

Report to Council

Agenda
Item:

17

Meeting Date: 28 April 2015
Portfolio: Leader and Finance, Governance & Resources.
Key Decision: Not Applicable:
Within Policy and Budget Framework YES
Public / Private Public

Title: CONSTITUTIONAL AMENDMENTS
Report of: Monitoring Officer
Report Number: GD.25/15

Purpose / Summary:

This Report recommends amendments to the Council's Constitution in relation to the deadline for the submission of Motions and Questions; the ability of the Monitoring Officer to make minor amendments; and, compliance with the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015.

Recommendations:

That Council:

1. Approve the revised wording to the Council Procedure Rules (CPR) and authorise the Monitoring Officer to make the necessary changes as follows:
 - a. CPR 10.3 (Notice of Questions by Members of the Public;
"A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Director of Governance no later than midday 11 clear days before the day of the meeting. Each question must give the name and address of the questioner and must, if the questioner wishes the question to be answered by a specific named member, name that member of the Council to whom it is to be put. If the questioner does not name a specific member, then the question will be answered by the leader or such member of the executive whom he/she nominates in respect of any matter for which the executive is responsible, and by the chairman of a relevant committee, sub-committee, panel or working group in respect of that body's functions. "

b. CPR11.4 (Notice of Questions by Members);

“A member may only ask a question under Rule 11.2 or 11.3 if either:

- (a) they have given notice of the question in writing or by electronic mail to the Director of Governance no later than midday at least 11 clear days before the day of the meeting; or
- (b) the question relates to urgent matters, they have the consent of the chairman of the Council in respect of any question to be asked at a full Council meeting and the chairman of the relevant committee, sub-committee, panel or working group in respect of any question to be asked at that meeting and the content of the question is given to the Director of Governance by 9.30 a.m. on the day of the meeting.”

c. CPR12.1 (Notice of Motions)

“Except for motions to remove the leader under Rule 12.2 and motions which can be moved without notice under Rule 13, written notice of every motion, signed by the member or members of the Council, must be delivered to the Director of Governance not later than midday 11 clear days before the date of the meeting. These will be entered in a book open to public inspection.”

2. Agree to amend Article 15.02 of the Constitution so as to include the delegation of authority to the Monitoring Officer as follows:

“Textual and factual amendments, including those resulting from changes in legislation, required to keep the Constitution up to date, or consequential amendments as a result of a Council, Executive or Committee decision may be implemented by the Monitoring Officer following consultation with the Portfolio Holder for Finance, Governance and Resources. All Members will be notified of changes made.”

3. To comply with the Local Authorities (Standing Orders)(England)(Regulations) 2001 (as amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015):

- i. Appoint the Employment Panel as a committee appointed under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers of the

- Authority and amend its terms of reference accordingly in the Council's Responsibility for Functions section of the Constitution.
- ii. Endorse the invitation on behalf of the Council to the two Independent Persons to be considered for appointment to the Panel and duly appoint Jane Salmon and Keith Thomas as co-opted members of the Employment Panel only for dealing with matters relating to the dismissal of relevant officers in accordance with the statutory procedure.
 - iii. Amend the Council's Officer Employment Procedure Rules and any other reference in the Constitution so as to comply with the amended Local Authorities (Standing Orders)(England)Regulations 2001.
 - iv. Agree that the changes become effective on 11 May 2015.
 - v. Authorise the Monitoring Officer to make the necessary amendments to the Constitution.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	28 April 2015

The Portfolio Holder for Finance, Governance and Resources has proposed some changes to the Council's Constitution and these are reported on as follows:

