

Committee Name and Date of Committee Meeting

Council – 11 November 2020.

Report Title

Constitution Amendments

Is this a Key Decision and has it been included on the Forward Plan?

No

Officer Approving the Submission of the Report

Sharon Kemp, Chief Executive

Report Author

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Ward(s) Affected

Borough-Wide

Report Summary

This report is submitted to recommend the approval of amendments to various parts of the Council's Constitution following a periodic review by the Constitution Working Group.

The proposals within this report have been reviewed and are supported by the Group which is a cross party body of Members.

The Council is recommended to approve the amendments to the Constitution, which would take immediate effect.

Recommendations

1. That the scheme of delegation be amended to allow for the implementation of an emergency delegation for the discharge of non-executive functions to the Chief Executive, to progress decisions related to Covid-19 recovery, subject to statutory decision making safeguards.
2. That the list of the various Policy Framework documents referenced within the Constitution be updated

3. That amendments be made to Council Procedure Rule 11 (which deals with Member questions)
4. That amendments be made to Council Procedure Rule 12 (which deals with public questions)
5. That amendments be made to the Scheme of Petitions
6. That changes be made to the Responsibility of Functions (Appendix 9 of the Constitution)
 - a. That quorum figures for each committee individually be referenced (rather than stating one third of the membership)
 - b. That the recommended amendments by the Health and Wellbeing Board be endorsed.
 - c. That the size of Licensing Committee hearing Panels be confirmed as 5 Members with a quoracy of 3 Members

Background Papers

The Council's Constitution

The report of the Head of Democratic Services presented to the Constitution Working Group.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

Yes

Exempt from the Press and Public

No

Proposed Amendments to the Constitution

1. Background

- 1.1 The Council continues to seek to strengthen its governance arrangements as part of its continued improvement journey and continues to review all aspects of its Constitution under the tutelage of the Constitution Working Group.
- 1.2 Good governance has been a core tenet of the Council's improvement journey in recent years. The Constitution has been subject to external review and significant changes have been made to the way in which proposals are developed by Members and officers and how decisions are made across the authority. As the Constitution is the document that empowers the authority to discharge its statutory and discretionary responsibilities, it is important that its provisions are reviewed, and changes made to strengthen the Council's governance and accountability arrangements
- 1.3 This report proposes a number of minor amendments identified through discussions with Members of all as means of improving the Council's good governance regime.
- 1.4 All proposals are in keeping with other Council policies and any national government policies and objectives.

2. Key Issues

The Chief Executive's Sub-Scheme of Delegation

- 2.1 An emergency delegation for the discharge of non-executive functions to the Chief Executive is a common provision in most local authorities. Whilst there is an urgency provision for Cabinet decisions and arrangements in place for the discharge of executive functions through the Leader's Scheme of Delegation set out in Appendix 9 of the Constitution (Responsibility for Functions), no such delegation for non-executive functions presently exists.
- 2.2 It is recommended that authority be delegated to the Chief Executive to discharge non-executive functions in the event of an emergency that prevents the Council or its committees, boards or panels from discharging their functions. Whilst the likelihood of this being necessary in the current pandemic emergency has been reduced through the introduction of legislative provisions for virtual meetings, the legislative provisions are scheduled to cease on 7 May 2021.
- 2.3 The recommendation would be that the adoption of such a provision would be caveated with an arrangement for the Chief Executive to discharge decision making functions in consultation with the Mayor in respect of Council matters and the Chair and Vice-Chair of any relevant committee, board and panel. Any

decision must state why the decision is urgent and can't await the next scheduled ordinary meeting of a committee and it has been deemed impossible to convene an extra ordinary meeting of that committee.

- 2.4 Any decisions taken by the Chief Executive under emergency delegation would be reported to all Members by the Democratic Services Team and retrospectively recorded at Cabinet or other appropriate Committee.

Policy Framework Documents

- 2.5 It is recommended that this list be reviewed to incorporate any changes in the statutory requirement for documents to be approved by the Council. Consideration would also be given to the inclusion of any plans or strategies which should be reserved to Council for approval but are presently within the decision-making remit of the Cabinet.
- 2.6 The Overview and Scrutiny Management Board recommended in early 2020 that a list of policies and strategies be maintained and reviewed every three years.
- 2.7 In terms of timing, it is recommended that changes be made to the list of Policy Framework documents after the election in May 2021 rather than at the present time.

Council Procedure Rule 11 (Members' Questions)

- 2.8 Council Procedure Rule 11 deals with all provisions relating to the submission of questions by Members to be answered by the Mayor, Leader, Cabinet Members, Committee Chairs or Designated Spokespersons.
- 2.9 In 2019, on the recommendation of the Constitution Working Group, the Council introduced a provision to restrict each Member to no more than ten questions to Council officeholders, with the option to put a further ten questions to Designated Spokespersons on joint authorities.
- 2.10 Consideration has been given to how effective this change has been in providing opportunities for decision makers to be accountable in the Council meeting and whether any further changes would aid decision making, scrutiny or the efficient discharge of business in the Council meeting.
- 2.11 The Constitution Working Group subsequently proposes the following clarifications:
- That it is the requirement for the Police and Crime Panel representative to answer questions relating to the business of the Police and Crime Panel, as a designated spokesperson, rather than the affairs of South Yorkshire Police or the Police and Crime Commissioner for South Yorkshire.

