



Uttlesford District Council

Chief Executive: Dawn French

Constitution Working Group

Date: Tuesday, 27 September 2016
Time: 18:00
Venue: Committee Room
Address: Council Offices, London Road, Saffron Walden, CB11 4ER

Members: Councillors R Chambers, ADean, J Freeman, S Harris, B Light, E Oliver, J Parry, V Ranger (Chairman)

AGENDA PART 1

Open to Public and Press

- 1 Apologies for absence and declarations of interest
- 2 Minutes of the meeting held on 21 July 2016 3 - 8
- 3 Matters Arising
- 4 Deletion of 'matters arising' from agendas 9 - 12
- 5 Procedure for cancelling Scrutiny call-in requests 13 - 22
- 6 Routine changes to the Constitution 23 - 26

For information about this meeting please contact Democratic Services

Telephone: 01799 510433, 510369 or 510548

Email: Committee@uttlesford.gov.uk

General Enquiries

Council Offices, London Road, Saffron Walden, CB11 4ER

Telephone: 01799 510510

Fax: 01799 510550

Email: uconnect@uttlesford.gov.uk

Website: www.uttlesford.gov.uk

**CONSTITUTION WORKING GROUP held at COUNCIL OFFICES
LONDON ROAD SAFFRON WALDEN at 6.00pm on 21 JULY 2016**

Present: Councillor V Ranger (Chairman)
Councillors R Chambers, A Dean, B Light, E Oliver and J Parry

Officers present: D French (Chief Executive), M Perry (Assistant Chief Executive - Legal) and P Snow (Democratic and Electoral Services Manager)

CWG1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

An apology for absence was received from Councillor S Harris.

CWG2 MINUTES

The Minutes of the meeting held on 23 June 2015 were approved and signed by the Chairman as a correct record.

CWG3 MATTERS ARISING – CWG4 – Criteria for the Nomination of Honorary Aldermen

Councillor Dean expressed disappointment it had taken so long to tackle the process for nominating and appointing honorary aldermen with the result he had been unable to make nominations at the annual meeting.

CWG4 ALTERNATIVE ARRANGEMENTS TO REPLACE AREA FORUMS

The Chairman said that calendar difficulties had prevented an earlier meeting to consider engagement with the public following the decision to scrap area forums. He had circulated a paper in April but had not received much response from members. He referred to the community engagement toolkit already circulated by the Democratic and Electoral Services Manager.

Building on that earlier work the paper prepared by the Chairman proposed two forums to be held annually for each of the north and south areas. One meeting would consider a single topic and the second would be in the nature of a question and answer session. One of the aims of his proposal was to reduce the need for officer input so that meetings would only be attended by those officers directly connected to the discussion topic and the length of meetings would be limited to two hours duration.

Members discussed the benefits and drawbacks of holding forum style meetings. One obvious and immediate problem was that very few members of the public attended unless one of the topics was associated with a matter of acute public concern such as the local plan. There was general agreement that forums had in the past attempted to cover too many topics and there had been insufficient time for in-depth analysis or discussion.

Councillor Dean said it was not the function of area forums to substitute the role of direct member engagement with parish councils at ward level.

Councillor Chambers agreed that too many topics had been attempted at the same meeting and said the tendency was for the same few people to attend each time. One topic per meeting was a preferable approach.

Councillor Light wanted the Council to adopt a less top down approach to engagement to enable channels of communication to be widened.

Councillor Parry said that Newport Parish Council had been successful in inviting people to ask questions and this idea could be extended to district engagement with the public. She felt that three forums would work more successfully as for the local plan process and this would enable an even division of 13 members per area.

Councillor Oliver said the experience at Clavering was for fewer and fewer people to attend parish meetings. Village life had changed a great deal in recent years with the result that there was now a less community based approach.

The Chief Executive was asked to comment and agreed with many of the points made by members about the diminishing role and popularity of public meetings. She said that the needs of both young and elderly people needed to be considered but finding the right answer was complex and difficult. One question that members should ask themselves was to define the purpose of public engagement in terms of what was the objective and desired outcome.