1. Standing Orders – Procedure Rule 12.1 – Deadline for Motions on Notice and CPRs 10.3 and 11.4 Notice of Questions

- 1.2 Council Procedure Rule 12.1 currently requires that Motions on Notice to Council are delivered to the Director of Governance by Members, no later than midday, seven clear days before the date of any full Council meeting. In practice, this means that they have to be submitted by noon on the Monday of the week before the Council Meeting.
- 1.3 In practice, to comply with the law regarding the despatch of papers, officers have to send the Council papers out on the Friday before that. This means that officers have to prepare the Agenda pack on the Thursday for distribution on the Friday. Often, Members leave the submission of their Motion until the Monday deadline which, as said, is after the Council papers have been despatched. In consequence, if a Motion is submitted after this time then another Agenda has to be prepared and circulated on the Monday.
- 1.4 The second issue, if a motion is submitted after despatch day, is that the electronic version of the agenda pack officers prepare will always have an out of date agenda at the front of it.
- 1.5 The above practice is time consuming and has a cost implication.
- 1.6 The proposal is that the deadline for Motions be brought forward to midday, 11 clear days before the Council meeting (this would be the Thursday lunchtime). This deadline would enable us to have sufficient time to prepare the electronic agenda pack and copy the papers prior to sending them out on the Friday afternoon. The impact on Members is that they would have to submit any Motion sooner than currently but Motions are rarely time critical and if all Members had one clear date to work to then this should not be detrimental.
- 1.7 The revised CPR12.1 would read as follows:

“Except for motions to remove the leader under Rule 12.2 and motions which can be moved without notice under Rule 13, written notice of every motion,

signed by the member or members of the Council, must be delivered to the Director of Governance not later than midday **11** clear days before the date of the meeting. These will be entered in a book open to public inspection.”

- 1.8 The same principle applies to the notice period required for questions submitted by Members and members of the public. The current Council Procedure Rules require both types of questions to be submitted no later than midday, seven clear days before the relevant Meeting. This presents the same issues as specified above. Accordingly, it is recommended that the two rules be amended with the 11 day notice period, to read as follows:

CPR10.3 Notice of Questions (by members of the public)

A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Director of Governance no later than midday **11** clear days before the day of the meeting. Each question must give the name and address of the questioner and must, if the questioner wishes the question to be answered by a specific named member, name that member of the Council to whom it is to be put. If the questioner does not name a specific member, then the question will be answered by the leader or such member of the executive whom he/she nominates in respect of any matter for which the executive is responsible, and by the chairman of a relevant committee, sub-committee, panel or working group in respect of that body's functions.

CPR11.4 Notice of questions (by Members)

A member may only ask a question under Rule 11.2 or 11.3 if either:

- (a) they have given notice of the question in writing or by electronic mail to the Director of Governance no later than midday at least **11** clear days before the day of the meeting; or
- (b) the question relates to urgent matters, they have the consent of the chairman of the Council in respect of any question to be asked at a full Council meeting and the chairman of the relevant committee, sub-committee, panel or working group in respect of any question to be asked at that meeting and the content of the question is given to the Director of Governance by 9.30 a.m. on the day of the meeting.

2 Delegation of Amendments to Monitoring Officer

2.1 The Monitoring Officer is tasked with keeping the Constitution up to date and all changes must be approved by the Council. Significant changes (such as the ones proposed in this Report) are and should be reported to Members. However, during the course of a year, there are often minor or legislative changes required which are unavoidable.

- Minor Changes – these could be numbering, job titles, name changes etc.
- Legislative changes are changes in the law regarding which the Council does not have an option.

2.2 Some other Councils have a delegation to the Monitoring Officer to keep the Constitution up to date, for example, as follows:

“Textual and factual amendments, including those resulting from changes in legislation, required to keep the Constitution up to date, or consequential amendments as a result of a Council, Executive or Committee decision may be implemented by the Monitoring Officer. All Members will be notified of changes made.”

2.3 It is recommended that our Constitution will be improved by a similar provision but also including a requirement that the Portfolio Holder be consulted. The proposed wording is:

“Textual and factual amendments, including those resulting from changes in legislation, required to keep the Constitution up to date, or consequential amendments as a result of a Council, Executive or Committee decision may be implemented by the Monitoring Officer following consultation with the Portfolio Holder for Finance, Governance and Resources. All Members will be notified of changes made.”

2.4 The delegation would be inserted into Article 15.02 of the Constitution which deals with changes to the Constitution.

3 Change to Standing Orders/Employment Procedure Rules

3.1 On the 25th March 2015 the Secretary of State for Communities and Local Government laid before Parliament the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015¹. These regulations come into force on

¹ SI2105/881

11 May 2015 and the Council is obliged to implement the changes no later than its first ordinary meeting after that date.

