

**DERBYSHIRE COUNTY COUNCIL**

**19 JANUARY 2021**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**UPDATES TO THE CONSTITUTION**

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

**1. Purpose of the Report**

To seek agreement to amendments to the Council's Constitution and referral to Full Council for formal approval.

**2. Information and Analysis**

A review of the Constitution is being undertaken which has initially identified several provisions where change should be considered. If Members are minded to recommend the revisions detailed below, a report will be prepared for Council in February 2021 to make these amendments to the Constitution. A further report will be presented to the Committee in due course on additional amendments which are identified as part of the review.

**2(a) Council Procedure Rules**

**(i) Cabinet Report to Council**

There is a provision in the constitution at Appendix 3, Council Procedure Rules, Section 9B Questions by members on the Report from Cabinet as follows:

“9B. Questions by Members on the Report from Cabinet

(a) After giving written notice to the Director of Legal and Democratic Services by 12 noon on the Friday before the Council meeting, a Member of the Council may ask a member of the Executive a question on items in the report.

(b) A Member asking a question under this Standing Order may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply.”

It is to be noted that after February 2019, the Cabinet Report to Council was no longer presented to Council. However, this change has not been ratified by Council or considered by the Governance, Ethics and Standards Committee and the provision remains in the Constitution. When this issue was identified, a Report from Cabinet was submitted to the Council meeting held on 2 December 2020 which rectified the position for the period March 2019 to December 2020.

Members are asked to consider removing the requirement for a Cabinet Report to Council from the Council Procedure Rules.

If these provisions are removed, any Member will continue to have the right to ask a question at Council of a member of the Executive under Standing Order 8.1. In addition, under the Access to Information Procedure Rules the Executive will still be required to submit quarterly reports to the Council on the cabinet decisions taken in the circumstances set out in Rule 15 of the Access to Information Procedure Rules (special urgency) in the preceding three months.

#### **(ii) Receipt of Minutes of Committees, Joint Committees and the Fire Authority**

There is a provision in the Constitution at Appendix 3, Council Procedure Rules, Section 4, Order of Business, item (n) Receive the minutes of committees, joint committees and the Fire Authority. These minutes were last presented to Council in February 2019. As with the Cabinet Report to Council detailed above, it is understood that when the Constitution was reviewed in 2019, there had been some consideration by Members to remove this provision from the Council Procedure Rules. However, this amendment was not reported to Council in May 2019 and therefore the Constitution was not amended.

To rectify this issue, the minutes of the meeting of the Fire Authority were presented to the December 2020 Council meeting, as part of the Cabinet Report to Council.

Again, Members are asked to consider removal of the requirement for these minutes to be presented to Council from the Council Procedure Rules.

If this provision is removed, any Member will continue to have the right to ask a question at Council of the nominated representative of the Derbyshire Fire Authority on the discharge of the functions of the Fire Authority under Standing Order 8.4.

#### **(iii) Member/Public Questions**

The Constitution (Appendix 3, Council Procedure Rules, Section 10.5) sets out the scope of public questions as detailed below:

“The Director of Legal and Democratic Services may reject a question if it:

- Exceeds 200 words in length;
- is not about a matter for which the Council has a responsibility, or which affects Derbyshire;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.”

However, there is no such provision for Member questions (Council Procedure Rules, Section 8) and the Committee is asked to consider whether these should be now be included in the Rules relating to Member questions.

Similarly, Council Procedure Rules in relation to public questions, state that in the absence of the questioner, the Chairman may ask the question on the questioner’s behalf, indicate that a written reply will be given, or decide that the question will not be dealt with. No such provision is made for Member questions and it is proposed that this now be added.

