

BRECKLAND COUNCIL

Report of: Mark Stinson - Executive Manager Governance

To: Overview and Scrutiny Commission – 14 September 2017
Cabinet – 17 October 2017
Full Council – 2 November 2017

Subject: Constitution Amendments

Purpose: To consider a number of amendments to the Constitution

Recommendations:

- 1) That the amendments detailed in Appendices A to F of this report be approved and the Constitution be amended accordingly; and
- 2) That membership of the Governance and Audit Committee at Part 3 Section D1 (Delegations to Committees), which currently refers to "6 members and 2 substitutes politically balanced", be amended to read "6 non-Cabinet members and 2 substitutes politically balanced".

1.0 BACKGROUND

1.1 The Council's current Constitution was approved by full Council at its meeting on 21 January 2016.

1.2 Under Article 14 of the Constitution any proposed changes may only be approved by full Council unless the change is:

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

1.3 In such circumstances the change may be made by the Monitoring Officer and comes into force immediately, but must be reported to full Council as soon as reasonably possible. Any change then continues to have effect only if full Council agrees.

1.4 There are a number of proposed changes to the Constitution, most of which are only minor. As none of the minor changes are considered to be urgent the Monitoring Officer has not made the changes under her delegated powers. Rather, this report is to seek approval for the proposed minor, and other, changes.

2.0 PROPOSED CHANGES

2.1 Call-In

2.1.1 Urgent executive decisions which are not key decisions

- (a) Executive decisions are decisions taken by:

- the Leader,
 - the Cabinet,
 - a committee of the Cabinet,
 - a portfolio holder or
 - an officer under powers delegated by any of the above.
- (b) All executive decisions are subject to call-in. This means that an executive decision cannot be implemented until formal notice of the decision has been published, and 5 working days have expired during which period a ward representative, or 2 members of the Overview and Scrutiny Commission, or any 3 members of the Council may formally request in writing that the decision be called-in for review. If a decision is called-in the decision is initially reviewed by the Overview and Scrutiny Commission, who may refer the decision back to the decision maker(s), or (in certain circumstances) refer the decision to full Council, or take no further action.
- (c) Under Rules 12 and 13 of the Access to Information Procedure Rules set out at Part 4D of the Constitution, the call-in procedure does not apply in two circumstances. These circumstances are explained in the following paragraph.
- (d) An executive decision which is also a key decision (because it has a significant effect on two or more wards, or because of its financial value) cannot be made until formal notice that a key decision will be made has been published, and 28 days have elapsed since publication. Where, for whatever reason, notice of a proposed key decision has not been published, but where the decision must be taken so urgently that there is insufficient time to wait the required 28 days, then there are two alternative procedures in Rules 12 and 13 of the Access to Information Procedure Rules. Depending upon how urgent the decision is, one rule allows an Officer to approve the exclusion of call-in, the other rule requires the consent of the Chairman of the Overview and Scrutiny Commission.
- (e) There have been times when there has been a need to exclude call-in of decisions which are NOT key decisions. On these occasions the Chairman of the Overview and Scrutiny Commission has determined whether or not to allow such exclusion. It is therefore proposed that this process is formalised with clear procedures and appropriate checks and balances. Exclusion of call-in in these circumstances will only be permitted where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest. Requirements of the process are proposed below:
- the Chairman of the Overview and Scrutiny Commission agreeing both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency (in the absence of the Chairman, the Chairman of the Council or in his/her absence the Vice-Chairman of the Council's consent shall be required. In the absence of all three, the Head of the Paid Service or his/her nominee's consent shall be required); and
 - the decision notice stating that the decision is not subject to call-in and the reasons why the delay caused by the call-in procedure is considered to be seriously detrimental to the Council's or the public's interest; and
 - a report being submitted to the next available meeting of full Council indicating the reasons for the urgency.
- (f) The proposed amendments to enable this additional procedure to be adopted are shown in full in appendix A to this report.