- The removal of South Yorkshire Passenger Transport Authority as a listed body

Council Procedure Rule 12 (Public Questions)

2.12 Council Procedure Rule 12 details the provisions for Members of the public to submit questions in Council meetings to the Mayor, Leader, Committee Chairs or Designated Spokespersons.

2.13 These provisions have not been amended for some time and the practice of recent years has it is suggested the spirit of the rules has been stretched beyond what would be considered reasonable or workable

2.14 The proposals of the Constitution Working Group in relation to public questions for Council and all sub-Committees of Council are:

- The introduction of a requirement to be:
 - in residence (as an elector (or resident with) an elector of the borough)
 - in employment (as your principle or only place of work)
 - in education (at one of the borough's education establishments)
- The introduction of provision for rejecting questions which repeat or substantially repeat any question that has been asked and answered in the preceding three Council meetings, so as to be consistent with the rules on Member questions
- The introduction of a provision for questions to relate to the affairs of the borough
- The introduction of discretion to the Chief Executive in consultation with Mayor to filter/edit questions which are seem as offensive in terms of language etc.

Scheme of Petitions

2.15 The provisions for Petitions were last reviewed in detail in 2019

2.16 The rules for a debate on a petition are considered to be restrictive and would not enable the Council to demonstrate its willingness to consider fully an issue of real public concern as debates are presently limited to a period of not more than 15 minutes.

2.17 It is recommended that reference to a time limit for debate be removed.

Responsibility of Functions

2.18 Appendix 9 of the Constitution details Responsibility for Functions and there are a number of areas that have been reviewed by the Constitution Working Group.

- 2.19 It is proposed to insert quorum figures for each committee individually (there is already provision in the Council Procedure Rules for the quorum of each committee to be one-third of the total membership, so this would essentially be a belt and braces approach to ensuring understanding)
- 2.20 The Health and Wellbeing Board have proposed amendments to their terms of reference which will need to be reported to and adopted by the Council before they can take effect.
- 2.21 The size of committees in relation to Licensing Board and Licensing Committees is also presented for consideration.
- 2.22 The present arrangement for Licensing Board, which is made up of 21 Members is to enable sub-committees of 5 members to be appointed for taxi licensing hearings, with a quoracy figure of 3.
- 2.23 Licensing Committee is made up of 15 Members drawn from the membership of the Licensing Board. The Licensing Act requires the Licensing Committee to be between 12 and 15 Members and requires all decisions delegated to sub-committees to be determined by no less than 3 members.

3. Options considered and recommended proposal

- 3.1 The Council has committed to continue to review various parts of the Constitution as part of its improvement journey. The proposals set out above in this report have been put forward through discussion and observation by Members and officers on the basis of strengthening governance arrangements.

4. Consultation on proposal

- 4.1 The Constitution Working Group has been consulted in the development of the proposals submitted to Council for approval.

5. Timetable and Accountability for Implementing this Decision

- 5.1 If Council were minded to approve the recommendations set out above, then the changes to the Constitution could be implemented with immediate effect, with the exception of the changes to the list of Policy Framework Documents which will be amended in May 2021.
- 5.2 The Head of Legal Services is responsible for ensuring implementation of the changes once agreed.

6. Financial and Procurement Advice and Implications

- 6.1 There are no further financial or procurement implications arising from the proposed changes to the Constitution.

7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

- 7.1 As required by statute, the Council should require the Constitution to be current and coherent as the key enabling document that enables the authority to exercise its decision-making powers and procedures.
- 7.2 The changes proposed within this report are compliant with the provisions of the Local Government Act 2000, which introduced the requirement for Local Authority Constitutions, and subsequent legislation which has further strengthened Local Authority governance.

8. Human Resources Advice and Implications

- 8.1 There are no human resources implications associated with this report

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 There are no implications for children and young people, or vulnerable adults associated with this report.

10. Equalities and Human Rights Advice and Implications

- 10.1 In reviewing all recommendations, the Constitution Working Group had regard to equalities requirements and did not identify issues within the proposals recommended as part of this report. Consequently, there are no equalities or human rights implications arising from the proposals within the report.

11. Implications for Partners

- 11.1 There are no implications for partners arising from the proposed amendments to the Constitution.

12. Risks and Mitigation

- 12.1 Any update to constitutional procedure creates the potential for confusion and misunderstanding. Mitigations will be put in place to address any such risks.

Risk	Mitigation
Members may be unaware of the new procedure rules	<p>Clear communication of the changes is needed</p> <p>All web pages and online guidance will be updated</p> <p>Member bulletins will be used to further communicate information.</p>

New rules and procedures may be unclear or have ambiguities	Monitor the application of the new rules The Monitoring Officer to provide advice and guidance where required
The public may be unaware of the new procedure rules	All web pages and online guidance will be updated

13. Accountable Officer(s)

Bal Nahal, Head of Legal Services
Craig Tyler, Head of Democratic Services

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive		Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	Click here to enter a date.
Assistant Director of Legal Services (Monitoring Officer)	Named officer	Click here to enter a date.
Assistant Director of Human Resources (if appropriate)		Click here to enter a date.
Head of Human Resources (if appropriate)		Click here to enter a date.

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