

BRECKLAND DISTRICT COUNCIL

Report of: Councillor Sarah Suggitt, Executive Member, Governance and the Monitoring Officer.

To: Governance and Audit Committee – 8 October 2020
Overview and Scrutiny Commission – 22 October 2020
Council – 10 December 2020

Author: Jacqui Berridge – Lawyer
Mark Stinson – Executive Manager for Governance

Subject: Constitution

Purpose: To consider variations to the Constitution relating to (a) Call-in for Non-Key Officer Decisions (b) Licensing Functions (c) Shareholder/trustee issues (d) Signing of Contracts /entering into Contracts as Deeds (e) Delegation to vary or waive the Contract Procedure Rules (f) Vacation of Office by failure to attend meetings (g) Financial Procedure Rules (acceptance of grant)

Recommendation(s):

- a) **Call-in for Non-Key Officer Decisions** – that Call-in not apply to non-Key Decisions made by officers under delegated authority, and the Constitution be amended in accordance with Appendix A;
- b) **Licensing functions**
 - That the terms of reference of the Licensing Committee be amended to include reference to the Animal Welfare functions, and to clarify the licensing functions for which it is responsible as shown in Appendix B
 - That the terms of reference of the Licensing Panel be amended to refer specifically to Regulation 2 and Schedule 1 of the Local Authorities (Functions and Responsibilities (England) Regulations 2000 as shown in Appendix B
 - That the Monitoring Officer be authorised to amend the Constitution to include reference to any future additional licensing matters which come under the above terms of reference, subject to a report being submitted to full Council for information, and the Log of Delegation to Officers be amended accordingly;
- c) **Shareholder/trustee issues** – that the list of functions exercised by the Cabinet detailed at Part 3 Section D (Delegations to Committees) of the Constitution be amended as detailed in paragraph 2.17;
- d) **Contracts – signing of contracts / entering into contracts as deeds** – that Article 13, Standing Order no. 49 and Contract Procedure Rule 22.2 be amended in accordance with Appendix C;
- e) **Contract Procedure Rules – delegation to vary or waive the Rules** – that the Log of Delegations to Officers and Contract Procedure Rule 7.2 be amended as shown in Appendix D;
- f) **Vacation of office by failure to attend meetings** – that Standing Order no. 56 be amended as shown in Appendix E; and

g) **Financial Procedure Rules (acceptance of grant)** – that Financial Procedure Rule 3.4.4(h) be amended as shown in Appendix F.

1.0 BACKGROUND

1.1 The Council's current Constitution was approved by full Council at its meeting on 21 January 2016. Under Article 14 of the Constitution (as amended) any proposed changes may be approved only by full Council unless the change is:

- a minor variation; or
- required to be made to remove any inconsistency or ambiguity; or
- required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

1.2 In such circumstances the variation may be made by the Monitoring Officer and comes into force with immediate effect, but must (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible. Any change only continues to have effect if full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of full Council.

1.3 All other variations must be submitted to full Council for approval.

1.4 This report seeks full Council approval for a number of non-minor variations.

2.0 PROPOSED VARIATIONS BEING SUBMITTED TO COUNCIL FOR APPROVAL

(a) Call-in for Non-Key Officer Decisions

2.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 have been in force since 10 September 2012. Amongst other things, the Regulations require all executive decisions taken by officers under delegated powers to be published. Prior to these Regulations only officer decisions which were key decisions had, by law, to be published.

2.2 The Constitution then requires all published executive decisions to be subject to call-in. By default, then, all officer decisions (other than very minor/administrative decisions) are subject to call-in. A large number of officer decisions are now subject to call-in but this is by default rather than design. Under section 9F of the Local Government Act 2000 the Council is required to ensure that its overview and scrutiny Committee has power to review or scrutinise executive decisions, including the power to review or scrutinise decisions made but not implemented (call-in), but it is for each Council to decide which decisions are subject to call-in.

2.3 As the current Constitution requires all published officer executive decisions to be subject to call-in this can reduce the speed of decision-making, and potentially divert attention away from those officer decisions that are likely to be of the greatest interest to the Overview and Scrutiny Commission. It is suggested that, where an officer is authorised to make a decision under delegated powers, that decision should not be subject to call-in unless the decision is a key decision, and proposed amendments are shown in Appendix A to this report. A Key Decision is a decision that either (i) is above a defined financial value (currently expenditure or savings which exceed 25% of the budget sum approved for a

particular service or function); or (ii) has a significant effect on communities in two or more wards of the Council.