2.1.2 Executive decisions which are subject to external deadlines

- (a) On occasions a situation may arise where a matter is not necessarily urgent, but is subject to deadlines imposed by external organisations which restrict the ability of the decision to be subject to call-in. There was a recent example with the devolution decision. The decision was a key decision (though it is not suggested that this process should be restricted to key decisions) and reference had been included in the forward plan, but the deadline was fixed by the government and certain information was not available to make the decision until close to that deadline (meaning that there was insufficient time to allow for call-in/scrutiny). The Constitution did not allow for this scenario.
- (b) It is suggested in such circumstances that, rather than the decision being made and then being subject to a 5 day call-in period, and as a potential alternative to excluding scrutiny altogether, the proposed decision could instead be subject to pre-decision scrutiny by the Overview and Scrutiny Commission. Such scrutiny could, if need be, take place on the same day as (but before) the Executive decision is made. This could only happen with the approval of the Chairman (or Vice-Chairman) of the Overview and Scrutiny Commission, and it is suggested that the process should work in much the same way as a post-decision call-in so that:
- The Leader, Deputy Leader, relevant portfolio holder or (where the decision will be taken by an officer) the relevant officer should be in attendance at the meeting of the Commission to answer relevant questions
 - The Overview and Scrutiny Commission should be required to set out in writing any concerns about the proposed decision
 - The decision-maker should then make the final decision taking into account any concerns raised by the Commission, and the final decision notice should explain the decision in relation to the concerns raised by the Commission
 - The decision would take effect immediately the decision is made.
- (c) It is not anticipated that this scenario will arise very often, but it provides an alternative process in the event of difficulties.
- (d) The proposed amendments to enable this additional procedure to be adopted are also shown in full in appendix A to this report.

2.2 Membership of the Cabinet - Chairman and Vice-Chairman of the Council

- 2.2.1 A query has recently been raised about whether it is possible for the Chairman or Vice-Chairman of the Council to be a member of the Cabinet. The answer is that it is not possible, as this is specifically prevented by section 9C(4) of the Local Government Act 2000 which states that "a local authority executive may not include the Chairman or Vice-Chairman of the authority".
- 2.2.2 Whilst this is specifically stated in law, it is felt that it would be useful to include reference within the Constitution so as to reinforce and clarify the point. The amendments at Appendix B of this report are therefore proposed.

2.3 Standing Committees

2.3.1 There are a number of references to "standing committees" within the Constitution. It is recommended that a definition of "Standing Committee" be added to the Glossary of Terms at the front of the Constitution.

2.3.5 Proposed amendments are shown at Appendix C to this report.

2.4 Performance of Executive Functions

2.4.1 Whilst all executive decisions should normally only be taken if they fall within the Policy Framework and comply with the Budget, Standing Order no. 26 states as follows:

"Urgent Action

26.1 Subject to the advice of the Chief Executive, the Monitoring Officer and the Section 151 Officer (or their representatives) the Cabinet can authorise action which either involves expenditure not wholly in accordance with the Budget or is contrary to the Policy Framework in accordance with the Finance Procedure Rules."

2.4.2 Part 3 Section D1 (General Provisions relating to Executive Powers) currently at page 39 of the Constitution, states as follows:

"3. Executive Functions may only be exercised if
(a) they fall within the Policy Framework and
(b) they are within the Budget.

2.4.3 It is considered that this should be amended slightly to refer to the reference within Standing Order No. 26. Proposed amendments are shown in appendix D to this report.

2.5.1 Appointments to Outside Bodies

2.5.1 The Constitution apparently allows both the Cabinet and the full Council to appoint members to outside bodies. This function is included under Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the 2000 Regulations"). This Schedule relates to "functions which may be (but need not be) the responsibility of an authority's executive". There is some confusion here: this is because:

- reference to appointing members to outside bodies is made twice in the list of Council functions and once in the list of Cabinet functions; and
- there are some conflicting provisions in the Constitution making it difficult to determine which appointments should be approved by which body (Cabinet or Council). This needs to be clarified.

2.3.2 As Schedule 2 of the 2000 Regulations gives the Council a choice of which body appoints outside bodies, it is suggested that both Cabinet and full Council should be able to make any outside body appointments (which was the original intention), and that the Constitution be amended to reflect this.

2.5.2 It is therefore suggested that the amendments proposed at Appendix E to this report be made.

2.6 Modern Slavery Act 2015

2.6.1 The Modern Slavery Act 2015 is aimed at combating crimes of slavery and human trafficking. Under sections 1, 2 and 4 of the Act it is an offence for any person:

- to held another person in slavery or servitude
- to require another person to perform forced or compulsory labour
- to arrange or facilitate the travel of another person with a view to that other person being exploited
- to commit any offence with the intention of arranging or facilitating the travel of another person with a view to that person being exploited.

2.6.2 Regulation 57 of the Public Contracts Regulations 2015 states that contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established that the economic operator has been convicted of (amongst others) any offences under sections 1, 2 or 4 of the Modern Slavery Act 2015. There is currently no reference within the Council's Contract Procedure Rules to the mandatory exclusions provided under Regulation 57 and it is felt that reference to this Regulation would be a useful reminder to officers.

