

Cabinet

13 March 2019

Annual Review of the Constitution



Report of Corporate Management Team

Helen Lynch, Head of Legal and Democratic Services

Councillor Simon Henig, Leader of the Council

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To present proposals for the revision of the Council's Constitution.

Executive summary

- 2 The Council's Constitution describes the four methods by which the Council operates: the Council, the Executive, Overview and Scrutiny, and the Committees. It also provides the framework within which each must operate by including:
 - (a) the rules and procedures to be followed by the Council and committees when conducting their business;
 - (b) the decision making powers of the Council, Executive, Committees and Officers;
 - (c) the financial and contract regulations;
 - (d) the rights of the public;
 - (e) codes of conduct for councillors and employees;
 - (f) members' allowances.
- 3 Although the Constitution has been regularly maintained and updated, a fundamental review of the content was undertaken last year and agreed

by Council on 23 May 2018. The annual review of the Constitution for 2019 is currently being undertaken which will be considered by Council at its annual meeting in May 2019.

Recommendation

- 4 The Leader and Cabinet are asked to:
 - (a) approve the delegation of executive powers as set out in the proposed amendments to the officer scheme of delegation at paragraph 16 of the report:
 - (b) recommend that Council agree the proposed revisions to the Constitution at its annual meeting on 22 May 2019.

Background

- 5 Section 37 of the Local Government Act 2000 requires local authorities operating executive arrangements to prepare and keep up to date a document which contains:
 - (a) such information as the Secretary of State may direct;
 - (b) the authority's standing orders (i.e. rules of procedure);
 - (c) the code of conduct for members; and
 - (d) such information as the authority considers appropriate.
- 6 The Council must ensure that copies of the above document – which is commonly referred to as the constitution – are available at the principal office for inspection by the public at all reasonable hours and supply a copy of the same upon request (upon payment of such reasonable fee as we may determine).
- 7 Durham County Council's Constitution is available on the Council's website and is reviewed on an annual basis.

Methodology

- 8 Preparations for the annual review of the Constitution commenced in the autumn of 2018, with Directors being contacted to request that they consider what, if any, changes they believed were appropriate to the Constitution. Contact was also made with the relevant officers responsible for the scheme of delegations in each directorate, and their requests for amendments incorporated into the proposed Constitution.
- 9 The proposals have been considered by the Constitution Working Group, then Cabinet prior to consideration by Council at its annual meeting.
- 10 An overview of the key changes for relevant sections where amendments are proposed are set out below. Attached at appendices 2 - 8 are relevant extracts of the constitution with the proposed changes shown as tracked changes. A summary of all the changes is attached at Appendix 9.

Terminology

- 11 During the last annual review of the Constitution, consideration was given to amending the terminology throughout the document so that it is gender neutral. The Constitution Working Group considered a recommendation from its specially convened sub-group that the terminology should be amended. CWG agreed that such changes should be recommended to Council as part of this review. In doing, so, it

was recognised that it was a matter of personal preference as to how individual councillors wish to be addressed.

- 12 Therefore it is proposed that the terminology of 'Chairman' be changed to a gender-neutral title of 'Chair', and that other references to gender throughout the document be neutralised, with such references as he/she, himself/herself, be replaced according to the data subject referenced whether that be member/ councillor/ officer/ member of the public etc.
- 13 If council agree to the changes proposed any consequential amendments to such documents as agendas/ minutes/ reports will need to be made to ensure consistency in approach.
- 14 It is also proposed to amend Article 12 in relation to the terminology of the Constitution to clarify that any reference to legislation also includes subsequent amendments to it without the need to reference in the document. Proposed changes are set out in Appendix 2.

Corporate Parenting Panel

- 15 The Corporate Parenting Panel reviewed its terms of reference at its meeting on 14 December 2018. The Panel proposes minor corrections and includes an adjustment of the numbers of its non-voting co-opted members. This change is intended to seek an increase in attendance by external professionals at meetings of the panel and its sub groups. The proposals are as set out at Appendix 3.

