

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Civic Affairs Committee

17 December 2012

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AMENDMENTS TO THE COUNCIL'S CONSTITUTION

Purpose

1. To recommend that Council approves the amendments to the Constitution as outlined in this report.
2. This is not a key decision but changes to the Constitution must be approved by Council.

Recommendations

3. That Council be recommended to approve amendments to the Constitution, as set out in this report.

Reasons for Recommendations

4. This report suggests a number of amendments to the Council's Constitution as part of maintaining the document to reflect the introduction of new legislation, changes in legislation, the publication of new regulations or the availability of latest Government guidance, ensuring it is as up-to-date and fit for purpose as possible.

Background

5. The Constitution Review Working Party previously considered amendments to the Council's Constitution prior to the establishment of the Civic Affairs Committee earlier this year, which is now responsible for reviewing the Council's Constitution as follows: -

"To bring forward proposals which, in the opinion of the Chief Executive and Monitoring Officer, entail substantive changes to the Constitution, for consideration by the Council, excluding those matters which are specifically included within the remit of other bodies on the Council."

6. A number of suggested amendments to the Council's Constitution since the latest version was approved on 28 August 2012 are set out as part of this report as recommendations 1 to 11.

Considerations

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

7. The Local Authorities (Executive Arrangements) Meetings and Access to Information (England) Regulations 2012 came into effect on 10 September 2012 and change the rules about how local authority executive decisions are taken, as well as public access to the decision-making processes. The main changes include: -

- the requirement for the Local Authority to publish a notice at least 28 clear days prior to its intention to make a key decision, superseding the requirement to produce a rolling four-month forward plan;
- the requirement for the Local Authority to publish a notice at least 28 clear days prior to its intention to hold all or part of an executive meeting in private session and a further notice at least five clear days ahead of the meeting, containing any adverse comments on the proposal to hold all or part of the meeting privately together with the executive's response to them;
- the requirement for the executive to make any material available regarding business relating to past decisions, upon request from a Member an overview and scrutiny committee. This excludes confidential or exempt information unless it relates to an action or decision that the member is scrutinising or to a review contained in the work programme of the committee;
- the requirement for the Local Authority to publish background papers on its website and make copies available for public inspection at the Council offices, upon request.

8. Proposed amendments to the Access to Information Procedure Rules section of the Council's Constitution, which incorporate these new requirements, are outlined at **Appendix A** to this report. **Appendix B** to the report shows the individual changes that have been made to the current Access to Information Procedure Rules.

Recommendation 1 – to adopt the revised Access to Information Procedure Rules attached to this report at Appendix A

Key Decisions

9. The Constitution sets out ten definitions of a key decision. Following the publication of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, a key decision is now defined as one which: -

- “1. is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
2. is likely to be significant in terms of its effect on communities living or working in an area of the District comprising two or more wards.”

Recommendation 2 – to amend the Constitution to reflect the new definitions of a key decision

Executive Meetings

10. Paragraph 1.2 of the Executive Procedure Rules currently states that the Executive, or Cabinet, will meet at least ten times per year at times to be agreed by the Leader. This does not coincide with the Council's calendar of meetings and the Leader has indicated that Cabinet does not need to meet ten times per year to conduct its business.

Recommendation 3 – to amend paragraph 1.2 of the Executive Procedure Rules to read “the Executive will meet at least six times per year at times to be agreed by the Leader”

11. In respect of meetings of individual Portfolio Holders, paragraph 3.1 of the Executive Procedure Rules states that “individual Portfolio Holders will normally hold meetings in accordance with schedules which co-ordinate with the work programme for that Portfolio”. This statement is potentially misleading as Portfolio Holders are not required to formally meet to discuss any decision that they are able to take under their delegated authority.

Recommendation 4 – to replace paragraph 3.1 of the Executive Procedure Rules to read “individual Portfolio Holders may take decisions outside of a formal meeting where expedient to do so. Formal meetings, when held, will be held in public in accordance with the provisions of procedure rules 1.3 and 1.6 above”

12. The Executive Procedure Rules still refer to prejudicial interests in some instances. Prejudicial interests are no longer used following the introduction of the Localism Act 2011 and new rules regarding the declaration of Members’ interests.

Recommendation 5 – to amend reference to prejudicial interests in the Executive Procedure Rules to read “disclosable pecuniary interests”

Risk Management Strategy

13. The Constitution currently provides for the Corporate Governance Committee to receive the Strategic Risk Register on a quarterly basis. The Corporate Governance Committee has recently agreed to monitor the Portfolio Holder’s review of the Strategic Risk Register as part of its annual review of the Risk Management Strategy. The Committee therefore considers that a quarterly review of the document is no longer necessary.