The Chairman commented it would be beneficial to invite the Police Commissioner and the Chief Constable to attend a meeting. Councillor Chambers said in his previous role on the Police authority visits were often made to local parishes but the manpower no longer existed for that approach to work.

Another suggestion made was to utilise whatever methods of communication existed to engage with the public. This could include, for example, disseminating information via social media or Uttlesford Life, holding meetings or surgeries at local shops, or arranging market stalls.

In summarising the discussion, the Chairman proposed to resurrect the cross-party member task group previously established to find a means of engaging with the public to replace the role of the now defunct area forums.

Members agreed with this suggestion and approved the following action:

AGREED to appoint Councillors Chambers, Dean, Light and Parry to serve on a member public engagement task group to report back to the Constitution Working Group with a first draft of proposals by 1 November 2016. Councillor Davies would be invited to chair the group but, in the event of him not accepting that offer, Councillor Ranger would chair it instead.

The intention would be to produce a final report by no later than the middle of March 2017 and report to Council on 4 April. Whatever was then agreed

could come into effect for 2017/18 from the Annual Council meeting on 16 May.

It was agreed that the informal task group would be member driven but that officer advice and support would be obtained where needed. In the meantime, members were asked to feed back any ideas to the Chairman.

CWG5

DELETION OF MATTERS ARISING FROM AGENDAS

The Chief Executive reported that she had raised with Mr Perry the presence on committee agenda of the item "matters arising". Her concern arose from a wish to avoid the item being used for extensive debate.

The Assistant Chief Executive – Legal confirmed that recent research had demonstrated that no other councils in Essex included a matters arising item on the grounds that it could prove disruptive to the consideration of scheduled business. He said that NALC had advised its parish members that inclusion of matters arising was unlawful. Although he did not agree with this advice he nevertheless considered it bad practice.

The Democratic and Electoral Services Manager said that good practice advice was not to include matters arising on committee agenda.

Members generally supported the advice they had been given but Councillor Dean asked for it to be recorded that he had objected on the grounds of informality of practice in the absence of a written report.

A vote was taken (while Councillor Parry was temporarily absent from the room) and the proposal was approved by three votes to two.

RECOMMENDED to Council that Procedure Rules 1.1.4 and 2.3 be deleted from the Constitution.

CWG6

POWER FOR LEAD OFFICERS TO REARRANGE COMMITTEE DATES IN CONSULTATION WITH THE CHAIRMAN

The Chief Executive explained the process followed in agreeing a programme of committee meetings which was generally done at or prior to the annual meeting of the Council. She said this sometimes led to difficulties when meeting dates had to be changed for sound business reasons. Because the timetable was approved by Council it was not presently possible for individual committee dates to be altered with the consent of the relevant chairman.

She proposed a simple change to allow the relevant lead officer to change scheduled dates with the chairman's consent. The revised meeting date would then be changed on the website and all members notified in the usual way.

Members were generally agreeable to making this change but felt it should be linked to a particular business reason and not done just for convenience.

The Chairman proposed adding the words “under exceptional circumstances”.

RECOMMENDED to Council that the lead officer be given the power to rearrange committee meetings in consultation with the relevant chairman under exceptional circumstances.

CWG7

PROCEDURE FOR CANCELLING SCRUTINY CALL-INS

At the invitation of the Chief Executive, members discussed the procedure for call-ins in circumstances where the Leader or relevant executive member agrees to take a Cabinet decision back for re-consideration. The present procedure did not allow for call-in meetings to be cancelled in these circumstances.

Councillor Parry confirmed that the recent call-in relating to street naming policy had required the Scrutiny Committee to go ahead in spite of the fact that the executive member had agreed to take the matter back for reconsideration.

Councillor Dean commented the meeting had to proceed as a member of the public had attended to listen to the discussion about street naming.

The Assistant Chief Executive – Legal said the aim of the agenda item brought to members was to avoid the need for an unnecessary meeting if the executive member had already agreed to the item being reconsidered and the Scrutiny Committee Chairman agreed to cancel the meeting.

The Chairman considered the matter to be straightforward on the basis of complete agreement that the matter the subject of the call-in process would be reconsidered by the Cabinet.

Councillor Chambers said he was concerned there could be room for misinterpretation of a private conversation and there might be a consequent need for an officer witness to any such conversation.