2.6.3 Section 54 also requires commercial organisations which operate in the United Kingdom and which have a global turnover above £36 million, to publish a slavery and human trafficking statement for each financial year that ends on or after 31 March 2016. A slavery and human trafficking statement is a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business.

2.6.4 Whilst there is no specific requirement for the Council to ensure that these statements are provided, Rule 1 of the Council's Contract Procedure Rules states that all procurement procedures must (amongst other things) be consistent with the highest standards of integrity. It is felt that this should include ensuring that all measures are taken to ensure that contractors comply with section 54 of the Modern Slavery Act 2015.

2.6.5 It is therefore recommended that the Council's Contract Procedure rules be amended as shown in Appendix F to this report.

2.7 **Governance and Audit Committee**

2.7.1 In Part 3 Section D of the Constitution (Delegations to Committees) the membership of the Governance and Audit Committee (currently at page 49 of the Constitution) is described as "6 members and 2 substitutes politically balanced".

2.7.2 In fact this should be "6 non-Cabinet members and 2 substitutes politically balanced" and it is recommended that the Constitution be amended accordingly.

3.0 **CONSULTATION**

3.1 The Overview and Scrutiny Commission is being consulted on these changes.

4.0 **OPTIONS**

4.1 Members have the option to agree or disagree each proposed amendment, or to require alternative amendments.

5.0 **REASONS FOR RECOMMENDATIONS**

5.1 The amendments are proposed in order to provide clarity within the Constitution, ensure consistency, and eliminate errors.

6.0 **EXPECTED BENEFITS**

6.1 To provide clarity and consistency within the Constitution and eliminate errors.

7.0 **IMPLICATIONS**

7.1 **Carbon Footprint / Environmental Issues**

7.1.1 none

7.2 **Constitution & Legal**

7.2.1 There are no specific legal implications. The proposed amendments are recommended in order to provide clarity and consistency within the Constitution, and eliminate errors.

7.3 **Contracts**

7.3.1 None

7.4 **Corporate Priorities**

7.4.1 None

7.5 **Crime and Disorder**

7.5.1 None

7.6 **Equality and Diversity / Human Rights**

7.6.1 None

7.7 **Health and Wellbeing**

7.7.1 None

7.8 **Financial**

7.8.1 None

7.9 **Risk Management**

7.9.1 None

7.10 **Staffing**

7.10.1 None

7.11 **Stakeholders / Consultation / Timescales**

7.11.1 None

8.0 **WARDS/COMMUNITIES AFFECTED**

8.1 None

9.0 ACRONYMS

9 .1 None

Background papers:- Council's Constitution

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Key Decision: No

Exempt Decision: No.

Appendices attached to this report:

APPENDIX A - Call-In - Urgent Executive Decisions which are not Key Decisions (paragraph 2.1.1) and Executive Decisions which are subject to External Deadlines (paragraph 2.1.2) – Proposed amendments to Constitution

APPENDIX B – Membership of the Cabinet - Chairman and Vice-Chairman of the Council - Proposed amendments to the Constitution

APPENDIX C – Standing Committees - Proposed amendments to the Constitution

APPENDIX D – Performance of Executive Functions - Proposed amendments to the Constitution

APPENDIX E – Appointment to Outside Bodies - Proposed amendments to the Constitution

APPENDIX F – Modern Slavery Act 2015 – Proposed amendments to the Constitution

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APPENDIX A - Call-In - Urgent Executive Decisions which are not Key Decisions (paragraph 2.1.1) and Executive Decisions which are subject to External Deadlines (paragraph 2.1.2) – Proposed amendments to Constitution

Proposed amendment 1

Part 3 Section D – Delegations to Committees – Overview and Scrutiny - Call-In Procedure for Executive Decisions

The following additional wording be added immediately after the heading "Call-In Procedure for Executive Decisions" at page 47.

"(Call-in does not apply to Executive Decisions taken under Rules 12 to 15 of the Access to Information Procedure Rules)"

Proposed amendment 2

Access to Information Procedure Rules

Existing Rules 14 to 18 be renumbered 16 to 20, and the following additional Rules be added:

"14.0 Special Urgency – Non-Key Decisions – Application of Call-In

14.1 Where for any Non-Key Decision any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest the Executive Decision shall not be subject to call-in subject to:

- the Chairman of the Overview and Scrutiny Commission agreeing both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency (in the absence of the Chairman, the Chairman of the Council or in his/her absence the Vice-Chairman of the Council's consent shall be required. In the absence of all three, the Head of the Paid Service or his/her nominee's consent shall be required); and
- the decision notice stating that the decision is not subject to call-in and the reasons why the delay caused by the call-in procedure is considered to be seriously detrimental to the Council's or the public's interest; and
- a report being submitted to the next available meeting of full Council indicating the reasons for the urgency.