Recommendation 6 – to remove the following paragraph under the Responsibility for Council Functions on pages 41 and 42 of the Constitution in respect of the Corporate Governance Committee: -

“(ii) to receive quarterly, the strategic risk register, covering reports and other associated documents presented to the appropriate portfolio holder, together with the minutes of the portfolio holder meetings, to monitor that the strategic risk register has been properly considered by the portfolio holder”

Scrutiny and Overview Committee

14. The Chairman of the Scrutiny and Overview Committee has requested that the Committee be renamed as the “Overview and Scrutiny Committee”. This is in keeping with the majority of other local authorities in the county whose scrutiny bodies are known as Overview and Scrutiny Committees rather than Scrutiny and Overview Committees. This proposal will also be considered by the Scrutiny and Overview Committee when it meets in January 2013.

Recommendation 7 – to change the name of the Council’s Scrutiny and Overview Committee to “Overview and Scrutiny Committee”

15. There is currently no reference in the Council’s Constitution to the Councillor Call for Action. This process gives any Member the right to refer a ‘local government matter’ to the District Council’s Scrutiny and Overview Committee as well as to the County Council’s relevant Overview and Scrutiny Committee, whether they are a Member of the authority or not. In all instances, however, the intention is that Members will have tried all other means at their disposal to resolve an issue before instigating a Councillor Call for Action. It should be noted that this process is not an alternative

way to deal with normal ward matters, but is a means of last resort to be used when all other avenues have been exhausted. A suggested approach to dealing with Councillor Calls for Action is attached to this report at **Appendix C**.

16. This proposal will also be considered by the Scrutiny and Overview Committee when it meets in January 2013

Recommendation 8 – to include a process in the Scrutiny and Overview Committee Procedure Rules for dealing with a Councillor Call for Action as set out in Appendix C to the report

17. All local authorities are required to allocate one of their overview and scrutiny committees to act as a Crime and Disorder Committee for the purposes of Sections 19 and 20 of the Police and Justice Act 2006 in relation to crime and disorder matters. These requirements were enacted by the Crime and Disorder (Overview and Scrutiny) Regulations 2009.
18. Under the legislation the Committee can: -
 - consider the decisions and actions undertaken by the responsible authorities involved in the Crime and Disorder Reduction Partnership (CDRP) and to make any recommendations and reports to the CDRP;
 - request information from the responsible authorities;
 - require attendance of officers or employees or responsible authorities to answer questions or to provide information;
 - receive Councillor Calls for Action in relation to crime and disorder and community safety issues in accordance with the Police and Justice Act 2006.
19. Crime and disorder matters are defined as: -
 - a) anti-social behaviour or other behaviour adversely affecting the local environment; or
 - b) the misuse of drugs, alcohol and other substances which affect all or part of a Members' electoral ward or any person who lives or works in the electoral ward.
20. This proposal will also be considered by the Scrutiny and Overview Committee when it meets in January 2013.

Recommendation 9 – to allocate the Scrutiny and Overview Committee as the Council's Crime and Disorder Committee, amending the Constitution accordingly, and ensure that it meets in this capacity at least once a year

21. The Scrutiny and Overview Committee Procedure Rules refer to Task and Finish Panels and Task and Finish Groups, both meaning the same thing. It is suggested that the term "Task and Finish Group" is used throughout the Scrutiny and Overview Committee Procedure Rules, in order to avoid confusion.

Recommendation 10 – to use the term "Task and Finish Group" throughout the Constitution in place of "Task and Finish Panel", where appropriate

Removal of a Member from a Council Committee or Sub-Committee, removal of a Member from Cabinet and removal of a Member as Leader of the Council

22. Paragraph 2.2 under the Council's Standing Orders refers to the removal of a Member from a Council Committee or Sub-Committee. The Civic Affairs Committee at its meeting on 24 September 2012 agreed to introduce the following sanctions relating to this issue: -

- recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees/Sub-Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- recommend to Council that the Member be replaced as Leader of the Council.

Recommendation 11 – to amend the title of paragraph 2.2 of the Council Procedure Rules to read “removal of a Member from a Council Committee or Sub-Committee, removal of a Member from Cabinet and removal of a Member as Leader of the Council” and replace the existing wording of the paragraph itself with the sanctions of the Civic Affairs Committee as set out above

New model constitution

23. The model constitution which was issued alongside the Local Government Act 2000 by the Government has never been revised and each local authority which adopted it has made its own revisions on an ad hoc basis since then. The Government are looking to the Association of Council Secretaries and Solicitors (ACSeS) to create a new model constitution which will incorporate legal and governance changes since its inception alongside examples of best practice. ACSeS has commissioned Dickinson Dees (Solicitors) to prepare a new model constitution for all English councils which would be hosted for all ACSeS members on a web-based platform. Work is now well advanced on this project with software designed to allow for the quick and easy production of a draft constitution from a bank of precedents, tailor-made for the differing models of council governance and incorporating the unique features of each council. It is hoped that the version for councils with executives will be ready to use in the New Year.