Councillor Dean then said there was no proper process to take decisions of the Scrutiny Committee to Cabinet. For example, the Committee’s decision to recommend the Building Control Partnership should not proceed had not been formally reported back to the Cabinet. If there was nothing in writing to explain the reasons for the proposal on the agenda he could not support it

The Democratic and Electoral Services Manager said that there was a procedure for reporting back to the Cabinet the findings of the Scrutiny Committee. He also confirmed that the call-in procedure remained available to the Scrutiny Committee in the normal way following the reconsideration of a matter by the Cabinet.

The Chief Executive gave reassurance to members that the change to the call-in procedure was not intended to undermine the role of the Scrutiny Committee as a counterbalance to the role of the Executive. There was

presently no procedure in place for cancelling meetings and she considered this amounted to an inappropriate use of resources. There was a danger of the Council being brought into disrepute in these circumstances.

Councillor Dean proposed a discussion on the call-in procedure with the Chairman and Vice-Chairman of the Scrutiny Committee before any decisions were taken.

The Chairman then put the proposal on the agenda to the vote and it was approved by four votes to two.

RECOMMENDED to Council that wording (to be drafted) be added to the Call-in procedure part of the Overview and Scrutiny Procedure Rules to enable Scrutiny Committee meetings to be cancelled, with the agreement of the lead officer and Chairman of the Scrutiny Committee, when the Executive had agreed to take a decision back for reconsideration.

The meeting ended 7.55pm

Committee: Constitution Working Group

Agenda Item

Date: 27 September 2016

4

Title: "Matters Arising" Agenda Item

Author: Interim Head of Legal Services

Item for decision

Summary

1. It has been the practice to include on agendas for meetings an item called "Matters Arising: To consider matters arising from the minutes." This report proposes the deletion of this as a standard agenda item for the reasons set out below.

Recommendations

2. Recommend to Council the deletion of the head of business: "deal with any matters arising from those minutes" in paragraph 1.1.4 (page (4)-5) and in paragraph 2.3 (page (4)-7) of the Council Procedure Rules.

Financial Implications

3. None

Background Papers

4. List of Councils in Essex with annotations regarding use of "matters arising".

Impact

- 5.

| | |
|---------------------------------|--|
| Communication/Consultation | None. |
| Community Safety | None |
| Equalities | None |
| Health and Safety | None |
| Human Rights/Legal Implications | Legal implications are dealt with in the body of the report. |
| Sustainability | None |
| Ward-specific impacts | None |
| Workforce/Workplace | None |

Situation

6. Agendas for meetings of the full Council and for Committee and Cabinet meetings routinely include as an item of business: "Matters Arising: To consider matters arising from the minutes." This is provided for in the Constitution for annual and ordinary meetings of the Council. The provision is not applied by the Constitution to meetings of committees or of the Cabinet but is routinely included on the agenda.
7. The "Matters Arising" item can provide a helpful opportunity for members to obtain a progress report but it also carries risks. The authoritative work on Council procedures, *"Knowles on Local Authority Meetings"*, comments:

"One of the potential problems arising out of confirmation of minutes is the temptation for members to raise issues apart from simply confirming the minutes as a correct record. At its worst this can lead to an attempt to change a decision taken at the previous meeting and any such discussion should be ruled out of order by the chairman. Some authorities are known to provide an item on the agenda "Matters arising from the minutes" to allow, for example, members to be advised of the current position of items discussed at the previous meeting. However, this is not regarded as good practice and, unless the subject to be raised is related to a matter specifically referred to in the agenda, may infringe the statutory restriction that only business specified in the notice can be dealt with [section 110B, Local Government Act, 1072]. The model standing order provides the following:

"Signing the Minutes. The Chairman will sign the minutes of the proceedings at the next suitable meeting. The chairman will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy." "

8. Section 110B referred to in paragraph 7 states:
 - (4) An item of business may not be considered at a meeting of a principal council unless either—
 - (a) a copy of the agenda including the item (or a copy of the item) is open to inspection by members of the public in pursuance of subsection (1) above for at least five clear days before the meeting or, where the meeting is convened at shorter notice, from the time the meeting is convened; or
 - (b) by reason of special circumstances, which shall be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

One of the principles behind this is that the agenda should contain sufficient information to allow members of the public (and councillors) to decide whether they should attend. It also allows for publication of reports and access to background papers in advance of the meeting.