3.2 The changes to the rules relate to the procedure to be followed in relation to disciplinary action taken against the Head of the Paid Service, the Monitoring Officer or Chief Finance Officer. Under the outgoing regime, the Council had to appoint a Designated Independent Person (DIP) to investigate a disciplinary matter involving those officers and the Council could then only take action in accordance with the DIP's report and recommendations. The new regulations seek to introduce a new streamlined procedure whilst attempting to retain some independent check within the system. They give the Council's "independent person", appointed by the authority to support the members' conduct framework, a role in the disciplinary process for chief officers.

3.3 In summary, under the new rules, the Council must:

- i. incorporate the procedure set out in the regulations into its Standing Orders and modify any other procedures to conform with the new regulations (including the previous provisions relating to the investigation of alleged misconduct);
- ii. approve any appointment of the head of the paid service before an offer of appointment is made to that person;
- iii. approve the dismissal of an officer designated as the head of the authority's paid service, the authority's chief finance officer or as the authority's monitoring officer (relevant officers) before notice of such a dismissal is given to that person;
- iv. appoint a committee under section 102(4) of the Local Government Act 1972 for the purpose of advising the Council on the dismissal of relevant officers;
- v. invite relevant independent persons to be considered for appointment to the 'Panel' (i.e. the committee referred to in (iv)). A relevant independent person is any person appointed by the Council as an independent person under the standards regime. The Council must appoint to the Panel such relevant independent persons who have accepted the invitation (these can be the City Council's own independent persons or those appointed by another authority);
- vi. must not dismiss a relevant officer unless the procedure specified in the regulations has been complied with;
- vii. before taking a vote at the relevant meeting on whether or not to approve any dismissal, full Council must take into account, in particular –
 - a. any advice, views or recommendations of the Panel;
 - b. the conclusions of any investigation into the proposed dismissal; and

c. any representations from the relevant officer.

- 3.4 The regulations say that any remuneration, allowance or fees paid to an independent person appointed to the Panel must not exceed the level of remuneration payable to that person in their role as an independent person under the Standards regime. It is felt that the current allowance of £348 per annum is sufficient to cover the role of the independent person in both the standards and dismissal regime.
- 3.5 In anticipation of this report, the Monitoring Officer wrote to the Council's two appointed Independent Persons, Jane Salmon and Keith Thomas, to invite them to be considered for appointment to the Panel. Both said that they would be prepared to be considered.
- 3.6 It is recommended that the Council takes the following steps to comply with the new Standing Orders:
- i. Appoint the Employment Panel as a committee appointed under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers of the Authority and amend its terms of reference accordingly in the Council's Responsibility for Functions section of the Constitution.
 - ii. Endorse the invitation on behalf of the Council to the two Independent Persons to be considered for appointment to the Panel and duly appoint Jane Salmon and Keith Thomas as co-opted members of the Employment Panel only for dealing with matters relating to the dismissal of relevant officers in accordance with the statutory procedure.
 - iii. Amend its Officer Employment Procedure Rules and any other reference in the Constitution so as to comply with the amended Local Authorities (Standing Orders)(England)Regulations 2001.
 - iv. Agree that the changes become effective on 11 May 2015.
 - v. Authorise the Monitoring Officer to make the necessary amendments to the Constitution.

4 CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1 It is proposed that the Council amend its Constitution to reflect the changes recommended in sections 1, 2 and 3 of the Report in order to improve the operation of the Council's administrative system and to comply with the new legislation.

5 CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 5.1 An efficiently operating system, to support the Council's activities, better enables the authority to deliver its local plan priorities.

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**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's –The Chief Executive is supportive of the changes proposed in the Report.

Deputy Chief Executive – None

Economic Development – None

Governance – Contained within the body of the Report.

Local Environment – None.

Resources –There will be a cost saving in terms of not having to re-issue the Agenda for Council Meetings and an efficiency in allowing minor changes to the Constitution without the need for a Report to Council. Human Resources aspects are covered within the Report.