



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE ETHICS AND STANDARDS COMMITTEE**

**19 January 2023**

**Report of the Director of Legal & Democratic Services and Monitoring Officer**

**Revisions to Council Constitution: Local Choice functions**

**1. Purpose**

- 1.1 To agree amendments to the Local Choice functions in the Constitution and a number of consequential changes and refer these amendments to full Council for approval.

**2. Information and Analysis**

- 2.1 The Local Government Act 2000 introduced new models of governance for local authorities. There were four governance models available to councils under the 2000 Act, namely: -

- (i) Mayor and Cabinet Executive
- (ii) Leader and Cabinet Executive
- (iii) Mayor and Council Manager
- (iv) Alternative arrangements – the modified committee system for authorities with a population of less than 85,000 as at the time of the Act

As Members of Committee are aware, Derbyshire County Council operates executive arrangements, with a Leader and Cabinet model.

- 2.2 The legislation provides for functions to be allocated between the executive (Cabinet) and non-executive (Council and Committees). For this purpose functions are classified as functions which:
- a) must not be the responsibility of the executive;
  - b) must be the responsibility of the executive;
  - c) the local authority can decide whether they are to be the responsibility of the executive; and
  - d) are shared between the council and the executive.
- 2.3 The Act together with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, identify which functions are to be treated as executive functions and non-executive functions. Regulation 3 and Schedule 2 to the Regulations set out which functions the Council can decide should be the responsibility of the executive or the non-executive. These are known as 'local choice functions'.
- 2.4 The current local choice functions are included in the Council's Constitution (Section G Local Choice Functions of Appendix 1 – Responsibility for Functions) attached at Appendix 3. They have been reviewed because they include a number of functions that are specifically specified in the Regulations as non-executive functions and do not include all relevant functions that are listed in Schedule 2 to the Regulations.
- 2.5 It is important to note that the non-executive functions currently included in the Constitution as local choice functions have not been designated as the responsibility of the executive and as a result decisions will have been made lawfully by the non-executive.
- 2.6 It is proposed that an amended Section G Local Choice Functions of Appendix 1 – Responsibility for Functions is approved by Governance, Ethics and Standards Committee. The new version attached to this report at Appendix 2 includes all the functions relevant to a county council that are listed in Schedule 2 to the Regulations and the Committee is recommended to agree it and refer it to Council for approval and inclusion into the Constitution.
- 2.7 The guidance on the approach to the division of functions between the executive and non-executive set out in the 'Local Government Act 2000: Guidance to English Local Authorities' has been taken into account and the amendments are in line with the recommended approach. The only function where a different approach is proposed relates to the making of agreements with other local authorities for the placing of staff at the disposal of those other authorities. It is proposed that this function is

treated as a non-executive function that falls within the remit of the Appointments and Conditions of Service Committee and delegated to the Managing Director/Head of Paid Service and Executive Directors because decisions relating to staffing matters are non-executive functions. Designating this specific staffing function as an executive function has the potential to cause confusion. Therefore it is proposed that it is designated as a non-executive function to ensure there is clarity and certainty that all staffing decisions fall outside of the remit of the executive.

2.8 In respect of those functions that are currently including in Section G Local Choice Functions of Appendix 1 – Responsibility for Functions that are not ‘local choice functions’, it is proposed that the following action is taken:

Functions relating to Health and Safety at work	No action. This applies where the functions are discharged otherwise than in the authority's capacity as an employer. Such functions are the responsibility of district councils rather than the county council
Functions relating to Elections	<p>The duty to appoint a returning officer for county council elections is now within the remit of the Appointments and Conditions of Service Committee.</p> <p>It is proposed that the functions of Council is amended to include:</p> <ul style="list-style-type: none"> <li>• making decisions relating to election functions</li> </ul>
Functions relating to the name and status of areas and individuals	<p>The functions of Council already include changing the name of the area. It is proposed that this is amended to:</p> <p>(h) changing the name and status of areas and individuals</p>
Power to make, amend, revoke or re-enact bye-laws pursuant to any provision of any enactment	<p>No action.</p> <p>The functions of Council already include making, amending,</p>

(including a local Act) whenever passed, and s14 Interpretation Act 1978	revoking, re-enacting or adopting bye-laws
Power to promote or oppose local or personal bills pursuant to s239 Local Government Act 1972	No action. The functions of Council already include promoting or opposing the making of local legislation or personal Bills
Powers to make Standing Orders	No action. The functions of Council already include adopting and changing the Constitution which includes the power to make standing orders
Duty to make arrangements for the proper administration of financial affairs	No action. Responsibility for designating an officer as the Chief Financial Officer is now within the remit of the Appointments and Conditions of Service Committee
Preparation of the Council's Statement of Accounts, Income and Expenditure and Balance Sheet including the preparation of the Annual Governance Statement	No action. The functions of Audit Committee already include responsibility for approving the Annual Statement of Accounts and preparation of the Annual Governance Statement

2.9 Governance, Ethics and Standards Committee is therefore asked to agree that the following amendments are made to the list of functions of the Full Council set out in Appendix 1 – Responsibility for Functions to the Constitution as set out in Appendix 2 to this report and refer them to full Council for approval:

- Add “making decisions relating to election functions”
- Amend (h) to “changing the name and status of areas and individuals”

### **3. Alternative Options Considered**

3.1 Do nothing – this option is not appropriate as it will not ensure that the Constitution kept up to date and fit for purpose.