9. There are arguments in favour of the “matters arising” item. It can provide, as mentioned, a helpful opportunity for members to obtain a progress report on items in the minutes. On the other hand, it cannot be used to revisit decisions already made and can be a distraction from the main focus of meetings and can prolong them. Any decisions made under “matters arising” are likely to be unlawful and, as “*Knowles on Local Authority Meetings*” points out, may infringe the statutory restriction that only business specified in the agenda can be dealt with. On balance, the officer recommendation is to delete this as an agenda item. If members have concerns about a specific matter, it is better to include it as a free-standing item on the agenda for a meeting.
10. Uttlesford DC is, according to research by officers, the only district council in Essex to include a “matters arising” item on its agendas. The County Council also does not have “matters arising” as an agenda item.

Risk Analysis

11.

| Risk | Likelihood | Impact | Mitigating actions |
|--|--|--|--|
| If “matters arising” is included as an agenda item, there is a possibility of legal challenge. (2) | Unlikely in the case of general discussion. More likely if decisions are made under “matters arising”. | Minimal in the case of general discussion. Could be significant if decisions are made under “matters arising”. | The principal mitigating action would be to remove the “matters arising” item from agendas. If members reject the recommendation, then a clear understanding that substantive decisions cannot be made under “matters arising” will reduce the risk. |

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Committee: Constitution Working Group

Agenda Item

Date: 27 September 2016

5

Title: Scrutiny Committee: Withdrawal of call-in requests

Author: Interim Head of Legal Services

Item for decision

Summary

1. This report follows consideration

Recommendations

1. Recommend to Council the deletion of the head of business: “deal with any matters arising from those minutes” in paragraph 1.1.4 (page (4)-5) and in paragraph 2.3 (page (4)-7) of the Council Procedure Rules.

Financial Implications

2. None

Background Papers

3. None. The report of the Director of Finance and Corporate Services to the Scrutiny Committee on 6 September is appended to this report.

Impact

- 4.

| | |
|---------------------------------|--|
| Communication/Consultation | None. |
| Community Safety | None |
| Equalities | None |
| Health and Safety | None |
| Human Rights/Legal Implications | Legal implications are dealt with in the body of the report. |
| Sustainability | None |
| Ward-specific impacts | None |
| Workforce/Workplace | None |

Situation

5. The purpose of this report is to propose changes to the Constitution to allow for the cancellation of a scrutiny committee meeting if members who “called in” the item subsequently conclude that call-in is not necessary. Members may decide they do not wish to pursue call-in if, for instance, they are offered assurance or explanation regarding the effect of the decision in question. Call-in may also not be necessary if assurances are given that the decision will be reconsidered by the Cabinet before its implementation.
6. The issue was considered by the Constitution Working Group at its meeting on 21 July 2016. It made this recommendation:

RECOMMENDED to Council that wording (to be drafted) be added to the Call-in procedure part of the Overview and Scrutiny Procedure Rules to enable Scrutiny Committee meetings to be cancelled, with the agreement of the lead officer and Chairman of the Scrutiny Committee, when the Executive had agreed to take a decision back for reconsideration.

7. This report proposes wording, as recommended by CWG, but goes slightly wider than recommended, as it provides for meetings to be cancelled for additional reasons to that mentioned in the recommendation.
8. A report was submitted by the Director of Finance and Corporate Services to the Scrutiny Committee on 7 September. The Scrutiny Committee voted to support the CWG recommendation, although some concern was expressed regarding transparency. The recommended wording seeks to address this.
9. Scrutiny Committee members asked to see this report at the same time as its circulation to CWG. Any comments made will be passed to CWG when it meets. There was also a suggestion from the Chair of the Scrutiny Committee that a wider review of the scrutiny process is needed. This can be pursued, if members wish, separately.
10. Members are recommended to add the following paragraph 9.13 (at page 4-64) of the Overview and Scrutiny Procedure Rules:

A call-in request under para 9.3 may be withdrawn at any time up until the Scrutiny Committee meets to consider the decision called in. If a request for call-in is withdrawn by all members who made it, then subject to the agreement of the Chairman, a Scrutiny Committee to consider the decision shall either not be summoned or shall be cancelled. For the avoidance of doubt, the meeting shall go ahead if the Chairman of the Scrutiny Committee decides that this is in the public interest. Information about any call-in requests that are withdrawn under this provision shall be included on the agenda for a future meeting of the Scrutiny Committee.