15.0 Special Urgency - Executive Decisions subject to External Deadlines – Application of Call-In

15.1 Where any Executive Decision (whether Key Decision or Non-Key Decision) is subject to external (eg Government) deadlines such that it is not possible for the decision to be subject to the usual call-in procedure the proposed decision may instead be subject to a pre-decision scrutiny by the Overview and Scrutiny Commission subject to:

- the Leader, Deputy Leader, relevant Portfolio Holder or (where the decision will be taken by an officer) the relevant officer being in attendance at the meeting of the Panel to answer relevant questions
- the Overview and Scrutiny Commission being required to set out in writing any concerns about the proposed decision

- the decision-maker then making the final decision taking into account any concerns raised by the Commission, and the final decision notice explaining the decision in relation to the concerns raised by the panel
- the decision taking effect immediately the decision is made.

15.2 When this Rule applies such scrutiny could, if need be, take place on the same day as (but before) the Executive Decision is made."

Proposed amendment 3

Access to Information Procedure Rule 1.0, be amended as follows:

In paragraph (c), which states that Rules 11-18 apply to Cabinet, Committees of the Cabinet, Cabinet Members, officers making Executive Decisions and any Executive joint committees, reference to Rules 11-18 be amended to refer to paragraphs 11-20

In paragraph (d), which states that Rules 14 and 17 also apply to the Overview and Scrutiny Committees, reference to Rules 14 and 17 be amended to refer to paragraphs 15 and 19

Proposed amendment 4

Access to Information Procedure Rule 10.5 be amended so that it refers to Rules 11-20 (rather than Rules 11-18) applying to Cabinet, Committees of the Cabinet, Individual Cabinet Members, officers an any Joint Arrangements.

APPENDIX B – Membership of the Cabinet - Chairman and Vice-Chairman of the Council - Proposed amendments to the Constitution

Proposed amended wording is shown underlined and in italics

Proposed amendment 1

Article 7 paragraph 2.0 (currently at page 20)

" 2.0 Form and Composition of the Cabinet

2.1 The Cabinet (which is also known as the Executive) will consist of:-

(a) the Leader; and

(b) at least two but not more than 9 Councillors appointed to the Cabinet by the Leader, *but the Chairman and Vice-Chairman of the Council may not be appointed as Cabinet members*"

Proposed amendment 2

Executive Powers – Arrangements by Leader for Cabinet Delegations - second column (currently at page 39)

"Maximum 9 member (excluding the Leader). *The Chairman and Vice-Chairman of the Council may not be appointed as Cabinet members*"

Proposed amendment 3

Standing Order no. 22.2 (currently at page 82)

"The Leader shall have the power to appoint up to nine Cabinet Members (including the Deputy Leader). *The Chairman and Vice-Chairman of the Council may not be appointed as Cabinet members.*"

Proposed amendment 4

Standing Order no, 23 (currently at page 82)

"23.1 The Cabinet shall consist of the Leader and the Cabinet Members. *The Chairman and Vice-Chairman of the Council may not be appointed as Cabinet members.*"

APPENDIX C – Standing Committees - Proposed amendments to the Constitution

Proposed amended wording is shown ~~crossed out~~, underlined and in italics

Proposed amendment 1

Glossary of terms – Miscellaneous Definitions (currently at pages 4 and 5)

Add the following definition:

"Standing Committee" means a Committee (whether required by statute or otherwise) which has been established by the full Council on a permanent basis to do its assigned work on an ongoing basis. The Standing Committees of the Council are detailed in Part 3 Section D of the Constitution (Delegations to Committees) and exclude full Council, Cabinet, and any Committees of the Cabinet (there are presently no Committees of the Cabinet)."

Proposed amendment 2

All references to "standing committee" be amended to read "Standing Committee".

APPENDIX D – Performance of Executive Functions - Proposed amendments to the Constitution

Proposed amended wording is shown underlined and in italics

Proposed amendment 1

Part 3 Section D (Delegations to Committee)

D1 – General Provisions relating to Executive powers (currently at page 39)

- "3. *Subject to Standing Order no. 26*, Executive Functions may only be exercised if
- (a) they fall within the Policy Framework and
 - (b) they are within the Budget."

