

BRECKLAND DISTRICT COUNCIL

Report of: Councillor Ian Sherwood, Executive Member for People, Communications and Governance
Rob Walker – Executive Director and Monitoring Officer

To: Governance and Audit – 2 December 2021
Full Council – 20 January 2022

Author: Jacqui Berridge - Lawyer
Sarah Wolstenholme-Smy – Legal Services Manager

Subject: Constitution – Proposed Variations

Purpose: To consider varying the Constitution as detailed in the body of the report.

Recommendations:

- 1) That in order to clarify those situations where the Section 151 Officer is able to appoint Deputies the Constitution be varied as shown in Appendix A;
- 2) That Part 3 Section F3 Paragraph (v)(g) (Delegations to the S151 Officer) of the Constitution be varied to read as follows:

“(g) power to write off debts in accordance with the approved debt recovery policy; and power to authorise disposal of obsolete stores or equipment subject to compliance with any requirements contained elsewhere within the Constitution.”
- 3) That in order to ensure that full Council can undertake its business more efficiently Standing Orders no. 5 (Order of Business), no. 6 (Questions on Notice) and no. 7 (Questions Without Notice) be varied as shown in Appendix C, and the variations be reviewed at the annual Council meeting in May 2023;
- 4) That, in relation to complaints:
 - (a) Item 1(h) of the terms of reference of full Council be varied to read as follows:

1(h) Payment or other benefits relating to complaints or findings of maladministration, other than minor payments/benefits of up to £10,000
 - (b) Paragraph (j) of Part 3 Section F1 of the Constitution (Chief Officer general powers) be amended to read as follows:

(j) To authorise payments of compensation in connection with complaints (including those made to the Local Government Commissioner/ Ombudsman) of up to £10,000, subject to (i) the agreement of the Monitoring Officer and the appropriate Cabinet Member or Chairman of Committee and (ii) informing the Overview and Scrutiny Commission.

- | |
|--|
| 5) That in order to refer to recorded votes, Standing Order no. 39 (Voting in Committees and Sub-Committees) be varied as shown in Appendix D. |
|--|

1.0 BACKGROUND

1.1 The Council's 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 administrative 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 administrative variation which may, for example, include 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 administrative variations do not require the approval of full Council.

1.3 All other variations must be submitted to full Council for approval. This report contains proposed variations for consideration which do not come within the above list.

1.4 The Governance and Audit Committee considered this report at its meeting on 2 December 2021 and any amendments proposed by that Committee will be verbally reported.

2.0 PROPOSED VARIATIONS

Deputy Section 151 Officer(s) (Appendix A refers)

2.1 Section 151 of the Local Government Act 1972 requires the Council to secure that one of its officers has responsibility for the administration of its financial affairs. That officer is personally required to undertake the duties set out in sections 114 and 114A of the Local Government Finance Act 1988 which are to report where it appears to him/her:

- that any part of the authority is about to make a decision to incur unlawful expenditure; proposes a course action which would be unlawful and likely to cause a loss or deficiency on the part of the authority; or is about to enter an item of account the entry of which is unlawful
- that the expenditure of the authority incurred in a financial year is likely to exceed the resources available to it to meet that expenditure.

2.2 The Section 151 Officer also:

- has responsibility for the proper administration of the Council's financial affairs;
- has statutory duties in relation to finance such as reporting on the robustness of the budget estimates and the adequacy of financial reserves when the estimates and Council Tax are set, and ensuring audit is undertaken;
- has duties set out in the Constitution;
- has a governance duty to check all reports;
- at any time may have a number of specific delegations given by the executive or by full Council or any Committee, including delegations detailed in the Constitution.

2.3 Part 3 Section F1 paragraph 10 of the Constitution (page 46) currently states as follows:

“10. The Council’s Monitoring Officer and S151 Officer are each authorised to delegate their powers during their absence or where she has a conflict of interest. Such delegation may be by way of appointing a Deputy Monitoring Officer or Deputy S151 Officer.”

2.4 This is the only reference within the Constitution to Deputy S151 Officers and it requires further clarification to reflect the legal situation which is as follows:

- the Section 151 Officer must personally undertake those duties listed in paragraph 2.4 and must, statutorily, nominate officers to deputise in relation to such duties where s/he is absent or ill;
- appointment of deputies under the above bullet point only applies for absence or illness and does not extend to any other situations where the officer may be unable to deal with a matter eg where the officer has a conflict of interest (where this occurs, difficulties may arise in dealing with a statutory report and any such situation would need to be considered at the time);
- nominating deputies to act where the officers have a conflict of interest is, however, good practice in all other situations;
- the Section 151 Officer may deputise all other functions.