Risk Analysis

11.

| Risk | Likelihood | Impact | Mitigating actions |
|--|---|---|---|
| <p>(2) That a meeting of a Scrutiny Committee is convened in circumstances in which it is not necessary.</p> <p>(2) That implementation of a decision by the Cabinet is delayed unnecessarily.</p> | <p>Unlikely to occur frequently but likely to occur occasionally.</p> | <p>Unnecessary cost of calling a meeting, use of resources and member and officer time. Could be some impact if implementation of decisions is delayed.</p> | <p>This report proposes a way of mitigating this risk, whilst allowing the Chairman to rule that a meeting should go ahead. Concerns about transparency re addressed by the proposal that information is given to the Scrutiny Committee when call-in requests are withdrawn.</p> |

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix 1 – report to Scrutiny Committee on 6 September 2016

| | | |
|-------------------|--|--------------------|
| Committee: | Scrutiny | Agenda Item |
| Date: | 6 September 2016 | |
| Title: | Call-in Procedure | |
| Author: | Adrian Webb, Director of Finance and Corporate Services | Item for decision |

Summary

1. Following a decision taken at Cabinet in respect of Street Naming and Numbering a Scrutiny call-in request was made.
2. The Portfolio Holder recognised that the person who had requested the call-in had made valid points that could improve the decision and agreed to take a revised policy back to Cabinet. However, the council constitution does not currently have a process in place which allows discussion to take place prior to a call-in meeting being held. Other councils including Essex County Council do have such a process in place.
3. The Constitution Working Group (CWG), at its meeting on 21 July 2016 was asked to consider such a process. The minute of this item from that meeting is attached at Appendix One.
4. The relevant section of Essex County Council's Scrutiny Handbook is attached as Appendix Two for members' information.
5. Further discussion of this item will take place at the CWG meeting to be held on 27 September 2016 prior to it going forward to Council in October.

Recommendations

6. Members consider the decision taken by CWG and either confirm support for the proposed process or request consideration of alternatives either by CWG or Council.

Financial Implications

7. None

Background Papers

8. None

Impact

- 9.

| | |
|---------------------------------|--|
| Communication/Consultation | This is being led by the Constitution Working Group and will go forward to Council for all Members to consider |
| Community Safety | None |
| Equalities | None |
| Health and Safety | None |
| Human Rights/Legal Implications | This would be an amendment to the constitution of the council |
| Sustainability | None |
| Ward-specific impacts | None |
| Workforce/Workplace | None |

Appendix One

CWG7 PROCEDURE FOR CANCELLING SCRUTINY CALL-INS

At the invitation of the Chief Executive, members discussed the procedure for call-ins in circumstances where the Leader or relevant executive member agrees to take a Cabinet decision back for re-consideration. The present procedure did not allow for call-in meetings to be cancelled in these circumstances.

Councillor Parry confirmed that the recent call-in relating to street naming policy had required the Scrutiny Committee to go ahead in spite of the fact that the executive member had agreed to take the matter back for reconsideration.

Councillor Dean commented the meeting had to proceed as a member of the public had attended to listen to the discussion about street naming.

The Assistant Chief Executive – Legal said the aim of the agenda item brought to members was to avoid the need for an unnecessary meeting if the executive member had already agreed to the item being reconsidered and the Scrutiny Committee Chairman agreed to cancel the meeting.

The Chairman considered the matter to be straightforward on the basis of complete agreement that the matter the subject of the call-in process would be reconsidered by the Cabinet.

Councillor Chambers said he was concerned there could be room for misinterpretation of a private conversation and there might be a consequent need for an officer witness to any such conversation.