Options

- Recommendation 1
24. The proposed amendments to the Council's Access to Information Procedure Rules ensure that the authority is compliant with the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. No other options are therefore proposed.
- Recommendation 2
25. The proposed amendments in relation to key decisions reflect the guidance published following the introduction of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. No other options are therefore proposed.
- Recommendation 3
26. An option is not to make any changes to the number of meetings Cabinet is required to hold and retain this at ten meetings per year.
- Recommendation 4
27. An option is not to make any changes to paragraph 3.1 in the Executive Procedure Rules, retaining the existing wording. Portfolio Holders can make decisions outside of public meetings and the recommendation seeks to add clarity around this issue to avoid any potential for confusion.

Recommendation 5

28. The proposed amendment to the Executive Procedure Rules regarding reference to prejudicial interests follows the introduction of the Localism Act 2011. No other options are therefore proposed.

Recommendation 6

29. The Corporate Governance Committee has already agreed to monitor the Risk Register as part of its annual review of the Risk Management Strategy. An option is to request that the Corporate Governance Committee reconsiders its decision and continues to receive the Strategic Risk Register on a quarterly basis.

Recommendation 7

30. An option is to maintain the current name of the Scrutiny and Overview Committee. The Chairman of the Committee has requested a change in name so that South Cambridgeshire District Council's scrutiny function mirrors the majority of other local authorities in the country, however, this proposal will not be considered by the Scrutiny and Overview Committee itself until January 2013.

Recommendation 8

31. The Local Government and Public Involvement in Health Act 2007 provides Members with a right to submit a Councillor Call for Action. The process set out in Appendix C provides the Council with a basis for processing such submissions. No other options are therefore proposed, however, this proposal is scheduled to be considered by the Scrutiny and Overview Committee at its meeting in January 2013.

Recommendation 9

32. Local Authorities are required to allocate one of their overview and scrutiny committees to act as a Crime and Disorder Committee as part of the Police and Justice Act 2006, as amended by Section 126 of the Local Government and Public Involvement in Health Act 2007. The existing Scrutiny and Overview Committee could allocate a section of one of its meetings, or even hold an additional meeting, to meet in its capacity as the Council's Crime and Disorder Committee at least once a year, fulfilling the authority's statutory requirements in this respect.

33. An option is the establishment of another overview and scrutiny committee, whose sole remit will be to consider issues relating to crime and disorder matters. This will impact the political balance on the Council's committees as the introduction of a new committee will mean the allocation of additional seats to political groups, which will have to reflect the political makeup of the authority.

34. This proposal is scheduled to be considered by the Scrutiny and Overview Committee at its meeting in January 2013.

Recommendation 10

35. This recommendation seeks the consistent use of the term "Task and Finish Group" throughout the Constitution and deletion of any reference to the term "Task and Finish Panel". No other options are proposed.

Recommendation 11

36. The Civic Affairs Committee has already agreed to the sanctions referred to as part of this recommendation. No other options are therefore proposed.

Implications

37.	Financial	None.
	Legal	The majority of the amendments to the Constitution set out above are necessary following the introduction of new legislation, changes in legislation and the publication of new regulations to ensure the Constitution is up-to-date.
	Staffing	None specific.
	Risk Management	A number of the recommended amendments to the Constitution outlined in this report seek to ensure that the Constitution is up-to-date and fit for purpose. Recommendations 1, 2, 5, 8 and 9 address legislative requirements. The Local Authority could face legal challenge if the Constitution is not amended to address the issues highlighted in the respective sections of this report.
	Equality and Diversity	The Council's Equality Impact Assessment screening process was followed in relation to this report, further to which no concerns in relation to equality and diversity were identified.
	Equality Impact Assessment completed	No. This is primarily an administrative matter only.
	Climate Change	None specific.

Consultations

38. No consultation has been carried out at this stage. It is usual practice for the Civic Affairs Committee to consider changes to the Constitution and submit recommendations to Council, if necessary.

Consultation with Children and Young People

39. No consultation with children and young people has taken place on the content of this report.

Effect on Strategic Aims

40. The content of this report will have no effect on the delivery of the Council's strategic aims.

Conclusions / Summary

41. The Civic Affairs Committee is invited to consider the eleven recommendations set out in this report as a basis for submitting a recommendation to the Council on amendments to the Constitution.

Background Papers: the following background papers were used in the preparation of this report:

The Localism Act 2011
The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

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