

Bolsover District Council

Council

24th May 2017

Review of the Council's Constitution

Report of the Assistant Director - Governance and Monitoring Officer

This report is public

Purpose of the Report

- To consider proposed amendments to the Council's Constitution as part of the Annual Review.

1 Report Details

- 1.1 The Constitution is the Council's 'rulebook'. It sets out how the Council operates and how it makes decisions. Council approved its latest version of the Constitution at the Annual Council meeting in May 2016.
- 1.2 The Council is required by law to prepare and keep up to date a Constitution which explains how the Council operates, how decisions are made and the procedures which are to be followed to ensure that these are efficient, transparent and accountable to local people.
- 1.3 Article 1 of the Constitution stipulates that the Monitoring Officer must monitor and review how it is working to make sure it gives full effect to its purpose.
- 1.4 One of the functions of the Standards Committee is to undertake an annual review of the Council's Constitution to ensure it is up to date and in line with legislation and current circumstances. At its meeting on 9th February 2017, the Committee agreed to set up meetings of the Constitution Working Group to consider the review.
- 1.5 The Working Group met on 23rd February 2017 and 16th March 2017, and the Standards Committee met on 13th April and considered a number of proposed amendments to the Constitution. These are set out in **Table 1**.

TABLE 1:

Meeting	Date	Area Reviewed
Standards Committee	9 th February 2017	<ul style="list-style-type: none"> • Council Procedure Rules
Constitution Working Group	23 rd February 2017	<ul style="list-style-type: none"> • Call In • Joint Appeals Committee • Joint Employment Committee • Officer Scheme of Delegation • Audit Committee Terms of Reference • Levels of Key Decisions
Constitution Working Group	16 th March 2017	<ul style="list-style-type: none"> • Petition Scheme • BDC Employee Appeals Committee • Speaking at Planning Committee • Delegated Decisions • Code of Conduct • Recorded Votes • Officer Scheme of Delegation
Standards Committee	13 th April 2017	<ul style="list-style-type: none"> • Review of the Constitution • Executive Decisions

- 1.6 In addition to the amendments included in this table, other changes have been proposed that include minor corrections and re-wording to bring the Constitution up-to-date.
- 1.7 A summary of the amendments to the Constitution is attached at **Appendix A** to this report.
- 1.8 A copy of the changed areas of the Constitution with all the proposed amendments as tracked changes is attached at **Appendix B** to the report.
- 1.9 A focused review has been carried out this year, targeting areas which required greater scrutiny and better understanding. The previous review was considered to be 'light touch' concentrating on Housekeeping, which has given the Standards Committee the confidence to be able to channel their efforts on specific areas. Below is a list of the areas of the Constitution that the Working Group feel should

be considered during the 2017/18 review. This is duplicated in the Standards Committee's Work Plan.

- Protocol on Member / Officer Relations

2 Conclusions and Reasons for Recommendation

- 2.1 The Constitution Working Group and Standards Committee have dedicated their efforts to particular areas of the constitution that required attention. These areas have been thoroughly discussed and presented for recommendation to Council.
- 2.2 It is required by law to keep an up to date constitution. Part of the role of the Standards Committee is to review the document on a regular basis, for ratification by full Council.

3 Consultation and Equality Impact

- 3.1 The Standards Committee, The Chief Executive, Chief Financial Officer, Monitoring Officer and Deputy Monitoring Officer have been consulted on the preparation of this document.
- 3.2 An Equality Impact Assessment has not been necessary as part of this review.

4 Alternative Options and Reasons for Rejection

- 4.1 None.

5 Implications

5.1 Finance and Risk Implications

None.

5.2 Legal Implications including Data Protection

- 5.2.1 The Council is required under the Localism Act 2011 to prepare and keep up-to-date a constitution that contains its standing orders, code of conduct, such other information that the Secretary of State may direct and such other information that the Authority considers appropriate.

5.3 Human Resources Implications

None.

6 Recommendations

- 6.1 That the amendments to the Constitution attached at **Appendix A** be approved.
- 6.2 That the areas of focus for the forthcoming 2017/18 Review be noted.
- 6.3 That delegated power be given to the Monitoring Officer to make changes to the Constitution arising from any new legislation, administrative errors or conflicts in interpretation.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is an executive decision which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
District Wards Affected	None.
Links to Corporate Plan priorities or Policy Framework	Demonstrating Good Governance

8 Document Information

Appendix No	Title
A	Summary of Amendments to the Constitution
B	Tracked Changes to specific Areas of the Constitution
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
None.	
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Summary of Changes to BDC Constitution