2.5 It is recommended that this matter be clarified within the Constitution in accordance with the details included at Appendix A to this report. It should be noted that the Section 151 Officer may seek day to day assistance from officers who are not formally appointed as Deputies, but officers who are not formally appointed as Deputies are not able to make any formal decisions.

Section 151 Officer – power to write off debts and dispose of obsolete stores and equipment

2.6 Part 3 Section F3 of the Constitution (Delegations to Directors) includes, at paragraph (v), the following delegation to the Section 151 Officer:

“(g) power to write off debts or authorise disposal of obsolete stores or equipment subject to the Council’s approval to reporting procedures.”

2.7 The Council’s approved debt recovery policy does not contain any reporting procedures, and it is not considered necessary to report disposal of obsolete stores or equipment as procedures are included with the Financial Management Standards and Contract Procedure Rules.

2.8 In the circumstances it is suggested that the wording of paragraph (g) be varied to read as follows:

“(g) power to write off debts in accordance with the approved debt recovery policy; and power to authorise disposal of obsolete stores or equipment subject to compliance with any requirements contained elsewhere within the Constitution.”

Questions asked by members at meetings of Full Council (Appendix B refers)

2.9 Standing Order no. 5 details the order of business for meetings of the full Council, which includes reference to the Leader’s announcements. Standing Order no. 5.2 then allows each member to ask questions (without notice) of the Leader on the content of the Leader’s announcement.

- 2.10 Standing Order no. 6 enables each member of the Council to ask the Chairman of the Council, a Cabinet member, or the Chairman of any committee, sub-committee or panel, a question subject to submitting appropriate notice of the question. Standing Order no. 6.5 then allows that member a right to ask a supplementary question (without notice).
- 2.11 In recent months it has become apparent that the time taken to answer questions raised by members at full Council is expanding. Whilst it is entirely appropriate to retain the ability for members to ask questions at full Council, it is also necessary to ensure that the meeting can proceed with its business efficiently. It is suggested that the right at full Council for members to ask questions without notice should all be dealt with under the same Standing Order No. 7 (Questions without Notice), with a time limit of 30 minutes allowed for all questions asked under that Standing Order.
- 2.12 It is also suggested that the amended procedures be reviewed at the annual Council meeting in May 2023.
- 2.13 Full proposals are set out in Appendix B to this report.

Payments arising from complaints

- 2.14 The Constitution currently allows Chief Officers to make payments of compensation in connection with complaints up to a maximum of £1000 subject to the agreement of the Monitoring officer and appropriate Cabinet member or Chairman of Committee, and also to informing the Overview and Scrutiny Commission. Any potential payments over £1000 must currently be submitted to full Council.
- 2.15 It is considered that the threshold for submission of such items to full Council is too low, and it is suggested that the Constitution be varied as follows:

Terms of reference of full Council

1(h) Payment or other benefits relating to complaints or finding of maladministration, other than minor payments/benefits of up to ~~£4000~~ **£10,000**"

Part 3 Section F1 of the Constitution – each Chief Officer shall have the following general powers:

(j) To authorise payments of compensation in connection with complaints (including those made to the Local Government Commissioner/Ombudsman) of up to ~~£4000~~ **£10,000**, subject to (i) the agreement of the Monitoring Officer and the appropriate Cabinet Member or Chairman of Committee and (ii) informing the Overview and Scrutiny Commission."

Recorded Votes – Committees and Sub-Committees (Appendix C refers)

- 2.16 Standing Order 16.3 (full Council) states as follows:

"16.3 On the requisition of any member of the Council made before the vote is taken and supported by twelve other members who signify their support by rising in their places the voting on any question shall be taken by a recorded vote as above. At a virtual meeting, where a member has requisitioned a recorded vote, the Chairman shall, entirely at his/her discretion, either take a vote by rollcall to determine whether

twelve other members support the requisition, or use any other means described in Standing Order 16.6 (c) below.”

2.17 Under Standing Order no. 40, the above Standing Order “*shall, with any necessary modification, apply to Committee and Sub-Committee meetings*”.

2.18 Standing Order no. 39, which relates to voting in Committees and Sub-Committees, only refers to recorded votes at virtual meetings and does not make any necessary modifications to the recorded vote requirement. It is therefore recommended that the variations to the Constitution detailed in Appendix C be approved which will allow a recorded vote to be taken at any committee or sub-committee where requisitioned by the same number of members as the quorate number for that committee or sub-committee.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 The existing reference to the Section 151 Officer appointing deputies requires clarification. This statutory officer has significant statutory and non-statutory duties and assistance is required. The Constitution therefore needs to clarify the circumstances in which the statutory officer may nominate deputies.