- 2.4 If approved, non-key decisions will continue to be published in order to ensure openness and transparency and to enable members and the public to scrutinise decisions taken. The Overview and Scrutiny Commission will continue to have the ability to scrutinise such decisions after implementation and may wish to consider these decisions at scheduled meetings in order to hold decision-makers to account.

(b) Licensing functions

- 2.5 The Licensing Committee is currently responsible for all policy related decisions for Hackney Carriage & Private Hire Vehicles, Operators and Drivers, Sex Establishments, Hypnotism, Street Trading, functions relating to health and safety at work and “any other Licensing provisions that the authority is required to undertake not mentioned elsewhere in this Constitution including all functions detailed at part B of Schedule 1 of the 2000 Regulations”. Schedule 1 of the 2000 Regulations lists "functions which cannot be the responsibility of an authority's executive" and part B of that Schedule details numerous licensing functions, including licensing functions which are the responsibility of a district council.
- 2.6 The Licensing Hearing Panel is then authorised to deal with applications for licences for taxis, hypnotism, street trading, sex establishments, “and other licensing provisions not mentioned elsewhere in the Constitution”.
- 2.7 The “2000 Regulations” means the Local Authorities (Functions and Responsibilities (England) Regulations 2000. By virtue of Regulation 2 and Schedule 1 most licensing functions of the Council, including (Regulation 2) the imposition of conditions/limitations, enforcement, amendment, modification, variation or revocation of licenses etc and the determination of any charges and fees, are currently functions which cannot be undertaken by the executive. But it is possible for the 2000 Regulations to be amended at any time in the future to make a licensing function something that may be (but need not be) the responsibility of the executive.
- 2.8 The Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018 came into effect on 1 October 2018 and amended the 2000 Regulations to clarify that all of the functions of those Regulations cannot be the responsibility of the executive. A report proposing delegations to officers and fees and charges was submitted to the Licensing Committee for consideration on 2 October 2018.
- 2.9 Arising from this it is recommended that the Constitution be amended so that:
- the terms of reference of the Licensing Committee be amended, as shown in Appendix B, to (i) include reference to the Animal Welfare functions, and (ii) clarify that all licensing functions which cannot be, or may be but need not be, executive matters shall be the responsibility of the Licensing Committee
 - the terms of reference of the Licensing Hearing Panel be amended to refer specifically to Regulation 2 and Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as shown in Appendix B
 - the Monitoring Officer be authorised to amend the Constitution to include reference to any future additional licensing matters which come under the above terms of reference, subject to a report being submitted to full Council for information, and the Log of Delegations to Officers be amended accordingly.

(c) Shareholder/trustee issues

2.10 The Constitution needs some clarification in relation to the appointment of shareholder representatives for Council owned companies, and any issues where the Council is acting as trustee. Legally, any function that is not specifically referred to in the Local Authorities (Functions and Responsibilities) Regulations 2000 is a matter for the Cabinet. Neither of these functions are included within the Regulations and it is suggested that the list of functions exercised by the Cabinet detailed at Section D3 (Delegations to Cabinet) of Part 3 of the Constitution be amended by the addition of the following 2 functions (prior to the list of functions detailed at Schedule 2 of the 2000 Regulations):

- **"the taking of decisions in respect of Council companies, including the appointment of shareholder representatives, except where the Company is exercising Non-Executive Functions, or where the establishment of the company would be outside of the Policy Framework or budget"**
- **"Any and all issues where the Council acts as trustee."**

(d) Contracts - signing of contracts /entering into contracts as deeds

2.11 Currently Standing Order no. 49 requires all contracts (whether or not they relate to the procurement of goods, services or works) to be signed in accordance with the Contract Procedure Rules. These Rules require all contracts that are not completed under seal ("simple contracts") to be signed by 2 officers, including the Contracts and Procurement Manager. This means that the Contracts and Procurement Manager is currently required to sign all contracts whether or not the contract relates to procurement.