Part	Page No	Section	Summary of changes	Rationale for Change
Part 3 – Committee Terms of Reference	35 REF APP B1	Audit Committee	Agreed to delete ‘including the co-opted Member’, from Call-In requirements of the Audit Committee Terms of Reference.	The Audit Committee Terms of Reference require that for the meeting to be quorate, the co-opted member must be present. There is only one co-optee on the Committee and whilst the presence of the neutral co-optee aids transparency and public confidence, it must be remembered that with this provision, an Audit Committee could be inquorate and fail to go ahead
	72 REF: APP B2	Joint Appeals Committee	To fix membership for the year at the Annual Meeting.	To avoid delay in establishment of this committee.
	72	Joint Employment Committee	To fix membership for the year at the Annual Meeting.	To avoid delay in establishment of this committee.
	TO ADD IN AT PAGE 60 REF APP B3	BDC Employee Appeals Committee	To add the terms of reference to the Constitution	Currently missing from the constitution.
Part 3 – Responsibility for Functions	30 REF APP B4	Cabinet Members Roles and Responsibility	Updated table of Cabinet Members Role and Responsibilities	To reflect changes agreed earlier in Municipal year.

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Part 4 – Council Procedure Rules	Removal of CPRs and replacement with the document within the appendix. REF APP B5	Throughout	Unifying the term either Chair or Chairman	To assist with the creation of a reflective document. Chairman is more highly used throughout the UK, often with ‘Madam’ inserted before in speech when used for a female Member.
	The CPRs are fundamentally the same apart from the detailed changes	1.2	Removal of 1.2 and reinsertion at 2.2 under Ordinary Council Meetings	As Committees are established at the meeting of Annual Council, it shouldn’t be necessary at that meeting to dissolve or review anything only just established. This should happen at any meeting of Council – Ordinary or Extraordinary.
	-	3.1	To include the Chief Finance Officer within the list of those who may require the Chief Executive Officer to call extraordinary meetings of Council.	This is currently omitted.
	-	4.1	Removal of a commencement time for meetings	Specification of start times will be in the meeting schedule agreed.

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	-	5.2	5.2 amended to include electronic mail as a destination for receiving summons to meetings.	In line with legislation, and to facilitate more paperless working.
	-	5.3	5.3 “relevant reports” added. The wording added makes clear that the summons will have attached any relevant reports. Previously this wasn’t included and therefore was unclear.	To reflect best practice on complete packs being distributed to members, improving transparency to the public and more efficiency within Governance.
	-	8.1	8.1 wording changes make it clear that the question is being asked of a member of the Executive.	To provide clarity around public questions.
	-	8.9	Members Questions and Public Questions – states that an answer may be a direct oral answer, referral to a Council publication or a written answer circulated later.	To provide clarity around the process.
	-	9.3(b)	Notice of Questions on urgent to be received by 9am on the day of the meeting.	In order to bring the constitution rules in line with each other.

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	-	14.4	Recorded Vote - number of Members required to request reduced to 5.	10 Members was deemed to be high, whilst 5 seemed to be common amongst other local authorities.
	-	14.5 Individual Recorded Votes	Agreed that where Council are requested immediately <u>before</u> or <u>after</u> a vote is taken the vote will be recorded in the Minutes.	For convenience.
	-	25	Inclusion of information around attendance at Committee Meetings by Cllrs to make clear that a non member of the Committee may attend with the Chairman's consent and stay for exempt business provided the meeting doesn't object, unless they are interviewing employees or conducting an employee appeal.	To provide clarity.
Part 4. - Call In and Scrutiny Procedure Rules	125 REF APP B6	4.5.14(a)	Contact with members	Communications to be electronic unless usual method is hard copy.
	125	4.5.14(c)	14 (c) wording changes	Accepted clarifications around Key Decision deadlines for publication.

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	126	4.5.14(f)	Rejection of call in by Monitoring Officer	Monitoring Officer to give reasons for refusal in writing. Clarification given on reasons.
	126	4.6.2	Deadline dates for Decision Notices were agreed.	To provide clarity
	126	4.6.3	Agreed for all Call-In requests to be received on a Call-In Request Form.	To provide clarity to the process.
	ADD IN REF: APP B7	Notice of Call in Request Form	To be put in the Constitution Date to be added after each signatory	To provide clarity to the process.
Part 4 - Officer Scheme of Delegation	172 REF APP B8	Chief Executive Officer Delegation 10.15	Agreed to add to the Delegation Scheme the previously agreed delegation to authorise other authorities to carry out enforcement and taxi and private hire vehicles.	Previously agreed.
	172	Chief Executive Officer Delegation 10.16	Agreed to add delegation to appoint Members to Outside Bodies mid-year.	Streamlined process

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	173	Chief Executive Officer Delegation 10.20	Agreed to remove from the Delegation Scheme delegation to the Chief Executive to accept transfers on pension schemes. This remained a delegation to the Director of Operations.	Requisition of Members
	174	Chief Executive Officer Delegation 10.26	Agreed to wording changes proposed on the CEO's determination of staffing matters, and where use of staffing delegation incurs additional expenditure, the additional expenditure should be referred to Executive for approval.	Streamlined process
	175	Executive Director – Operations Delegation 11.3	Rejected proposals to add in, “in consultation with the Chief Executive to the delegation to determine a request for early release of pension”.	No change
	176	Executive Director – Operations Delegation 11.7	Rejected proposal to raise the level at which bad debts are written off from £2,500 to £5,000.	No change