Councillor Dean then said there was no proper process to take decisions of the Scrutiny Committee to Cabinet. For example, the Committee's decision to recommend the Building Control Partnership should not proceed had not been formally reported back to the Cabinet. If there was nothing in writing to explain the reasons for the proposal on the agenda he could not support it.

The Democratic and Electoral Services Manager said that there was a procedure for reporting back to the Cabinet the findings of the Scrutiny Committee. He also confirmed that the call-in procedure remained available to the Scrutiny Committee in the normal way following the reconsideration of a matter by the Cabinet.

The Chief Executive gave reassurance to members that the change to the call-in procedure was not intended to undermine the role of the Scrutiny Committee as a counterbalance to the role of the Executive. There was presently no procedure in place for cancelling meetings and she considered this amounted to an inappropriate use of resources. There was a danger of the Council being brought into disrepute in these circumstances.

Councillor Dean proposed a discussion on the call-in procedure with the Chairman and Vice-Chairman of the Scrutiny Committee before any decisions were taken.

The Chairman then put the proposal on the agenda to the vote and it was approved by four votes to two.

RECOMMENDED to Council that wording (to be drafted) be added to the Call-in procedure part of the Overview and Scrutiny Procedure Rules to enable Scrutiny Committee meetings to be cancelled, with the agreement of the lead officer and Chairman of the Scrutiny Committee, when the Executive had agreed to take a decision back for reconsideration.

Appendix Two

Extract from Essex County Council's Scrutiny Handbook

(v) During the period specified in (iv) above, the proper officer shall call in the decision for scrutiny by the relevant Overview and Scrutiny Committee, if so requested in writing by a member of that Committee. The member will set out in writing the reasons for calling in the decision. The proper officer shall then call a meeting of the Committee on such date as he decides (where possible after consultation with the Chairman of the Committee) and in any case within ten clear working days of the request to call in.

(vi) On receipt of a notice of call-in the Governance Officer will:

(a) arrange for the notice to be acknowledged in writing;

(b) for the decision taker to be formally notified in writing of the receipt of a notice of call-in;
and

(c) for the Chairman of the Overview and Scrutiny Committee to be informed where the Chairman is not a party to the call-in.

(vii) Prior to the meeting of the Committee arranged under (v) above, the Chairman may, with the agreement of the Member calling the matter in, arrange an informal meeting between him, the Member calling in the decision and the decision taker to discuss the issue.

(viii) Where the call-in has been made as the result of representations from a Member who is not a member of the Committee, that Member will be invited to attend the informal meeting. The Governance Officer will attend the informal meeting and will within 24 hours produce a note for circulation to all parties to the meeting for approval.

(ix) Where at the informal meeting stage assurances are given by, or agreements reached with Cabinet Members, then those assurances or agreements must subsequently be confirmed in writing.

(x) A report of any call-ins that are withdrawn as a result of an informal meeting will be included on the Agenda for the next meeting of the Committee

SC19 CALL-IN PROCEDURE

The Committee considered a report on call-in procedures and the decision taken by the Constitution Working Group when it discussed the matter on 21 July 2016.

The Chairman explained that this followed the Committee's call-in of a Cabinet decision regarding the Street Naming and Numbering Policy. He explained that the County Council's procedures allowed a call-in to not proceed if the Member calling in the decision and members of the Cabinet agreed to reconsider the decision.

He said there would be some issues with this regarding transparency. More thought was needed on the matter and it would be helpful if the Committee looked at this at a later time.

The Interim Head of Legal Services suggested it would be sensible to have a mechanism in place to cancel call-ins provided that appropriate checks and balances were in place. It would be possible to include a mechanism which allowed the Chairman to prevent the call-in from being cancelled. He was conscious that the Committee and the Working Group avoided unnecessarily duplicating work.

Councillors Felton, Oliver and Light said that the matter should not be deferred and should be considered at the meeting.

The Interim Head of Legal Services said that he would be compiling a note to the Working Group on how the constitution would need to be changed. This could also be circulated to Members of the Committee for comment.

