

DERBYSHIRE COUNTY COUNCIL

2ND JULY 2020

GOVERNANCE, ETHICS AND STANDARDS COMMITTEE

UPDATES TO THE CONSTITUTION

1. Purpose of the Report

To consider proposed amendments to the Constitution to ensure that the Constitution remains up to date and fit for purpose.

2. Information and Analysis

The revised Constitution was implemented in May 2019. However, it is regularly reviewed in order for it to remain up to date and fit for purpose. As a result of such a review, a number of amendments to the Constitution are proposed and detailed in the draft report to Council attached at Appendix 1 for consideration by the Governance, Ethics and Standards Committee. Changes to the Constitution may only be approved by the Council after consideration of the proposals by the Governance, Ethics and Standards Committee.

3. Legal Considerations

In accordance with the Council's Constitution, approval by the full Council is required for any change to the Constitution. However, under its terms of reference at Article 11 of the Constitution, the Governance, Ethics and Standards Committee is required *to advise the County Council on the monitoring, amendments to and overall operation of the Constitution.* Therefore, prior to the amendments being considered by the full Council, they must be considered by the Governance, Ethics and Standards Committee.

4. Other Considerations

In preparing this report, the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality and diversity, human resources, human rights, environmental, health, property and transport considerations.

5. Background Papers

The Constitution and the file held by the Director of Legal and Democratic Services

6. Officer Recommendation

That the Committee considers the proposed amendments to the Constitution as detailed in the draft report to Council attached at Appendix A and commends them to the Council.

Simon Hobbs

Director of Legal and Democratic Services and Monitoring Officer

DERBYSHIRE COUNTY COUNCIL

15th July 2020

Council – Draft Report

Updates to the Constitution

1. Purpose of the Report

To consider proposed amendments to the Constitution to ensure that the Constitution remains up to date and fit for purpose.

2. Information and Analysis

The revised Constitution was implemented in May 2019. However, it is regularly reviewed in order for it to remain up to date and fit for purpose. As a result of such a review, the Council is invited to consider the following amendments to the Constitution:

- a) Within Appendix 1 – Responsibility for Functions, the list of legislation included under delegation 1 of the Delegations to the Director – Community Services be replaced with the list attached to this report at Appendix A. As the list of legislation is regularly updated, it is proposed that the wording of delegation 1 to the Director –Community Services be amended to read:

“To undertake enforcement and administrative duties under the legislation detailed in the list at Appendix A”.

Updated lists (i.e. a replacement Appendix A) can then be included from time-to-time as necessary with the agreement of the Director of Legal and Democratic Services, with the Governance, Ethics and Standards Committee and the Council being notified in accordance with delegation 18 to the Director of Legal and Democratic Services, to *“undertake any revisions or amendments to the Constitution required as a consequence of amendments or variations to legislation, or the implementation of new legislation. Such amendments to be retrospectively approved by Council”.*

- b) Within, Appendix 1 – Responsibility for Functions, delegation 4 of the Delegations to the Director of Legal Democratic Services be amended to widen the authority to include the ability to settle or compromise potential as well as actual proceedings. It is proposed that the delegation be amended to read as follows:

“To prosecute, withdraw, defend, compromise, settle, appeal and appear in proceedings, or compromise or settle proceedings or potential proceedings on behalf of the County Council in any court of law, whether criminal or civil, tribunal, inquiry, chamber or other hearing or before any Judge, Registrar, Recorder, Magistrate, Coroner, Inspector, Arbitrator, Mediator or expert.”

- c) Within Appendix 1 – Responsibility for Functions, an additional function added to the list of *“Functions of the Full Council”* to include consideration of settlements and exit packages on termination of employment or remuneration on appointment in excess of £100,000.
- d) Amend Appendix 9 – Officer Procedure Rules to enable Executive Directors to appoint Directors on a temporary basis and pending recruitment to the permanent role. As mentioned in point 2 above, full Council must be involved whereby the annual remuneration package of a role is or exceeds £100,000 and Appendix 9 requires the appointment of Chief Officers and Deputy Chief Officers, which includes Executive Directors and Directors within the Council to be considered by Elected Members. Therefore, it is proposed to include an exception to Appendix 9 to provide for the temporary appointment to the role of director; that is an appointment for a maximum period of 6 months, so that the total remuneration awarded under the arrangement would not total £100,000. To provide for this additional wording would be included at paragraphs 3 (c) (ii) and (iv) of Appendix 9 as follows:

“ save where the appointment is on a temporary basis of no more than 6 months.”

- e) To clarify the position with regard to delegated authority for the making of key decisions, it is proposed to amend Part B1 of *Powers delegated to Executive Directors in Consultation with Cabinet Members* within Appendix 1 – Responsibility for Functions to read as follows:

Part B

B1 Delegations to Executive Directors and Directors do not include:-

(d) any matter which constitutes a key decision except as provided for in Article 7.3(c)

The making of a key decision as outlined above would be subject to call-in as specified at paragraph 13(1) of Appendix 5 – Improvement and Scrutiny Procedure Rules. Should the matter be urgent, call-in could be waived in accordance with paragraph 13 (6) of Appendix 5. include decisions taken by an individual member of Cabinet, a Committee of Cabinet , or a key decision made by an officer with delegated authority from Cabinet or under joint arrangements, as well as by Cabinet.

Consequently, it is proposed to amend paragraph 13(6) to read *“the call-in procedure set out above shall not apply where the decision being taken by Cabinet, an individual member of Cabinet, a Committee of Cabinet or a key decision made by an officer with delegated authority from Cabinet or under joint arrangements is urgent.....”*

- f) Within Appendix 2 - the Council’s Petition Scheme, to be considered further, a petition must be signed by 10 or more persons who, live, work or study in the Council’s area. It is proposed to increase the number of signatures required for further consideration of a petition to 100

Should the Council still wish to consider petitions with fewer signatures, Council may consider that it be reasonable to delegate such petitions to officers to consider. It is therefore proposed that the relevant section of the Petition Scheme be amended to read as follows:

“The County Council has decided that a petition for the purposes of this Petition Scheme must be signed by 50 or more persons who live, work or study in the Council’s area. Any petition with fewer than 50 signatures will be passed to the relevant department to consider in accordance with the departmental complaints process.”

3. Legal Considerations

In accordance with the Council’s Constitution, approval by the full Council is required for any change to the Constitution. However, under its terms of reference at Article 11 of the Constitution, the Governance, Ethics and Standards Committee is required *to advise the County Council on the monitoring, amendments to and overall operation of the Constitution.* Therefore, prior to the amendments being considered by the full Council, they were considered by the Governance, Ethics and Standards Committee at its meeting on 2nd July and the Committee commends the proposed amendments to the Council.

4. Other Considerations

In preparing this report, the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality and diversity, human resources, human rights, environmental, health, property and transport considerations.

5. Background Papers

The Constitution and the file held by the Director of Legal and Democratic Services.

6. Officer Recommendation

That the Council approves the amendments to the Constitution outlined in the report and commended by the Governance, Ethics and Standards Committee.

Simon Hobbs

Director of Legal and Democratic Services and Monitoring Officer