#### **(iv) Order of Business**

The Council Procedure Rules (Appendix 3, Section 4) set out the order in which the business of a Council meeting should be considered. Should the Committee agree to remove the provisions of the Constitution as detailed in (i) and (ii) above, the following existing provisions would be removed from the Constitution:

- 4(k) Report from the Cabinet and Members’ Questions on the Report
- 4(n) Receive the minutes of committees, joint committees and the Fire Authority

The revised order of business would be as follows:

- (a) If necessary, the appointment of the Chairman
- (b) Apologies
- (c) Declarations of interests
- (d) Chairman’s announcements
- (e) Minutes of the previous meeting
- (f) Report of the Leader of the Council and Members’ Questions
- (g) Questions submitted by the public
- (h) Petitions

- (i) Questions submitted by Members
- (j) Reports of officers
- (k) Presentations
- (l) Motions

**(v) Section 2 – General Meetings**

There is currently no provision in the Constitution to provide for the cancellation of a scheduled meeting of the Council as a result of a lack of business or in exceptional circumstances (such as the Covid-19 Pandemic). It is therefore proposed that an additional section be added to the Council Procedure Rules as 2.2 to read:

*“The Chairman may cancel a scheduled meeting of the Council due to lack of business or in exceptional circumstances after consultation with the Leader of the Council and the Leader of the Main Minority Group.”*

**(vi) Substitutes**

Section 17.2 of the Council Procedure Rules sets out the arrangements for allowing substitutes at standing committees and sub-committees. The provision is however, somewhat limited and it is considered that the wording be expanded to provide greater clarity and detail. It is therefore suggested that the section be amended to read as below:

*“(a) For each of the standing Committees and Sub-Committees for the Council there shall be appointed a pool of members not greater than one quarter of the total number of members allocated to each of the duly constituted political groups on that committee who will be permitted to attend that Committee or Sub-Committee as a substitute in accordance with this Standing Order.*

*(b) Where a member (the original member) of a standing Committee or Sub-Committee of the Council is unable to attend a meeting of that Committee or Sub-Committee the original member may request the member appointed as a substitute pursuant to Standing Order 17 (a) (the substitute member) for that Committee or Sub-Committee for the political group to which the original member belongs to attend the Committee or Sub-Committee on behalf of the original member. The attendance of the substitute shall be notified in writing to the Director of Legal and Democratic Services no later than 5 pm on the day before the meeting. The substitute member shall announce at the start of the meeting which member they are substituting for under the item “Apologies for Absence and Substitutions”.*

*(c) A substitute member shall not be permitted to attend meetings of the Regulatory Planning Committee unless (s)he has previously received appropriate training to the satisfaction of the Monitoring Officer.*

*(d) The substitute member attending the Committee or Sub-Committee shall declare his/her presence as substitute at the commencement of the business of the Committee or Sub-Committee. The substitute member shall then act for all purposes, for the duration of that meeting only, as though he were the original member of the Committee or Sub-Committee.*

*(e) If the original member of the Committee or Sub-Committee is the Chairman or Vice-Chairman of that Committee or Sub-Committee the substitute member shall not be entitled to act in that office.”*

## **2(b) Article 11 – The Governance, Ethics and Standards Committee**

As members of the Committee will be aware, the Council is required to appoint an ‘Independent Person’ who has a role in dealing with Code of Conduct complaints. Section 28(8) of the Localism Act 2011 provides that a person is not ‘*independent*’ if the person is—

- (i) a member, co-opted member or officer of the authority,*
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or*
  - (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);*
- (b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was—*
- (i) a member, co-opted member or officer of the authority, or*
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;*

The remit of the GES Committee as detailed in Article 11 of the Constitution, implies that the Independent Persons are members of the Governance, Ethics and Standards Committee. However, in practice they have not been formally co-opted onto the Committee or paid a co-opted member allowance. To provide clarity therefore, it is proposed that the wording on the composition of the Committee be amended to read;

*“The Governance, Ethics and Standards Committee will comprise of 8 Elected Members.”.*

## **2(c) Appendix 1 - Responsibility for Functions**

- (i) Under the responsibility for functions of the Director of Legal and Democratic Services (Section 20), there is provision for them;*

*“To appoint an independent person of another authority’s Standard Committee, where necessary because of a conflict of interest or non-availability, to serve a temporary member of the Standards Committee.”*

In light of the fact that the Independent Person is not a member of the Governance, Ethics and Standards Committee as set out above, it is proposed that the delegation is removed.

(ii) As the Committee will be aware, Council approved a revised leadership model at its meeting on 2 December 2020. As a result, there are various changes required to Appendix 1 of the Constitution to reflect the new role of Managing Director with effect from 1 January 2021. It is proposed that the Director of Legal and Democratic Services be authorised to make the necessary changes to the Constitution to reflect the new role.