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APPENDIX E – Appointment to Outside Bodies - Proposed amendments to the Constitution

Proposed amended wording is shown ~~crossed out~~, underlined and in italics

Proposed amendment 1

Part 3 Section D – Delegations to Committees – Full Council (currently at page 37)
Functions/Terms of Reference

"1. (g) Appointment of representatives to joint authorities, and joint committees ~~and other outside bodies~~ unless the appointment is a Cabinet function or has been delegated by the Council (Non-Executive Functions only).

Proposed amendment 2

Part 3 Section D – Delegations to Committees – Full Council (currently at page 39)
Functions/Terms of Reference

"22. ~~As detailed in paragraph 19 of Schedule 2 of the 2000 Regulations,~~ The appointment of any individual

- (a) To any office other than an office in which he/she is employed by the Council where this is an executive function
- (b) To any body other than: the Council; a joint committee of two or more authorities; or to any committee or sub-committee of such a body, and
and the revocation of any such appointment.

(The above function is detailed at Schedule 2 of the 2000 Regulations and may be carried out by both the full Council and the Cabinet.) (Appointments to outside bodies at (b) above may be made for more than one municipal year, including periods up to the date of the next District Council election).

Proposed amendment 3

Part 3 Section D – Delegations to Committees – Arrangements by Leader for Cabinet Delegations – D3 – Delegations to Cabinet (currently at page 41)

That the existing item (a) in the middle of page 41 of the Constitution be moved so that it is listed above the Schedule 2 items subject to the following amendments:

"The appointment of any individual:

- (a) To any office other than an office in which he/she is employed by the Council where this is an executive function
- (b) To any body other than: the Council; a joint committee of two or more authorities; or to any committee or sub-committee of such a body, and
and the revocation of any such appointment.

(The above function is detailed at Schedule 2 of the 2000 Regulations and may be carried out by both the full Council and the Cabinet.) (Appointments to outside bodies at (b) above may be made for more than one municipal year, including periods up to the date of the next District Council election).

Proposed amendment 4

The Cabinet functions at page 41 need some minor renumbering and the second reference to the functions detailed at Schedule 2 of the 2000 Regulations needs to be removed.

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APPENDIX F – Modern Slavery Act 2015 – Proposed amendments to the Constitution

Proposed amended wording is shown underlined and in italics

Proposed amendment 1

Contract Procedure Rule 2.1 (currently at page 115)

"2.1 Officers

Officers will comply with

- (a) these Contractor Procedure Rules (CPRs)
- (b) the Council's Constitution
- (c) all UK and EU legal requirements (*including ensuring that any contractors are mandatorily excluded from participation in a procurement procedure where Regulation 57 of the Public Contracts Regulations 2015 applies*)"

Proposed amendment 2

Contract Procedure Rule 2.2 (currently at page 116)

2.2.1 Chief Officers/ Deputy Chief Officers will:

- (a) ensure their Service Grouping complies fully and are familiar with the requirements of these Contract Procedure Rules
- (b) ensure contracts are recorded in the Contracts Register as held and maintained by Corporate Improvement and Performance team
- (c) ensure compliance with English Law, UK and EU legislation and Council policy (*including ensuring that any contractors are mandatorily excluded from participation in a procurement procedure where Regulation 57 of the Public Contracts Regulations 2015 applies*)
- (d) " etc

Proposed amendment 3

Contract Procedure Rule 22.1.6 (currently at page 132)

"22.1.6 In addition, every Relevant Contract for purchases over £25,001.00 for works, £25,001.00 for supplies of goods, materials or services and £10,000.00 for consultants must also as a minimum state clearly:

- (a) that the contractor may not assign or sub-contract without prior written consent;
- (b) any insurance and liability requirements;
- (c) health and safety requirements;
- (d) ombudsman requirements;
- (e) data protection requirements if relevant;

- (f) that charter standards are to be met if relevant;
- (g) requirements under the Equalities Act 2010;
- (h) obligations under the Care Act 2014 in safeguarding adults and children;
- (i) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, including obligations under the Freedom of Information Act 2000 and 2015 Transparency Code;
- (j) requirements under the Counter-Terrorism and Security Act 2015 and Prevent Strategy where applicable;
- (k) Obligations under the Public Interest Disclosure Act 1998 including employee whistleblowing.
- (l) statement requirements under the Modern Slavery Act 2015"

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