3.2 The existing delegation to the Section 151 officer relating to write-offs is factually incorrect, and the delegation relating to obsolete stocks requires further clarification.

3.3 Standing Orders relating to questions at full Council meetings require amendment in order to make the business of full Council more efficient.

3.4 The Constitution currently requires payments to complainants to be approved by full Council if the payment is over £1000. This is not considered to be efficient.

3.5 Standing Order no. 39 (Voting in Committees and Sub-Committees) needs to clarify how Standing Order no. 16.3 (which relates to recorded votes and which is applied to committees and sub-committees by Standing Order no. 40) applies to committees and sub-committees.

4.0 **EXPECTED BENEFITS**

4.1 The Constitution will remain fit for purpose.

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.

5.1.1 **Constitution & Legal**

5.1.1 Approving variations to the Constitution is a function reserved to full Council. Any other legal implications are detailed in the body of the report.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All.

7.0 ACRONYMS

7.1 None.

Background papers:- The Council's Constitution which can be found online.

Lead Contact Officer

Name and Post: Sarah Wolstenholme-Smy – Legal Services Manager/Jacqui Berridge
Lawyer

Telephone Number:

Email: [Sarah.wolstenholme-smy@breckland.gov.uk/](mailto:Sarah.wolstenholme-smy@breckland.gov.uk)
Jacqui.berridge@breckland.gov.uk

Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

- APPENDIX A – proposed variations to the Constitution to clarify the appointment of Deputy Section 151 Officers
- APPENDIX B - Proposed variations to Standing Orders nos. 5, 6 and 7 relating to questions asked at full Council
- APPENDIX C – proposed variation to Standing Order no. 39 in order to take into account recorded votes at Committees and Sub-Committees

APPENDIX A – proposed variations to the Constitution to clarify the appointment of Deputy Section 151 Officers

New wording is shown in bold underlined type.

Deleted wording is shown in strikethrough italic type.

Paragraph 10 of Part 3 Section F1 of the Constitution (page 46) be varied to read as follows:

“10. The Council’s Monitoring Officer ~~and S151 Officer~~ are each **is** authorised to delegate ~~their~~ **his/her** powers during ~~their~~ **his/her** absence or where s/he has a conflict of interest. Such delegation may be by way of appointing a Deputy Monitoring Officer. ~~or Deputy S151 Officer.~~

(b) The Council’s Section 151 Officer shall, as required by law, nominate a Deputy to undertake, where s/he is unable to act owing to absence or illness, those statutory duties which s/he is required to undertake personally (reporting duties under sections 114 and 114A of the Local Government and Finance Act 1988) (NOTE: this applies only where the Section 151 Officer is absent or ill. If any other circumstances prevent the officer from undertaking his/her reporting duties the manner in which any statutory report will be issued must be considered at the relevant time.)

(c) The Section 151 Officer may also appoint a Deputy or Deputies to undertake all or any other Section 151 duties and functions not detailed in paragraph (a) above, including (but not limited to) statutory, Constitutional, governance, administrative and delegated duties and functions, and acting as Proper Officer.

(d) The Section 151 Officer shall in all instances ensure that where they s/he has a conflict of interest in relation to any matter detailed in paragraph (c) above the matter is dealt with by a duly appointed Deputy

The following additional paragraph be inserted within the general clauses that relate to officer delegations at Part 3 Section F1 of the Constitution:

14A. (Paragraph 10 of Part 3 Section F1 relates to the appointment of Deputy Monitoring Officers and Section 151 Officers.)

Paragraph 15 of Part 3 Section F1 (which relates to delegations to Chief Officers) be varied as follows:

- (e) To appoint a person to act in his or her place to exercise a specified power (including any power to act as the proper officer) for a relevant function:
- (i) in his or her absence, or
 - (ii) when he or she is otherwise not available to exercise it at the relevant time, or
 - (iii) in accordance with any general directions given by him or her.

(Paragraph 10 of Part 3 Section F1 relates to the appointment of Deputy Monitoring Officers and Section 151 Officers.)

APPENDIX B – proposed variations to Standing Orders nos. 5, 6 and 7 relating to questions asked at full Council

New wording is shown in bold underlined type.

Deleted wording is shown in strikethrough italic type.

Proposed variations to Standing Order no. 5 – Order of Business

5.1 Except as otherwise provided by the following paragraph (variation of order of business) of this Standing Order, the order of business at every ordinary or annual meeting of the Council shall be:

a) ...

g) Leaders Announcements – **to be in the form of a verbal report**

h) Answer any questions on Notice.

i) Answer any questions without Notice **(total duration 30 minutes)**

...

