

Bolsover District Council

Standards Committee

11 March 2019

Review of the Council's Constitution

Report of the Head of Corporate Governance and Solicitor to the Council & Monitoring Officer

This report is public

Purpose of the Report

- To recommend proposed amendments to the Council's Constitution for consideration by the Standards Committee prior to submission as part of the Annual Review of the Constitution to Council for adoption.

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 2018. Council also approved amended Terms of Reference for the Strategic Alliance Joint Committee in September 2018. These changes have been implemented in the version that shall be published following this review of the Constitution.
- 1.2 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. The following areas have been identified for review:

Proposals contained within this report:

- Edits to the Constitution proposed by the Portfolio Holder for Corporate Governance resulting from Member discussions (Virements) (deferred from previous meeting)
- Joint Employment Committee and Joint Appeals Committee Terms of Reference
- Updating of the Proper Officer Provisions

Proposals that will be put forward for amendment following May 2019:

- UECC Terms of Reference
- Safety Committee Terms of Reference
- Contract Procedure Rules – Contract Formalities
- Parental Leave Policy and Constitutional Implications
- Standards Committee Terms of Reference
- Review of Employee Code of Conduct
- Employment Rules
- Minor wording changes or updating of job titles (housekeeping)

- 1.3 Details of the proposed amendments in relation to the first list of areas as above are attached at **Appendix 1**. This also outlines the rationale behind each proposal.
- 1.4 Where revised versions of each section have been produced, these are also attached as appendices, showing the tracked changes in comparison to the current documents.

2 Conclusions and Reasons for Recommendation

- 2.1 To ensure the Council has in place a fit for purpose Constitution which complies with English law.

3 Consultation and Equality Impact

- 3.1 The Chief Executive, Chief Financial Officer, Monitoring Officer and SAMT are consulted at various stages of the Constitution Review.
- 3.2 An Equality Impact Assessment has not been necessary as part of this review.

4 Alternative Options and Reasons for Rejection

- 4.1 Members may consider alternative options to each of the proposals put forward, where legally permitted.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 Failure to ensure the Constitution meets legal requirements can leave the Council open to challenge, as does failure to comply with the provisions of the Constitution. It is therefore essential that Constitution is regularly reviewed and given robust oversight.

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

There are no human resources implications arising from the proposals within this review.

6 Recommendations

- 6.1 That the Committee consider the proposals for amendments to the Council's constitution as set out in Appendix 1 to the report and support that they be submitted to Council as part of the Constitution Review.
- 6.2 That the Committee give consideration to the list of areas of the constitution to be reviewed in the forthcoming municipal year, edit it as necessary and agree for a further report to be submitted to a future meeting.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the portfolio holder been informed</p>	Yes
<p>District Wards Affected</p>	None
<p>Links to Corporate Plan priorities or Policy Framework</p>	Demonstrating good governance

8 Document Information

Appendix No	Title
1	Summary of proposals and rationale
2	Revised Proper Officer Provisions
3	Council Report 6 th March 2019 - Joint Employment Committee and Joint Appeals Committee
<p>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)</p>	
None.	
<p>Report Author Contact Number</p>	
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Area of Review	Proposal and Rationale	Sections of the Constitution to be revised
Proper Officer Provisions	<p>During review of this area of the Constitution it was found that a number of the regulations specified under Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 relating to proper officer provisions were not titled correctly and that several of the regulations that have 'proper officer' provisions were not included within the list detailed at pages 170 - 175.</p> <p>This section has been amended as set out in Appendix 2 in line with the legislation.</p>	<p>Pages 170 – 175 Part 4 – Scheme of Delegation Proper officer Provisions</p>
Joint Employment Committee and Joint Appeals Committee	<p>At the Meeting of Council on 6th March, Members will give consideration to the report attached as Appendix 3. The changes proposed suggest for the JEC and the JAC become one Committee entitled the Joint Employment and Appeals Committee (JEAC). The JEAC would sit as an 8 member Committee to deal with appointments of SAMT members.</p> <p>The rational for the change is that, in the current arrangements, any appeal against a decision by the JEC would be made to the JAC. The JAC's membership also comprises both Council Leaders and Deputies and the Leader of the principal opposition in each Council. An appeal cannot be heard by the same Members that heard the original disciplinary or capability case so revised arrangements are required.</p> <p>The terms of reference as amended are set out as part of Appendix 3.</p> <p>Further, amendment to the Scheme of Delegation to officers is also proposed to enable dismissal decisions regarding members of SAMT to be made by the Chief Executive Officer, or the Strategic Directors in his absence. The would amend paragraph 10.28 (ii) as follows:</p>	<p>Pages 61 and 62 Part 3 Responsibility for Functions</p> <p>Scheme of Delegation Page 164 CX Delegation 28</p>

	<p><i>To determine all staffing matters including but not limited to:</i></p> <p>...</p> <p>(ii) <i>the appointment, dismissal, suspension, or discipline of staff, save that in relation to the Chief Executive Officer, Strategic Directors and Heads of Service, this does not include the appointment and, in the case of statutory officers, their dismissal.</i></p> <p>This has the effect of removing the power to dismiss statutory officers only from the delegation, leaving all other dismissal decisions within the scope of the power.</p> <p>This matter is subject to Council discussion, and the decisions of the meeting on 4th March will be presented to this meeting.</p>	
<p>Budget and Policy Framework Rules – Inclusion of informing Portfolio Holders</p>	<p>A request has been made for the relevant Portfolio Holder to be informed in the following circumstances:</p> <p><i>Virements</i></p> <p><i>4.3.6 - Once a budget has been approved, Executive or budget managers shall be entitled to vire across budget heads within the budget framework with the exception of salary related budgets AND REQUIRED TO INFORM THE RELEVANT PORTFOLIO HOLDER WHEN THE VIREMENT IS IN EXCESS OF £25,000. Virements from salary related budgets can only be utilised for the use of agency and consultancy work necessary to maintain agreed service levels. Managers within the Accountancy Section shall be entitled to vire budgets for housekeeping purposes within each service area.</i></p> <p>DEFERRED from last meeting. Section 151 Officer will be in attendance to answer queries.</p>	<p>Part 4 Budget and Policy Framework (pages 103 and 104 in current version)</p>