

## BRECKLAND DISTRICT COUNCIL

**Report of:** Executive Director - Strategy and Governance (Monitoring Officer)

**To:** Breckland District Council – 31 October 2019

**Author:** Mark Stinson, Executive Manager for Governance

**Subject:** Process for amending the Constitution

**Purpose:** To consider the current process for amending the constitution and whether changes to that process are considered appropriate.

### **Recommendation(s):**

That the Constitution be amended in accordance with paragraph 1.7 of this report.

### **1.0 BACKGROUND**

- 1.1 At its meeting on 3 October 2019, the Governance and Audit Committee considered the current process for constitutional changes and concluded that in future all substantive changes to the Constitution should be considered by the Committee prior to recommendation to Council.
- 1.2 Under Article 14 of the Council's Constitution, changes to the Constitution may only be approved by the Full Council unless, in the reasonable opinion of the Monitoring Officer, a change is:
- (a) a minor variation; or
  - (b) required to be made to remove any inconsistency or ambiguity; or
  - (c) required to be made so as to put into effect any decision of the Council or its committees or the Cabinet,
- In these cases the Monitoring Officer may make such a change and such change shall come into force with immediate effect but shall (unless a minor typographical, referencing or numbering change) be referred to Full Council as soon as is reasonably possible and shall continue to have effect only if Full Council agrees. Minor typographical, referencing and numbering changes do not require the approval of Full Council.
- 1.3 Under the current process, most proposed constitutional changes are reported directly to Council. However, where there are proposed changes that would have a material impact on the work or role of a committee, such proposals are generally submitted to the relevant committee for debate and discussion prior to being reported to Council. A recent example was the proposed changes to Planning Committee delegations, which the Planning Committee considered and then recommended to Council.
- 1.4 No individual standing committee has previously had general responsibility for reviewing proposed constitutional changes. Full Council did establish a working group in 2013 (comprising three members) who, working with three South Holland members, undertook a comprehensive review of both councils' constitutions. The Working Party was appointed directly by Council and its work concluded in late 2015. It is not anticipated that we will need to conduct such a comprehensive review again as the current constitution is kept under on-going review with regular reports to Council.

- 1.5 The current constitution does, however, provide that a standing committee may be appointed to make recommendations to Council on prospective constitutional changes (Article 14, paragraph 2.1.1).
- 1.6 It should be noted that changing the Constitution can already be a lengthy process, especially as reports are already taken to any relevant committee and/or the Cabinet where the proposed changes impact on that committee/Cabinet. If constitution reports are routinely required to be considered by the Governance and Audit Committee, this would take place after any affected committee/Cabinet has been consulted – which could result in significant delay in seeking constitutional change.
- 1.7 If Council is minded to appoint the Governance and Audit Committee to make recommendations to Council on prospective constitutional changes, then the following amendments to the Constitution are required:
- a. In Part 2, Article 14, paragraph 2.1.1, the words “currently the Governance and Audit Committee” be inserted immediately after the words “The Council may if it considers necessary appoint a special committee to make recommendations for that purpose.”
  - b. In Part 3, Delegations to Committees, Governance and Audit Committee Terms of Reference, add a new term of reference under the section headed Governance as follows “to consider all substantive amendments to the Constitution (which shall not include minor variations and amendments required to remove an inconsistency or ambiguity) and to make recommendations thereon to Council. The question of whether a proposed amendment is substantive to be determined by the Monitoring Officer in consultation with the Chairman of the Committee”.

## 2.0 **OPTIONS**

- 2.1 To continue with the current practice of consulting only the Cabinet and/or relevant committees where any proposed constitutional change has a substantive impact on that body, prior to submission to Council for approval.
- 2.2 To amend the constitution so that proposed substantive changes to the constitution are reviewed by the Governance and Audit Committee, as well as Cabinet/other committees as appropriate, prior to submission to Council.

## 3.0 **REASONS FOR RECOMMENDATION(S)**

- 3.1 The Governance and Audit Committee has, as part of its terms of reference, responsibility for governance. The constitution is an important governance document.

## 4.0 **EXPECTED BENEFITS**

- 4.1 The proposed change to the process will result in additional scrutiny to proposed constitutional changes.

## 5.0 **IMPLICATIONS**

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; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk

Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitution & Legal**

5.2.1 Approval of any changes to the Constitution, and to the terms of reference of any committee, are non-executive decisions reserved to the Council.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 None

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Background papers:- None

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**Key Decision:** No

**Exempt Decision:** No