(iii) Attached at Appendix A to this report is a revised list of legislation under which the Director – Community Services can authorise enforcement and administrative duties to be undertaken. On 9<sup>th</sup> December 2020, the Director of Legal and Democratic Services authorised the inclusion of this revised list in accordance with delegation 18 of the delegations 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 the Council.*

## **2(d) Article 20 – Officers**

(i) Section 20.1(b) - Corporate Management Team

The Section should include the following list of officers:

- Managing Executive Director – Commissioning, Communities and Policy
- Executive Director – Children’s Services
- Executive Director – Adult Social Care and Health
- Executive Director - Place
- Director of Finance and ICT
- Director of Legal and Democratic Services
- Director of Organisation Development and Policy
- Director of Public Health

(ii) Section 20.1(c) – ‘Head of Paid Service, Monitoring Officer and Chief Finance Officer’ requires amendment so it is clear that the Managing

Executive Director – Commissioning, Communities and Policy is the Head of Paid Service.

## **2(e) Appendix 7 – Budget and Policy Framework Rules**

Section (I) requires amendment to reflect the current provisions in the Local Authorities (Standing Orders) (England) Regulations 2001. The section should read as follows:

*“(I) Where, before 8th February in any financial year, the Cabinet submits to the Council for its consideration in relation to the following financial year:*  
*(i) estimates of the amounts to be aggregated in making a calculation (where originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ, of the Local Government Finance Act 1992;*  
*(ii) estimates of other amounts to be used for the purposes of such a calculation;*  
*(iii) estimates of such a calculation; or*  
*(iv) amounts required to be stated in a precept under Chapter IV of I of the Local Government Finance Act 1992,*

*and following consideration of those estimates or amounts, the Council has any objections to them, it must follow the procedure in paragraph 7 to 9 of Part II of Schedule 2 to the Standing Order Regulations.”*

## **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.

Additionally, delegation 18 of the delegations to the Director of Legal and Democratic Services enables the Director 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”*. However, such amendments must be retrospectively approved by the Council. Consequently, as outlined above, prior to the amendments being considered by the full Council, this amendment should also be considered by the Governance, Ethics and Standards Committee.

Full Council has the power to arrange for the discharge of any of its functions by a committee. By virtue of section 102 of the Local

Government Act 1972, it is for full Council to make appointments to Committees. The proposed amendment to the Constitution set out in the report will ensure that appropriate process is in place in respect of appointment of substitute members to a 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 report to Council and recommends them to Council for approval.

**Helen Barrington**  
**Director of Legal and Democratic Services and Monitoring Officer**



**Part 1****Authorisation for officers enforcing legislation generally.**

Agriculture (Miscellaneous Provisions) Act 1968  
 Animal Health Act 1981  
 Animal Welfare Act 2006  
 Animals Act 1971  
 Anti-social Behaviour Act 2003  
 Brucellosis (England) Order 2015  
 Cancer Act 1939  
 Children and Families Act 2014  
 Children and Young Persons (Protection from Tobacco) Act 1991  
 Children and Young Persons Act 1933  
 Clean Air Act 1993 – Motor Fuel (Composition and Content) Regs.  
 Companies Act 2006  
 Consumer Credit Act 1974  
 Consumer Protection Act 1987  
 Consumer Rights Act 2015  
 Copyright, Designs and Patents Act 1988  
 Criminal Justice Act 1988  
 Criminal Justice and Police Act 2001  
 Customs & Excise Management Act 1979  
 Education Reform Act 1988  
 Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015  
 Enterprise Act 2002  
 Environmental Protection (Microbeads)(England) Regulations 2017  
 Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020  
 Estate Agents Act 1979  
 European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:
 