2.12 Contract Procedure Rule 22.2.2 states that a contract must be sealed where:

- (a) the Council wishes to enforce the contract for more than six years after it ends
- (b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- (c) there is any doubt about the authority of the person signing for the contracting party
- (d) the total value is expected to exceed £75,000.00.

2.13 The above Rule does not make it clear that any contract under seal must also be entered into as a Deed. If a contract under seal is not entered into as a Deed it comprises a "simple contract" which affects the length of time that the contract remains enforceable.

2.14 To clarify these matters it is recommended that the Constitution be amended as shown in Appendix C.

(e) Contract Procedure Rules – delegation to vary or waive the Rules

2.15 Cabinet at its meeting on 19 March 2019, and full Council at its meeting on 16 May 2019, approved a number of delegations to officers relating to procurement contracts, including the delegation relating to variation or waivers detailed at Appendix D.

- 2.16 The delegation is incorrect. The delegation to officers relating to waivers should relate to Contract Procedure Rule 7.1 such that the power of the Cabinet to waive any requirements of the Rules for specific projects is delegated to the specified officers. The delegation should not relate to Contract Procedure Rule 7.2 which is an existing delegation to the Contracts Team.
- 2.17 In the circumstances it is recommended that the Log of Delegations to Officers, and the Contract Procedure Rules, be amended as shown in Appendix D.

(f) Vacation of Office by failure to attend meetings

- 2.18 Section 85 of the Local Government Act 1972 deals with the vacation of office by members who fail to attend meetings of the local authority for a period of 6 months. Section 85 is reflected in Standing Order no. 56 (Vacation of Office by failure to attend Meetings) but Standing Order no. 56 does not accurately reflect the law. It is therefore recommended that Standing Order no. 56 be amended as shown in Appendix E.

(g) Financial Procedure Rules (acceptance of grant)

- 2.19 Financial Procedure Rule 3.4.4(h) reserves to Council any decision to “agree to any terms or restrictions applied by the funder and to approve the receipt and spend of grant funding above £100,000.00”. This is not an accurate representation of the legal position, as approval of any terms and conditions and a decision to spend grant funding is always an executive function. It also results in a need for duplication of decision making (i.e. executive and Council decisions) often at a time when there is a short deadline for acceptance of the grant.
- 2.20 A Council decision is only required if there is a need to vary the approved budget. Very often, grant funding has a neutral impact on the budget, and it is therefore proposed that this rule is amended so that Council decision (to accept the grant and amend the budget) is required in respect of any grant funding in excess £100,000 except where the s151 Officer certifies that the grant has a neutral impact on the budget. The proposed changes to the wording of Financial Procedure Rule 3.4.4(h) are set out in Appendix F.

3.0 OPTIONS

- 3.1 Members have the option to approve or not approve the variations, or to require alternative variations.

4.0 REASONS FOR RECOMMENDATIONS

- 4.1 To remove anomalies, improve efficiency and effectiveness, and to ensure that the Constitution is kept up to date with changing circumstances.

5.0 EXPECTED BENEFITS

- 5.1 To ensure business continuity; secure necessary minor typographical and referencing and variations to the Constitution; reduce bureaucracy and the administrative burden; and ensure clarity of function.

6.0 IMPLICATIONS

- 6.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality &

Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

6.1.1 Constitution & Legal

6.1.2 Any legal implications are set out in the relevant paragraphs. Amending the Constitution is a function reserved to full Council.

7.0 WARDS/COMMUNITIES AFFECTED

7.1 None

8.0 ACRONYMS

8.1 None

Background papers:-	The Council's Constitution which is available on the Council's website.
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Lead Contact Officer

Name and Post:	Jacqui Berridge Lawyer
Telephone Number:	Jacqui.berridge@breckland-sholland.gov.uk
Email:	

Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendix A	Proposed amendments if deletion of call-in to non-key officer decisions is approved
Appendix B	Proposed amendments to the terms of reference of the Licensing Committee and the Licensing Hearing Panel
Appendix C	Proposed amendments to clarify which officers can sign contracts and to ensure that all contracts under seal are entered into as deeds
Appendix D	Proposed amendments to the Log of Delegations to Officers and to the Contract Procedure Rules to clarify which officers have authority to vary or waive the Contract Procedure Rules
Appendix E	Proposed amendments to Standing Order no. 56 relating to the vacation of office by failure to attend meetings
Appendix F	Financial Procedure Rules – acceptance of grant

Appendix A – Proposed amendments if deletion of call-in to non-key officer decisions is approved

Part 3 - Section D – Delegation to Committees - Section D1 – General provisions relating to Executive Powers

Paragraph 7 be amended to read as follows:

“7. All Executive Decisions, (other than **(a)** urgent decisions (as described in the Access to Information Procedure Rules) **and (b) non-Key Decisions made by officers**), are subject to the Call-In procedure set out later in Part 3.”