Scheme of Delegation

- 16 There have been some changes to the scheme of delegation to officers as set out in Appendix 4, which are set out below:-

(a) Director of Public Health

The proposed amendments seek to clarify the role of the Director of Public Health.

(b) Corporate Director of Regeneration and Local Services

It is proposed to streamline the delegations to the Corporate Director of Regeneration and Local Services by removing extensive lists of legislation and replace with generic wording relating to the functions of the Directorate. These changes do not add to/remove delegated powers to the Corporate Director but will make the delegations more consistent with those to the other Corporate Directors.

In addition, there are a number of amendments proposed which clarify the scope of existing delegations that are in place, which are listed in the summary of changes at Appendix 9. In line with the restructure within Regeneration and Local Services at Head of Service level, which

is expected to be finalised by 1 April 2019, changes to the scheme of delegation will require amendment in line with the transfer of duties. The Head of Legal and Democratic Services will amend the Constitution to reflect these changes in accordance with her delegated powers.

(c) Corporate Director Resources

The Council has a number of key policies such as the Discretionary Housing Payments Policy, Welfare Assistance Scheme and Residential and Non-residential charging policies, which are approved by Cabinet. The Corporate Director does not currently have any delegated authority to make minor amendments to the scheme to reflect changes in grant received etc. This means each time a change is required in order to implement the policy, Cabinet approval is required. It is therefore proposed to enable the Corporate Director to make minor changes to these policies in consultation with the relevant portfolio holders. Any changes to the extent or scope of the policies would still require Cabinet approval.

There is also an amendment to generalise the commissioning of advice services rather than refer to a specific provider as this may change overtime.

It is also proposed include delegations in relation to the Pension Fund and the management of the council's portfolio in the Border to Coast Pensions Partnership Limited.

Council Procedure Rules/ Executive Procedure Rules

- 17 It is proposed to amend the rules relating to the scope of questions that are to be considered at meetings of the Executive and Council. The current rules provide that a question will be rejected if it is substantially the same as a question which has been considered in the last 6 months. However, it is proposed that this is strengthened slightly to include questions which are closely related to a question asked in the last 6 months.
- 18 It is also proposed that the Council Procedure Rules are amended to clarify that a member with the right of reply on a motion under consideration has no more than 3 minutes to speak. This reflects custom and practice. Amendments are set out in Appendix 5.

Financial Procedure Rules

- 19 It is proposed to amend references to the Audit Commission following the appointment of external auditors, and the references to the Accounts and Audit Regulations 2011 which have now been superseded by the 2015 version. Amendments are set out in Appendix 6.

Contract Procedure Rules

- 20 There are a number of proposed changes to the Contract Procedure Rules as set out in Appendix 7, which are intended to provide clarification or ensure current practice/requirements are reflected. It is proposed to make provision for the use of e-signatures because it is anticipated that the use of e-signatures is likely to develop over the next 12 months.
- 21 Some overall minor updates have also been made with regard to corrections of previous typing errors or formatting.

Code of Practice for Members and Officers dealing with Planning Matters

- 22 It represents good governance to keep Codes of Practice under review. Accordingly, Officers have reviewed the Code of Practice for Members and Officers dealing with planning matters and proposed to amend the code to cover members seeking to vote when they have not been present for the full presentation/debate at Planning Committees. The Code has also been updated to reflect the interest arrangements of members under the Localism Act 2011. The County Planning Committee on 5 February 2019 agreed to recommend that Council approves the proposed changes. These are set out in Appendix 8 to the report.

Constitution Working Group/Next Steps

- 23 The proposed revisions were approved by the Constitution Working Group on 14 February 2019 for recommendation to Cabinet, and then Council on 22 May 2019.

Background papers

Report to Council- 23 May 2018

DCC's Constitution document

Contact: Helen Lynch

Tel: 03000 269732

Ros Layfield

Tel: 03000 269708