- African Horse Sickness (England) Regulations 2012
- Animal By-Products(Enforcement)(England) Regulations 2013
- Avian influenza (Preventative Measures)(England) Regulations 2006
- Avian Influenza (Vaccination)(England) Regulations 2008
- Biofuel Labelling Regulations 2004
- Bluetongue Regulations 2008
- Business Protection from Misleading Marketing Regulations 2008
- Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008
- Cattle Identification Regulations 2007
- Construction Products Regulations 2013
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Rights (Payment Surcharges) Regulations 2012
- Cosmetic Products Enforcement Regulations 2013 and the EU Cosmetic Products Regulation 1223/2009
- Crystal Glass (Descriptions) Regulations 1973
- Detergents Regulations 2010
- Diseases of Swine Regulations 2014
- EC Fertilisers (England and Wales) Regulations 2006
- Eggs and Chicks (England) Regulations 2009
- Electrical Equipment (Safety) Regulations 2016
- Electromagnetic Compatibility Regulations 2016

Energy Information Regulations 2011  
Energy Performance of Buildings (England and Wales) Regulations 2012  
Equine Identification (England) Regulations 2018  
Financial Services (Distance Marketing) Regulations 2004  
Fluorinated Greenhouse Gases Regulations 2015  
Foot-and-Mouth Disease (Control of Vaccination)(England) Regulations 2006  
Footwear (Indication of Composition) Labelling Regulations 1995  
Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018  
General Product Safety Regulations 2005  
Package Travel and Linked Travel Arrangements Regulations 2018  
Packaging (Essential Requirements) Regulations 2015  
Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001  
Personal Protective Equipment (Enforcement) Regulations 2018  
Pressure Equipment (Safety) Regulations 2016  
Products of Animal Origin (Disease Control)(England) Regulations 2008  
Pyrotechnic Articles (Safety) Regulations 2015  
Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018  
Radio Equipment Regulations 2017  
REACH Enforcement Regulations 2008  
Recreational Craft Regulations 2017  
Registration of Establishments (Laying Hens)(England) Regulations 2003  
Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013  
Simple Pressure Vessels (Safety) Regulations 2016  
Supply of Machinery (Safety) Regulations 2008  
Textile Products (Labelling and Fibre Composition) Regulations 2012  
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010  
Tobacco and Related Products Regulations 2016  
Toys (Safety) Regulations 2011  
Trade in Animals and Related Products Regulations 2011  
Transmissible Spongiform Encephalopathies (England) Regulations 2018  
Veterinary Medicines Regulations 2013  
Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012  
Welfare of Animals at Time of Killing (England) Regulations 2015  
Zoonoses (Monitoring) (England) Regulations 2007

Fireworks Act 2003

Fraud Act 2006

Hallmarking Act 1973

Health Act 2006

Knives Act 1997

Legal Services Act 2007

Licensing Act 2003

Motor Cycle Noise Act 1987

Offensive Weapons Act 2019

Olympic Symbol etc. (Protection) Act 1995

Prices Act 1974

Protection of Animals Act 1911

Psychoactive Substances Act 2016

Registered Designs Act 1949

Road Traffic Acts 1988 and 1991

Single Use Carrier Bags Charges (England) Order 2015

Tenant Fees Act 2019

and the Housing and Planning Act 2016 as it relates to Client Money Protection Schemes

Theft Act 1968

Tobacco Advertising and Promotion Act 2002  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Unsolicited Goods and Services Acts 1971 and 1975  
Video Recordings Act 1984  
Vehicles (Crime) Act 2001

## **Part 2**

### **Additional List of Legislation for officers with qualification/competency in:**

#### **Food Law**

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

Animals and Animal Products (Examination for Residues and Maximum Residue Limits)(England and Scotland) Regulations 2015  
Beef and Veal Labelling Regulations 2010  
Country of Origin of Certain Meats (England) Regulations 2015  
Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Information and Compositional Requirements) (Amendment etc.) (England) Regulations 2020  
Food for Specific Groups (Information and Compositional Requirements)(England) Regulations 2016  
Food Information Regulations 2014  
Food Safety and Hygiene (England) Regulations 2013  
Genetically Modified Organisms (Traceability and Labelling)(England) Regulations 2004  
Infant Formula and Follow-on Formula (England) Regulations 2007  
Materials and Articles in Contact with Food (England) Regulations 2012  
Novel Foods (England) Regulations 2018  
Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 *in so far as it relates to food law*  
Official Feed and Food Controls (England) Regulations 2009 *in so far as it relates to food law*  
Olive Oil (Marketing Standards) Regulations 2014  
Organic Products Regulations 2009  
Poultrymeat (England) Regulations 2011  
Quick-frozen Foodstuffs (England) Regulations 2007  
Scotch Whisky Regulations 2009  
Specified Products from China (Restrictions on First Placing on the Market)  
(England) Regulations 2008  
Spirit Drinks Regulations 2008  
Wine Regulations 2011

Food Act 1984

Food and Environment Protection Act 1985 [Note: Authorisation must be issued directly to the officer by the FSA.]

