

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.		
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- 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.