### **4. Implications**

4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **5. Consultation**

5.1 Not applicable.

## **6. Background Papers**

6.1 None identified.

## **7. Appendices**

7.1 Appendix 1 – Implications.

7.2 Appendix 2 – Proposed Local Choice functions.

7.3 Appendix 3 – Current Local Choice functions.

## **8. Recommendations**

That the Committee agrees:

- (a) the amended Section G Local Choice Functions set out in Appendix 2 to this report and refers it to full Council for approval and inclusion in Appendix 1 – Responsibility for Functions of the Constitution; and
- (b) the following amendments to the list of functions of the Full Council set out in Appendix 1 – Responsibility for Functions to the Constitution and refers them to full Council for approval:

- Add “making decisions relating to election functions”
- Amend (h) to “changing the name and status of areas and individuals”

## **9. Reasons for Recommendations**

9.1 To comply with legislative requirements and ensure the Council’s Constitution is kept up to date and fit for purpose.

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## Implications

### Financial

1.1 None.

### Legal

2.1 As set out in the body of the report, the Local Government Act 2000 introduced new models of governance for local authorities, including the introduction of executive arrangements.

2.2 The Act together with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, identify which functions are to be treated as executive functions and non-executive functions. Regulation 3 and Schedule 2 to the Regulations set out which functions the Council can decide should be the responsibility of the executive or the non-executive. These are known as 'local choice functions'.

2.3 Chapter 5 of the Local Government Act 2000: Guidance to English Local Authorities includes guidance on the approach to the division of functions between the executive and non-executive and relevant extracts are set out below:

“5.8 The Secretary of State has adopted the following approach to the division of functions between the executive and the council:

- determination of the local authority's policy framework and budget (see chapter 2 of this guidance) and other constitutional and quasi-legislative functions are to be the responsibility of the full council;
- functions which involve either determining an application from a person for a licence,
- approval, consent, permission or registration or direct regulation of a person (except in cases where there is only limited discretion in the discharge of the function) together with any related enforcement actions (including prosecution) are not to be the responsibility of the executive; and
- all other functions are to be the responsibility of the executive.”

**“Functions which may be appropriate for either the executive, the full council or a committee**

...

5.38 The functions of determining any appeal against a decision made by or on behalf of the local authority and of making arrangements for the determination of certain appeals (relating to school exclusions and admissions and appointments to Council Tax Benefit and Housing Benefit Review Boards) are also specified in Schedule 2 to the Regulations as local choice functions.

5.39 Where the functions of making arrangements for the determination of certain appeals (relating to school exclusions and admissions and appointments to Council Tax Benefit and Housing Benefit Review Boards) are not to be the responsibility of the executive the local authority's executive arrangements should provide that they will be discharged by the full council.

...

5.43 In addition, Schedule 2 to the Regulations provides that appointments to outside bodies are local choice functions. Whoever makes such an appointment, the member appointed could be either a member of the executive or another councillor.

5.44 The Secretary of State advises that a local authority's executive arrangements should provide that the executive will make appointments to outside bodies in connection with functions which are the responsibility of the executive (e.g. housing, education, social services, regeneration, etc.) and all other appointments should be made by the full council, a committee or officer of the local authority.

5.45 The powers to place staff at the disposal of other local authorities (using section 113 of the Local Government Act 1972 or any other similar provision) are local choice functions.

5.46 Using the powers in section 13(4) and 13(5) of the Act a local authority's executive arrangements should provide that the functions to place staff at the disposal of other local authorities, for example to facilitate the exercise of joint arrangements, are to be the responsibility of the executive except to the extent that the staff are being placed at the disposal of the other authority in relation to the discharge of functions which are not the responsibility of the executive of the authority placing the staff."

- 2.4 Article 22 of the Constitution makes it clear that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance Ethics & Standards Committee. This report discharges that constitutional requirement.
- 2.5 The Council is required to prepare and keep up to date its Constitution as set out in Section 9P of the Local Government Act 2000 as amended. Approval by full Council of the recommendations in this report will enable the compliance with this duty.

## **Human Resources**

3.1 None.

## **Information Technology**

4.1 None.

## **Equalities Impact**

5.1 None.

## **Corporate objectives and priorities for change**

6.1 This report links to the Council Priority of 'High Performing Value for Money and Resident Focused Services'. The changes proposed will enable efficient, effective and lawful decision making.

## **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 None.