

Bolsover District Council

Council on Wednesday 5th October 2022

Review of the Council's Constitution

Report of the Assistant Director of Governance & Monitoring Officer

Classification	This report is Public
Report By	Jim Fieldsend Solicitor to the Council The Arc Clowne Jim.fieldsend@bolsover.gov.uk 01246 242472
Contact Officer	Jim Fieldsend Assistant Director & Monitoring Officer Jim.fieldsend@bolsover.gov.uk 01246 242472

PURPOSE/SUMMARY OF REPORT

- To consider proposed amendments to the Council's Constitution as recommended by the Standards Committee.

REPORT DETAILS

1. Background

- 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 Meeting in May 2022.
- 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 On 22nd August 2022 the Monitoring Officer recommended two changes to the Officer Delegation Scheme which were approved by Standards Committee and which are outlined below.

2. Details of Proposal or Information

- 2.1 The Council's Contract Procurement Rules as contained in Part 4.8 of the Constitution provides a framework for the procurement of all goods services and works for the Council. All purchases are required to go through a set process depending on the value of the purchase. In exceptional circumstance these rules may not be followed. These circumstance are set out in paragraph 4.8.4 of the rules- "Exemptions to the Contract Procedure Rules"- and generally relate to situations where there is only one possible supplier, where the contract would amount to an extension of an earlier contract or where it is urgent to award a contract without going out to tender.
- 2.2 The rules require that the decision to apply one of the exemptions should only be made by Director or Assistant Director by a formal Delegated Decision. There is however no specific power to make such decision in the current Scheme of Delegation for Officers and so decision makers tend to use one of the general power to exercise day to day administration and operational management
- 2.3 Standard's Committee agreed that the following more specific power to use a contract exemption be included within the Scheme of Delegation,

To award a contract without following one of the normal procedures within part 4.8.3 of the Council's Procurement Rules provided that one of the exemptions in part 4.8.4 of the Rules can be applied and the provisions of part 4.8.4 are met

- 2.4 The current scheme of officer delegation currently enables both the Executive Director of Resources and Executive Director of Strategy and Resources to carry out Rights of Way functions for which the Council is responsible under Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).
- 2.5 These regulations provide for the making of footpath orders under the Highways Act however it does not provide for footpath orders under the Town & Country Planning Act 1990
- 1.3 Standards Committee approved the amendment of the relevant power from:

to carry out Rights of Way functions for which the Council is responsible under Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).

to:

to carry out Rights of Way functions for which the Council is responsible under Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) together with rights of way powers as set out in the Town & Country Planning Act 1990.

3. Reasons for Recommendation

- 3.1 The Standards Committee have agreed the above changes

- 3.2. 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 to make such recommendations to Council as necessary.

4 Alternative Options and Reasons for Rejection

- 4.1 The Council may make other amendments or reject the amendments proposed as part of this review, however the rationale for each proposal has been to ensure the Council's procedures comply with the law, are in line with best practice, are practical and up-to-date, as well as in accordance with other decisions taken by the Council. No alternative options are therefore proposed.

RECOMMENDATION(S)

That the amendments to the Constitution detailed in the report be approved.

Approved by the Portfolio Holder – Corporate Governance

IMPLICATIONS:

Finance and Risk: Yes ☐ No ☒

Details:

There are no financial or risk implications arising from this report.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes ☐ No ☐

Details:

It is a requirement under Council Procedure Rule 1.1 (o) of the Council's Constitution, that Annual Council Meeting agrees the Scheme of Delegation as set out in Part 3 of the Constitution.

On behalf of the Solicitor to the Council

Staffing: Yes ☐ No ☒

Details:

There are no human resource issues implications arising from this report.

On behalf of the Head of Paid Service

DECISION INFORMATION

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: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? <i>(Only Key Decisions are subject to Call-In)</i>	No

District Wards Significantly Affected	All
Consultation: Leader / Deputy Leader <input checked="" type="checkbox"/> Executive <input type="checkbox"/> SLT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	Details: Deputy Leader

Links to Council Ambition: Customers, Economy and Environment.

DOCUMENT INFORMATION	
Appendix No	Title

Background Papers <i>(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 Executive you must provide copies of the background papers).</i>
None