Function of Overview and Scrutiny Commission – paragraph 20 describing the Call-in Procedure for Executive Decisions be amended as follows:

“No Executive action shall be taken to implement a decision by the Leader, a Cabinet Member or by the Cabinet, a Sub-Committee of the Cabinet or ~~an~~ **a Key Decision by an officer** for a period of five clear Working Days from the date of publication of the decision to members, and if any reference is made within this time under the following paragraph, Executive action shall be further delayed pending consideration by the Overview and Scrutiny Commission. However, Executive action can proceed at once if the action is urgent and the procedures set out in the Access to Information Procedure Rules are followed.”

Section F1 – Officer Delegations

Paragraph 11.0 be amended to read as follows:

11.0 Where a decision to be made by any Officer under delegated authority meets the definition of an Executive Decision ~~including a Key Decision~~, that Officer shall be obliged to ***publish the decision. Where that Executive Decision is also a Key Decision that Officer shall be obliged to*** comply with all relevant rules in this Constitution relating to Key Decisions (with particular regard to publishing Key Decisions in advance, publishing decision notices and complying with Call-In).

APPENDIX B – Proposed amendments to the terms of reference of the Licensing Committee and the Licensing Hearing Panel

The terms of reference of the Licensing Committee be amended to read as follows:

“1. To deal with all Policy related decisions relating to:

(a) Hackney Carriage & Private Hire Vehicles, Operators and Drivers

(b) Sex Establishments

(c) Hypnotism

(d) Street Trading

(e) **Animal Welfare**

(f) Any other Licensing provisions that the authority is required to undertake not mentioned elsewhere in this Constitution including all functions detailed at part B of Schedule 1 of the 2000 Regulations and **where those functions either cannot be, or may be (but need not be), the responsibility of an authority’s executive.** “

2. Functions relating to health & safety at work – functions under any of the relevant statutory provisions within the meaning of Part 1 (health, safety and welfare in connection with work, and control of dangerous substances) of the Health & Safety at Work etc. Act 1974 (**as amended**), to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.”

The terms of the Licensing Hearing Panel be amended to read as follows:

“1. To deal with all licensing applications, reviews etc. that are not the responsibility of the Licensing Panel appointed by the Committee of the Licensing Authority (which are responsible for Gambling Act 2005 & Licensing Act 2003 matters). The functions of the Panel also include:

- Taxis Licensing
- Hypnotism Licensing
- Street Trading Licensing
- Sex Establishment Licensing
- Welfare of Animals Licensing
- Any other Licensing provisions not mentioned elsewhere in the Constitution **including all other licences/permits/registrations etc and functions detailed at Regulation 2 and Part B of Schedule 1 of the 2000 Regulations in so far as these are not delegated to officers and are not the responsibility of the Committee of the Licensing Authority.**”

APPENDIX C – Proposed amendments to clarify which officers can sign contracts and to ensure that all contracts under seal are entered into as deeds.

ARTICLE 13 – FINANCE, CONTRACTS AND LEGAL MATTERS

2.0 Contracts

2.1 Every contract **for the procurement of goods, services or works** made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

STANDING ORDER NO.49

Common Seal and Signing of Documents

49.4 A proper authorisation for the doing of any act which should or may be recorded or affected by means of a document under hand (**ie a document not under seal**) shall be sufficient authority for the signing of such document. ~~by the appropriate officers specified in Contract Standing Orders.~~

49.5 Any contract entered into on behalf of the Council shall be made in writing. Subject to ~~Any contract which is subject to the~~ **Contract Procedure Rules (ie any contract which relates to procurement of goods, services or works)** such contracts must be signed or sealed in accordance with the Contract Procedural Rules. **Any contract which is not subject to the Contract Procedure Rules may be signed by the Chief Executive, or any Chief Officer, Deputy Chief Officer or Senior Manager.**