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	178	Executive Director – Operations Delegation 13.11	Agreed to amend North East Derbyshire District Council to Bolsover District Council.	Typographical
	178	Executive Director Operations' delegation	Agreed that delegation made annually to the Council's Chief Financial Officer to authorise any amendments to the list of named officers that may prove necessary during the course of the financial year in relation to the duties identified in accordance with Section 223 of the Local Government Act 1972 be added to the Delegations Scheme.	Agreed By Council
	179	Proper Officer	Agreed to add the Monitoring Officer as Proper Officer, with the Chief Executive Officer to witness and receive Declaration of Acceptance of Office Under S83 (1) to (4).	Streamlined process
Part 4 – Council Procedure	263 REF: APP B9	Petition Scheme	Retain a petition scheme for the Council.	No change

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Rules Appendix A	263	Petition Scheme	Retain acceptance of paper versions of petitions and changes would not be made to accommodate EPetitions.	No Change
	265	Petition Scheme	Agreed that the appeal process would still refer to the relevant Scrutiny Committee however wording would be changed.	To allow referral to a different Scrutiny Committee to the Committee that reviewed the petition and offering Scrutiny Members the ability to refer an appeal to the Complaints Procedure.
	263	Petition Scheme	Agreed for the Petition Scheme to be uploaded to the Council website	For transparency
	264	Petition Scheme	No further changes be made to the Petition Scheme in regard to advising petitioners about what is happening with their petitions once they have been submitted.	No change
	265	Petition Scheme	The required steps when considering a petition be retained within the Scheme.	No change
	Throughout	Petition Scheme	Thresholds remain at the current level for determining how to process petitions.	No change

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	None	Petition Scheme	Noted that the Secretary of State would no longer review the Council's scheme under their powers.	No change
Part 4 – Access to Information Procedure Rules	111 REF:APP B10	Key Decision Level 4.2.14	Agreed for the Revenue Key Decision Level to be set at £75,000 and the Capital Key Decision Level to be set at £150,000.	Best practice – to ensure that the financial level for key decisions is appropriate following review.
	112	Delegated Decisions	A form of words agreed on definition of Executive Decisions, including a financial limit of £50,000.	Best practice – following a review of the processes followed by other Councils.
	112	Delegated Decisions	Delegated decisions of below £50,000 would not be put on the website.	Best practice – following a review of the processes followed by other Councils.
	-	Delegated Decisions	Agreed that Members would no longer receive Delegated Decision notices.	Best practice – following a review of the processes followed by other Councils.
	-	Delegated Decisions	Agreed that where a Delegated Decision is consequent upon a decision made at Executive that	Legislation – although there have been no changes to legislation or guidance, the system has been

Part	Page No	Section	Summary of changes	Rationale for Change
			Executive would demonstrate that the issue had been considered in detail.	reviewed against the current guidance.
	-	Delegated Decisions	Agreed that delegated decisions on HR related matters are no longer publicised on the website or sent to Members.	Legislation – although there have been no changes to legislation or guidance, the system has been reviewed against the current guidance.
Part 5 – Members’ Code of Conduct	189 REF:APP B11	Significant Other Interests	<p>The proposed wording in the code of conduct to significant other interests arising from nominations to an outside body by the Council be added to the Code of Conduct is to allow participation in suitable circumstances. Under the changes the Cllr may participate:-</p> <ul style="list-style-type: none"> • If the Cllr has declared the interest and said that they will be staying • The Cllr present the report and answers questions • The Cllr does not debate or move a motion • The Cllr leaves before the vote is taken. 	<p>Clarifications – The current position leads to difficulties in Executive where the matter before the Executive relates to significant matters such as land transfers or loans or grants of money – particularly for regeneration projects and the applicant is a body to which the Cllr is nominated by the Council. The affected Councillor inevitably must declare a significant other interest and under the terms of the Constitution leave the Chamber. This leaves the Executive without the member who knows most about the project and the reasons for the report. The proposed change allows the Cllr to fulfil his role as a nominated member of the outside body and to keep the Executive properly informed whilst preserving the vote from being influenced by those with a conflict of interest.</p>

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Part 5 - Planning Protocol	209 REF:APP B12	Planning Protocol	Agreed that the Planning Protocol was robust.	No Change
	N/A	Speaking at Planning Committee Guidance	Agreed that the Speaking at Planning Guidance would be accepted and changed to reflect the current practice of 5 minutes allowed.	For Clarity, does not form part of the Constitution.