consultation with the Monitoring Officer, in order to:</b></p> <ul style="list-style-type: none"> <li><b>i) reflect changes in the law, government or regulators' guidance, and other Council policies; or</b></li> <li><b>ii) correct obvious, technical or clerical errors and to take account of changes of any names or titles.</b></li> </ul>	<p>Part 3 – Functions Scheme</p> <p>Scheme of Delegation to Officers</p> <p>9. General powers delegated to all Strategic Directors and Heads of Service - page 83 of the current version.</p>

(b) Time limits for Questions and Motions to Council.

Currently, the deadline for all of these is midday 7 clear working days before the day of the meeting. This gives very little preparation time for those who have to answer the questions or those who want to participate in the motion debate.

Accordingly it is being suggested that the deadline is extended. The suggestions is that the deadline could be extended by either 5 working days or 10 working days. This would operate as follows in terms of the February, March and April Council meetings:-

17 clear days	22/1/20	5/2/20	23/3/20
12 clear days	29/1/20	12/2/20	30/2/20
Current deadline of 7 clear days.	5/2/20	19/2/20	6/4/20
Agenda Despatch	7/2/20	21/2/20	8/4/20
Council Meeting	17/2/20	2/3/20	20/4/20*

\*Affected by Easter

The table shows what extending the deadline by 5 and 10 clear days does to timescales. This would be accompanied by a change requiring the distribution of questions and motions to members to occur immediately after the deadline for submission.

If Members wish to change the deadlines this would mean an alteration 9.3 and 10.1 of the Council Procedure Rules (CPR) and the addition of the following:-

9.3 (c) details of questions submitted by Councillors on notice will be circulated to Cabinet immediately after the deadline has passed.

And add to the end of 10.1 :-

Details of motions submitted by Councillors on notice will be circulated to the Cabinet immediately after the deadline has passed.

<p>(c) Access to Information – Member attendance during exempt items of Cabinet</p>	<p>The Council Procedure Rules make provision, at rule 25.3 for Members who are not appointed to the relevant Committee or Sub-Committee to remain in a meeting of that Committee or Sub-Committee during the private session considering exempt items, unless the Committee or Sub-Committee ask them to leave.</p> <p>This rule has in practice been applied to Executive, although technically this is not a Committee. It is therefore proposed in the interests of clarity, that the term Cabinet be added to the wording of this rule.</p>	<p>Part four – Council Procedure Rules, Section 4.3</p>
<p>(d) Reserves – approval of Transformation Reserve</p>	<p>At the present time there is a specific delegation to the Section 151 Officer to approve expenditure from this Reserve. This was agreed so that expenditure from the Reserve could be properly monitored and recorded but also so that relatively minor expenditure as part of the Transformation Programme would not be delayed by the need for a formal Cabinet decision.</p> <p>However it is not necessary for the delegatee to be the Section 151 Officer. The Section 151 Officer needs to be aware of expenditure from this Reserve and we need to make sure the system so informs her. However the actual decisions come through the governance structure set up to deal with Transformation Programme projects. It would be the Transformation Governance Group (TGG) (which includes Members) that would decide to progress a project not the Section 151 Officer.</p>	<p>Delegation Scheme – 12 Head of Finance and Resources and Section 151 Officer number 12.10.</p> <p>This delegation to move to the Director of People.</p> <p>Delegated Decisions relating to Invest to Save Projects to be initialled by the Section 151 Officer to evidence that she has seen them.</p> <p>The Budget and Policy Framework Rules number 5(b) needs amending to refer to the Director of People.</p>

	<p>This can be achieved by amending the delegation and transferring the delegation to the Director of People with an additional requirement that the Section 151 Officer not only has to see the proposal but initials the Delegated Decision form (DD form) to evidence that she has been consulted.</p>	
<p>(d) Reserves – approval of expenditure from Reserves</p>	<p>It has always been the case that expenditure from Reserves are agreed by the Cabinet in a formal decision. This used to be in the Constitution but for some reason was removed.</p> <p>There needs to be a decision route for expenditure from the Reserves – for openness and transparency reasons. It is suggested therefore that this is put back into the Constitution to make the position clear.</p>	<p>Cabinet functions in Part 3 of the Constitution includes at point (g) in year decisions. This could be amended as follows, with changes being shown in bold:-</p> <p>(g) Take in-year decisions on resources or priorities <b>including the use of reserves</b> together with other stakeholders and partners in the local community, to deliver and implement the Policy and Budget Framework</p>
<p>(d) Small increases in expenditure and effect on the Council's Budget</p>	<p>From time to time changes are made to the way services are provided to make them better. Sometimes this has no cost. If the cost is significant, then a report is taken to Cabinet. Sometimes, however, the cost increase is very small. As the rules stand at the moment, even a small increase in budget requires formal member approval through Cabinet. So Cabinet could be considering a report that involves a very small increase.</p>	<p>Delegation Scheme – 12</p> <p>New 12.12</p> <p>To authorise small increases in individual budgets of up to £10,000 per budget on one occasion in any corporate year subject to a delegated decision notice being produced.</p>

	<p>It is felt that these decisions would be better done by a Delegated Decision (a DD). This would ensure transparency (a formal decision is recorded) whilst still involving members (the Leader and/or Deputy Leader and/or Portfolio Holder have to be consulted in every delegated decision but give a faster route and avoiding Cabinet dealing with minor increases.</p> <p>Clearly the Section 151 Officer needs to be able to exercise control over this and stop costs spiralling out of control. It is therefore suggested that a new delegation is given to the Section 151 Officer to cover small increases in budgets.</p>	
<p>Council Procedure Rules</p> <p>Rule 8 Questions by the public</p>	<p>A review of our neighbouring authorities has shown that they all allow <b>any</b> member of the public to ask questions at council so long as they meet the scope.</p> <p>Bolsover District Council restricts whom may ask questions as “Members of the public who are on the Register of Electors for or who are Non Domestic Rate Payers to the district”.</p> <p>Concern was raised that some whom have a connection to the district may not qualify to ask a question under this current regime and consideration was given to whether this should be extended to include those who have a “Local Connection” to the district.</p>	<p>Part 4 Council Procedure Rules</p> <p>8 – Questions by the Public</p> <p>8.1 General - page 103 of the current version.</p>

For the purposes of Housing the Housing Act 1996 defines that a person has a local connection to a district if

1. (a) they are, or were in the past, normally resident there, and that residence was of their own choice; or,
2. (b) they are employed there; or,
3. (c) they have family associations living there; or,
4. (d) of any special circumstances.

The committee could accept that anyone can ask a question as the current scope limits this to a matter which is one the Council “has a responsibility or which affects the district.” This restriction would ensure that whomever asked a question could only do so if it genuinely affected the district.

The proposed wording of the amended rule 8.1 (a) is

**~~Members of the public who are on the Register of Electors for North East Derbyshire District Council, or who are Non Domestic Rate Payers to District,~~ may ask questions of members of the Cabinet at ordinary meetings of the Council.**