Councillor Barker said he agreed with having a system in place to cancel call-ins. He said there were two likely situations which would result in the cancellation of a call-in. The first was where the Member who called-in the decision was reassured and the decision stood. This could be due to a misunderstanding of the decision. The second was where it was agreed that the decision would be reconsidered by Cabinet. After the matter was reconsidered, the Committee had the power to call-in the decision again.

Councillor Barker proposed that changes to the constitution were dealt with by the Constitution Working Group.

RESOLVED that the Interim Head of Legal Services would circulate the proposed amendments to the constitution to the Committee before they were considered by the Constitution Working Group.

Committee: Constitution Working Group

Agenda Item

Date: 27 September 2016

6

Title: Updating the Constitution

Author: Interim Head of Legal Services

Item for decision

Summary

1. This report seeks approval for the Monitoring Officer to make routine changes to the Constitution to keep it up to date.

Recommendations

2. To recommend to Council the changes to the Constitution as set out in the Appendix to allow the Monitoring Officer to keep the Constitution updated.

Financial Implications

3. None.

Background Papers

4. There are no background papers.

Impact

- 5.

| | |
|---------------------------------|---|
| Communication/Consultation | None |
| Community Safety | None |
| Equalities | None |
| Health and Safety | None |
| Human Rights/Legal Implications | There is a risk of challenge to Council decisions if the Constitution is not kept up to date. |
| Sustainability | None |
| Ward-specific impacts | None |
| Workforce/Workplace | None |

Situation

6. Article 15.2 of the Constitution sets out the procedure for making changes. (Page (2)-46.) It states:

Changes to the constitution may only be made by the Full Council after consideration of the proposal by the Constitution Working Group.

7. Whilst this is appropriate for substantive changes to the Constitution, there is a level of routine updating that is needed on a regular basis and which, in the officers' view, does not require approval by full Council and consideration by the Constitution Working Group. Officers have in mind specifically the following:

- Amending references to posts in the Council's Scheme of Delegation, where responsibilities and/or post titles change in the light of restructuring;
- Updating the Scheme of Delegation to reflect changes to delegations made by regulatory committees or by the Cabinet or Leader;
- Updating the responsibilities of members of the Cabinet, as determined by the Leader;
- Updating references to legislation where an Act of Parliament is replaced by another Act in substantially similar terms or reflecting changes in the law which are required by new legislation which the Council has no choice but to make;
- Drafting changes to the Constitution where these correct obvious errors or better give effect to the clear intention of the constitution.

It is arguable that at least some of these changes could be made by officers on an administrative basis without express provision in the Constitution. However, setting out clear powers to keep the Constitution up to date would avoid doubt and encourage regular review.

8. More significant changes to the Constitution would still require Council approval on the recommendation of the Constitution Working Group.

Risk Analysis

9.

| Risk | Likelihood | Impact | Mitigating actions |
|---|---|--------------|--------------------|
| That the Council's constitution is not kept up to date. | 2. Not maintaining the Constitution could result in uncertainty about responsibility for functions, with a possible risk of legal | [Click here] | [Click here] |

| | | | |
|--|--|--|--|
| | challenge, a lack of full transparency, and potential confusion. | | |
|--|--|--|--|

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix:

Proposed Amendments to Article 15.2 of the Constitution. (Page (2)-46)

15.2 Changes to the Constitution

15.2.1 Subject to Article 15.2.3, changes to the constitution may only be made by the Full Council after consideration of the proposal by the Constitution Working Group.

15.2.2 In the event that the Council considers amending the constitution to provide for a mayor and cabinet form of executive it must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum

15.2.3 The Monitoring Officer may approve drafting changes in these circumstances:

- To update the Council’s scheme of delegation where responsibility for a function the subject of delegated powers is moved from one officer to another; for instance, following a departmental restructuring or to reflect changes in job titles or the management structure.
- To reflect changes to delegations to officers made by regulatory committees or by the Cabinet.
- To reflect changes in responsibilities of members of the Cabinet, as determined by the Leader.
- To update references in the Constitution to legislation where an Act of Parliament is replaced by another Act in substantially similar terms or to reflect changes which are required by new legislation which the Council has no choice but to make.
- To correct obvious errors or to better give effect to the clear intention of the Constitution.