49.6 A contract in the form of a deed must state in the signature pages that the Contractor and the Council are executing the contract as a deed

CONTRACT PROCEDURE RULE

22.2 Contract Signature (*see the Log of Delegations to Officers for details of Officers who may action this rule*):

22.2.1 A contract entered into by or on behalf of the Council must:

- (a) Where the contract is in the form of a deed (**see below**), be made under the Council's seal and attested as required by the Constitution, or:
- (b) Where the contract is in the form of an agreement, either:
 - (i) be signed by at least two officers of the Council authorised as required by the Constitution, or:
 - (ii) be formalised by the sending of an award letter and the subsequent issuing of a purchase order.

22.2.2 A contract must be **in the form of a deed (see below) and** sealed where;

- (a) The Council wishes to enforce the contract for more than six years after it ends; **or**
- (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; **or**
- (c) Where there is any doubt about the authority of the person signing for the contracting party; **or**
- (d) Where the total value is expected to exceed £75,000.00.

A contract in the form of a deed must state in the signature pages that the Contractor and the Council are executing the contract as a deed

APPENDIX D – Proposed amendments to the Log of Delegations to Officers and to the Contract Procedure Rules to clarify which officers have authority to vary or waive the Contract Procedure Rules

LOG OF DELEGATIONS TO OFFICERS

Officer(s)	Subject		Delegation From	Power
CX, COs and DCOs following consultation with the MO or S151 Officer	Contracts – variation or waiver (exemption) of Contract Procedure Rules		Cabinet	(Contract Procedure Rule 7.2 7.1) Authority to vary or waive any Contract Procedure Rules subject to complying with all relevant requirements of Rule 7, and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme

CONTRACT PROCEDURE RULES

7.2 Additionally, these Contract Procedure Rules may be waived or varied where the circumstances are certified by the Contracts Team as meeting any of the following criteria (~~see the Log of Delegations to Officers for details of Officers who may action this rule~~):

APPENDIX E - Proposed amendments to Standing Order no. 56 relating to the vacation of office by failure to attend meetings

STANDING ORDER NO.56

Vacation of Office by failure to attend Meetings

All Council members

56.1 If a member **of the Council**, for a period of four consecutive months, fails to attend any meeting of ~~the Council, Cabinet, Committee or Sub-Committee, or joint committee or any other body as a representative of the Council~~ **the authority** the Chief Executive **(or an officer on behalf of the Chief Executive)** ~~should~~ **shall** notify the member, in writing, of the period of his or her absence and the implications of Section 85 of the 1972 Act.

56.2 If a member for a period of six consecutive months **from the date of his or her last attendance** fails to attend any meeting ~~of the Council, Cabinet, Committee or Sub-Committee, joint committee~~ **of the authority**, ~~the member shall~~ cease to be a member of the Council unless the failure was due to some reason approved by the Council before the expiry of that period (in accordance with section 85 of the 1972 Act).

56.3 In accordance with Section 85, attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, or who were appointed to advise the authority on any matter relating to the discharge of their functions, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed to be attendance at a meeting of the authority

Cabinet members

56.4 In addition to the above if a member of the Cabinet, for a period of four consecutive months, fails to attend any meeting of the Cabinet the Chief Executive should notify the member, in writing, of the period of his or her absence and the implications of Section 85 of the 1972 Act.

56.5 If a member of the Cabinet for a period of six consecutive months from the date of his or her last attendance fails to attend any meeting of the Cabinet, the member shall cease to be a member of the Council unless the failure was due to some reason approved by the Council before the expiry of that period (in accordance with section 85 of the 1972 Act).

56.6 In accordance with Section 85, attendance as a member at a meeting of a committee of the Cabinet, or the discharge acting alone of any function which is the responsibility of the Cabinet, shall be deemed to be attendance at a meeting of the Cabinet.

APPENDIX F - Proposed amendments to Financial Procedure Rule 3.4.4(h)

~~To agree to any terms or restrictions applied by the funder and to approve the receipt and spend of grant funding above £100,000.00.~~

Except where the s151 Officer certifies that there is no material impact on the Council's budget, to approve receipt of any grant funding in excess of £100,000 and any necessary budget amendment.