Food Safety Act 1990

### **Part 3**

#### **Additional List of Legislation for officers with qualification/competency in: Feed Law**

Agriculture Act 1970

Animal Feed (Composition, Marketing and Use)(England) Regulations 2015

Animal Feed (Hygiene, Sampling etc and Enforcement)(England) Regulations 2015

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

Animal Feed (Basic Safety Standards) (England) Regulations 2019

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 *in so far as it relates to feed law*

Official Feed and Food Controls (England) Regulations 2009 *in so far as it relates to feed law*

### **Part 4 Additional List of Legislation for officers with qualification in: Weights and Measures Law**

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

Measuring Container Bottles (EEC Requirements) Regulations 1977

Measuring Instruments Regulations 2016

Non-automatic Weighing Instruments Regulations 2016

Weights & Measures (Packaged Goods) Regulations 2006

Weights and Measures Act 1985

### **Part 5**

#### **A separate authorisation is required under the Health and Safety at Work etc Act 1974 referring to the following:**

i) Sections 20, 21, 22 and 25 of the 1974 Act;

ii) The following Regulations made under the 1974 Act:

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013

The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009

The Dangerous Substances and Explosive Atmospheres Regulations 2002,

The Explosives Regulations 2014,

The Petroleum (Consolidation) Regulations 2014, and

iii) The provisions of the following Acts mentioned in Schedule 1 to the 1974 Act;

Explosives Act 1875  
Public Health Acts 1936 and 1961

**Part 6**

**A**

**List of Legislation falling to be enforced by Unitary Authorities and NOT County Councils**

The Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018  
The Ozone-Depleting Substances Regulations 2015  
Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014

**B**

**List of Legislation falling to be enforced by London Borough Councils, District Councils and County Councils where there is no District Council**

Sunbeds (Regulation) Act 2010

## **Part 7**

### **List of Extracted Legislation appropriate to specialist Animal Health and Welfare Officers ONLY**

Agriculture (Miscellaneous Provisions) Act 1968

Agriculture Act 1970

Animal Health Act 1981

Animal Welfare Act 2006

Animals Act 1971

Brucellosis (England) Order 2015

Companies Act 2006

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

African Horse Sickness (England) Regulations 2012

Animal By-Products (Enforcement)(England) Regulations 2013

Animals and Animal Products (Examination for Residues and Maximum Residue Limits)(England and Scotland) Regulations 2015

Avian influenza (Preventative Measures)(England) Regulations 2006

Avian Influenza (Vaccination)(England) Regulations 2008

Bluetongue Regulations 2008

Business Protection from Misleading Marketing Regulations 2008

Cattle Identification Regulations 2007

Consumer Protection from Unfair Trading Regulations 2008

Diseases of Swine Regulations 2014

EC Fertilisers (England and Wales) Regulations 2006

Eggs and Chicks (England) Regulations 2009

Equine Identification (England) Regulations 2018

Food Safety and Hygiene (England) Regulations 2013

Foot-and-Mouth Disease (Control of Vaccination)(England) Regulations 2006

Genetically Modified Organisms (Traceability and Labelling)(England) Regulations 2004

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019

Official Feed and Food Controls (England) Regulations 2009

Products of Animal Origin (Disease Control)(England) Regulations 2008

Registration of Establishments (Laying Hens)(England) Regulations 2003

Trade in Animals and Related Products Regulations 2011

Transmissible Spongiform Encephalopathies (England) Regulations 2018

Veterinary Medicines Regulations 2013

Welfare of Animals at Time of Killing (England) Regulations 2015

Zoonoses (Monitoring) (England) Regulations 2007

Food and Environmental Protection Act 1985

Food Safety Act 1990

Protection of Animals Act 1911

Trade Descriptions Act 1968