

CONSTITUTION COMMITTEE – 22 JUNE 2012

REPORT OF THE CHIEF EXECUTIVE

REVIEW AND REVISION OF THE CONSTITUTION

Purpose

1. The purpose of this report is to recommend changes to the Constitution.

Background

2. Article 15 of the County Council's Constitution gives the Chief Executive a duty to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. It requires that changes to the document should only be approved by the full County Council after consideration of the proposal by the Chief Executive and the Constitution Committee or, in the case of the Financial Procedure Rules and Contract Procedure Rules, the recommendations of the Corporate Governance Committee. The annual review of the Contract Procedure Rules will take place in September 2012.
3. In the case of everything except the Meeting Procedure Rules the final decision on changes can be made at a single meeting of the County Council. However, in the case of the Meeting Procedure Rules any motion to add, to vary or revoke Standing Orders must, having been proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.
4. The Constitution came into effect in June 2001 and has usually been reviewed on an annual basis. However, only a limited review took place during 2011, confined to changes to the Contract Procedure Rules. The remainder was delayed to enable revision to take into account legislation then before Parliament, including the Localism Bill.
5. The Localism Act received Royal Assent in on 15 November 2011 and since then regulations covering a number of topics, in particular the Standards regime, have been awaited. The regulations relating to Standards were made on 6 June to come in to force on 1 July 2012. Changes are required to the County Council's Constitution as a result. The Committee will note this is a very tight timescale. Unfortunately and

unusually, there was no consultation with local government on the regulations.

6. Although proposed changes to the Constitution cover a number of areas a substantial number arise from the abolition of the previous Standards regime and putting in place a new system in line with the Localism Act and associated Government Regulations.
7. It has not been possible in the time available to produce details of the Constitutional changes to give effect to the new regulations. This is currently being prepared and will be the subject of a supplementary report which will be circulated to members of the Committee as soon as it is available. This will take into account views expressed by elected Members who serve on the Standards Committee who will be meeting informally to consider the matter on 14 June 2012.

Requirements of the new Standards regime

8. Under the provisions of the Localism Act 2011, relevant authorities including the County Council are under a duty to promote and maintain high standards of conduct by members and co-opted members of the authority. In order to discharge that duty, the authority must adopt a Code dealing with the conduct that is expected of members, given that a national 'Model Code of Conduct' will not be issued by the relevant Government department. The County Council's revised or new Code must be consistent with principles identified in the Act and must include provision for registration and disclosure of pecuniary interests and interests other than pecuniary interests.
9. Relevant authorities must have in place arrangements under which allegations can be investigated and decisions on allegations can be made. In this context, 'allegation' means a written allegation that a member or co-opted member of the authority has failed to comply with the Code of Conduct. However, the Localism Act abolishes the requirement to have a Standards Committee. Local authorities making arrangements may decide that it is desirable for there to be member involvement in decision-making in relation to Standards, but that is a matter for local determination.
10. Under the new provisions, the current requirements for a number of independent co-opted members to serve on Standards Committees with one as its chairman are abolished. 'Independent persons' must now be appointed with an advisory, rather than decision-making role in the investigation of allegations.
11. Under the new provisions, as with the current provisions, the Monitoring Officer must establish and maintain a Register of Interests of members and co-opted members of the authority. There are provisions requiring the

disclosure of pecuniary interests on taking office and at meetings and a failure to make such declaration will be a criminal offence if the person does not have reasonable excuse for so doing.

Code of Conduct for Leicestershire

12. Members of the County Council who are also members of District Councils have expressed concern about the difficulties of working under two different Codes of Conduct and a desire to achieve a single Code for members in Leicestershire. It will not be possible to achieve this before the regulations come in to force on 1 July, therefore it is being proposed that interim arrangements are put in place to give time for further discussions to take place with the District Councils with a view, if possible, to arriving at an agreed single code. It is hoped this can be achieved.

Politically Restricted Posts

13. One of the functions of the Standards Committee is currently that of taking any necessary action required in connection with the designation of posts within the County Council as politically sensitive and determining applications for exemption. The position is affected by the provisions of the Localism Act 2011 which gives the function of granting and supervising the exemptions from political restrictions to the Head of Paid Service.
14. Given that the granting of exemptions is now, by law, something which is determined at officer level it would seem to be appropriate for the initial designation of posts to also be carried out at officer level. It is therefore suggested that the County Solicitor (Monitoring Officer) should be given this function. Suggested amendments to the Articles of the Constitution are therefore being proposed on this basis.

Term of Office of Leader

15. Schedule 2 of the Localism Act 2011 introduces new provisions for Leader and Cabinet executives requiring local authorities to make provision for the election of a Leader and removal of a Leader by resolution and allowing authorities to include provision with respect to the term of office. The Secretary of State may make regulations in relation to these issues.
16. Originally the County Council's Constitution required the Leader to be appointed at each Annual Meeting of the Council. However, that was changed in 2008 to provide for a term of office of four years to meet the requirements of the Local Government and Public Involvement in Health Act 2007, which are now repealed.
17. It is now open to the Council if it wishes to return to the original position of appointing the Leader annually.

18. This may require changes to the Articles of the Constitution and Standing Order 10(5) which appears now to be unduly restrictive having regard to the latest legislative changes.

Other Proposed Amendments

19. Changes to the Constitution, in particular the Articles and Overview and Scrutiny Procedure Rules are also being proposed in the light of the Health and Social Care Act 2012 which places power of referral to the Secretary of State, regulator or NHS Commissioning Board with the County Council rather than the Health Scrutiny Committee.
20. The requirements of the Police Reform and Social Responsibility Act 2011 to establish a Police and Crime Panel will be reflected in an amendment to the Responsibility for Functions and the abolition of the Police Authority will be reflected in an amendment to the Standing Orders.

Recommendations

- (a) That the County Council be recommended to approve the proposed changes to the Constitution as set out in the supplementary report;
- (b) That the Monitoring Officer be authorised to undertake the necessary steps to arrange for the appointment of one or more independent persons whose views must be sought and taken into account in relation to allegations of a breach of the Members' Code of Conduct in accordance with the provisions of the Localism Act 2011; that appointment to be made by a panel of members;
- (c) That the Monitoring Officer be authorised to undertake further discussions with the District Councils with the view to arriving at a single Code of Conduct for Leicestershire.

Background Papers

The Constitution of Leicestershire County Council.

Circulation under Local Issues Alert Procedure

None.

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Equal Opportunities Implications

None.