5.2 Leader's Announcements

a) The Leader's announcements will be in the form of a verbal report to Council.

b) All Members may ask questions of the Leader on the content of the Leader's announcements.

c) The Leader may invite Members of the Council's Executive to respond to questions on the Leader's behalf.

d) The Leader has the right to respond to questions raised after the meeting. This will be in writing and to all Members of the Council.

~~5.3~~ **5.2** Variation of order of business

~~5.3.1.~~ **5.2.1** Business falling under items (a), (b), or (c) of the above paragraph shall not be displaced, but the order of the remaining business may be varied:

a) By the Chairman at his/her discretion, or

b) By a resolution passed on a motion (which need not be in writing) duly moved and seconded which shall be moved and put without discussion.

Proposed variation to Standing Order no. 6 – Questions on Notice (NOTE FOR INFORMATION: the following standing order 6.5 refers both to Council and Committees and is being amended to refer only to Committees. Supplementary questions at full Council are then dealt with under proposed replacement Standing Order no. 7 below)

6.5 Supplementary question – **committees, sub-committees or panel meetings (for supplementary questions at full Council see Standing Order no. 7.1)**

6.5.1 A member **at a committee, sub-committee or panel meeting** asking a question under paragraph ~~6.1 or~~ 6.2 may ask one supplementary question without notice, of the member to whom the first question was put or by whom it was answered. The supplementary question must arise directly out of the original question or the reply.

Continue overleaf

Proposed replacement Standing Order no. 7

Questions Without Notice

7.1 The time period for questions under this Standing Order shall be no more than 30 minutes per meeting, subject to the right for the Council to suspend this in accordance with Standing Orders.

7.2 Questions may be asked by members in the following order:

- (a) the leader or deputy leader of the main opposition group may ask one question;**
- (b) the leaders or deputy leaders of any further opposition groups may then ask one question each starting with the largest group and ending with the smallest group;**
- (c) individual members (excluding any leaders or deputy leaders who have already asked a question) may then ask one question each. Members wishing to ask a question shall indicate such a wish by raising their hand.**

The above process may be repeated in the same order until either the full 30 minute period has expired or there are no further questions, whichever is the sooner.

7.3 A member may ask:

- (a) the Leader any question on the content of the Leader's announcements. The Leader may invite a Cabinet Member to respond; or**
- (b) the Chairman of the Council, the Leader, a Cabinet Member or the Chairman of any committee, sub-committee or panel a question on any matter within their area of responsibility. The Leader may invite a Cabinet Member to respond, and a Cabinet Member may ask another Cabinet Member or the Leader to respond.**

7.4 Answers to questions under this Standing Order shall take the form of:

- (a) a direct oral reply; or**
- (b) with the consent of the chairman of the meeting, a written answer where it is of a technical nature. Answers given in writing shall be given within 5 Working Days of the meeting and shall be sent to all members.**

7.5 Questions shall be put and answered without discussion.

APPENDIX C – proposed variation to Standing Order no. 39 in order to take into account recorded votes at Committees and Sub-Committees

New wording is shown in bold underlined type.

Deleted wording is shown in strikethrough italic type.

STANDING ORDER NO.39

Voting in Committees and Sub-Committees

39.1 Apart from virtual meetings when Standing Order no. 39.4 below shall apply, **or when a recorded vote is requisitioned when Standing order no. 39.5 below shall apply,** voting at a meeting of a Committee or Sub-Committee shall be by show of hands.

39.2 A member may request that their own name be recorded in the minutes as voting for or against or abstaining when voting on a motion or amendment.

39.3 The Chairman or any member of the Committee or Sub-Committee may, at their discretion, ask that the numbers voting for and against a motion or amendment be recorded in the minutes.

39.4 At all virtual meetings the Chairman shall take the vote by rollcall and the number of votes for or against the motion or amendment or abstaining from voting will be recorded in the minutes, unless:

- (a) a recorded vote is required by the Chairman under Standing Order no. 16.2; or
- (b) a recorded vote is requisitioned under Standing Order no. 16.3 **(see also Standing Order 39.5);** or
- (c) at the Chairman's discretion, the vote is taken by one of the following methods:
 - (i) by use of an electronic voting system for remote voting where available; or
 - (ii) by use of electronic hand raising where available; or
 - (iii) by physical hand raising where practicable

except that where (c) applies a rollcall shall still be required if requisitioned by any member and supported by two further members.

39.5 Standing Order 16.3 shall apply to recorded votes except that reference to the requisition being supported by twelve other members shall be deemed to refer to the requisition being supported by such number of other members as, together with the member who made the requisition, comprise the quorate number for that Committee or Sub-Committee”.