



SHEFFIELD CITY COUNCIL Report to Council

Report of: Deputy Chief Executive

Date: 6 July 2011

Subject: Minor Changes to the Constitution

Author of Report: Dave Ross – Democratic Services
0114 273 5033

Summary:

This report provides details of the minor and consequent drafting changes to the Constitution that have been agreed by the Director of Legal Services, in consultation with the Lord Mayor, in January, April and May 2011.

Recommendations:

That Council notes the minor changes to the Constitution approved under delegated authority by the Director of Legal Services, in consultation with the Lord Mayor, in January, April and May 2011.

Background Papers:

Records of delegated decisions dated 31 January, 1 April and 12 May 2011.

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial implications
NO
Legal implications
NO
Equality of Opportunity implications
NO
Tackling Health Inequalities implications
N/A
Human rights implications
N/A
Environmental and Sustainability implications
N/A
Economic impact
N/A
Community safety implications
N/A
Human resources implications
N/A
Property implications
N/A
Area(s) affected
None
Relevant Scrutiny Committee if decision called in
Not applicable
Is the item a matter which is reserved for approval by the City Council?
NO
Press release
NO

Minor Changes to the Constitution

1. Introduction

- 1.1 At the Council Meeting on 5 January 2011, it was agreed, as part of a report on Changes to the Constitution, to delegate to the Director of Legal Services, in consultation with the Lord Mayor, the authority to make any minor and consequent drafting changes to the Constitution. It was also agreed that details would be reported back to Full Council.
- 1.2 This report provides details of the minor changes that have been approved by the Director of Legal Services, in consultation with the Lord Mayor, in January, April and May 2011.
- 1.3 Details of those changes were sent to all Members of the Council after they had been agreed and also made available on the Council's website at <http://www.sheffield.gov.uk/changestotheconstitution>.

2. Minor Changes

- 2.1 There have been minor changes to the following parts of the Constitution:
 - Part 2 - Article 4 (The Full Council)
 - Part 2 - Article 12 (Officers)
 - Part 3 - Responsibility for Functions
 - Part 4 - Council Procedure Rules
 - Part 4 - Scrutiny Procedure Rules
 - Part 4 - Budget and Policy Framework Procedure Rules
 - Part 4 - Access to Information Procedure Rules
 - Part 4 - Area Committee Procedure Rules
 - Part 5 - Whistleblowing Policy (within the Officer's Code of Conduct)
 - Part 7 - Management Structure
- 2.2 Details of all the changes are set out in the decision records appended to the report.

3. Recommendations

- 3.1 That Council notes the minor changes to the Constitution approved under delegated authority by the Director of Legal Services, in consultation with the Lord Mayor, in January, April and May 2011.

RECORD OF DELEGATED DECISION

Record of Decision of: Director Legal Services Lynne Bird - 2734018

Date: 31st January 2011

Subject: Minor Changes to the Constitution

Reasons: The changes have been made to correct minor drafting inaccuracies.

Recorded decision:

In accordance with the authority delegated to the Director of Legal Services by Council on 5th January 2011 to make minor and consequent drafting changes to the Constitution, I have, after consultation with the Lord Mayor on 28th January 2011, authorised the changes recorded below, which will come into immediate effect [*and will be reported back to the next meeting of Full Council on 2nd February 2011*].

Part 3 - Responsibility for Functions

Part 3 -

3.35 - Vice Chair amended to Deputy Chair.

3.3.3 – Delete the reference to the Licensing Act 2003 to read:

- Licensing Authority Policy Statement: Section 349, Gambling Act 2005

3.3.5 –Licensing Committee Terms of Reference paragraph (c) delete the following words that were included in error 'and the making of an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption':

- (c) Where licensing matters (including policy and adoption of legislation) are to be determined by Full Council to consider the matters and make recommendations to Full Council.

Council Procedure Rules

Part 4 - Council Procedure Rules Council

- 5.2 (b) and (c) - added Lord Mayor and Deputy Lord Mayor.

- (b) elect the Lord Mayor (Chair) of Council;

(c) elect the Deputy Lord Mayor (Deputy Chair) of Council;

- 5.2 (g) - deleted reference to Table 1;
- 5.3 - Scrutiny Management Board amended to Scrutiny Management Committee.
- 10.1 - 10.00 a.m. amended to 12.00 noon.
- 13 (b) add the words 'The Council can commission further investigation into the matter, for example by a relevant Committee, individual Cabinet Member or Executive Director':

b) Petitions requiring a Council Debate

A petition containing 5,000 signatures or more will trigger a public debate by Full Council. Seven working days notice submitted to the Head of Democratic Services should be given to ensure Members have adequate preparation time. A time limit of 40 minutes will be available for public debate to include three minutes for the lead petitioner to address the Council on the subject of the petition and subsequently within the overall time frame to answer any questions from Members. If the subject matter is within the Council's remit, Council can decide to take the action the petition requests, or not to take the action requested for reasons put forward in the debate. If the matter is one that falls under the remit of the Executive, Full Council can decide whether or not to submit recommendations as to how the final decision should be made. The Council can commission further investigation into the matter, for example by a relevant Committee, individual Cabinet Member or Executive Director.

- 16.8 - deleted.
- Renumbering from paragraph 22.

Access to Information Procedure Rules

Part 4 - Access to Information Procedure Rules Council

- 5 (b) - added "in accordance with these Rules" for consistency.

b) where an item is added to an agenda in accordance with these Rules, copies of which are open to inspection by the public, copies of the item (and of the revised agenda) and copies of any report for the meeting relating to that item, shall be available for inspection for the time the item was added to the agenda.

- 20.1 - reference to Rule 18 amended to Rule 19.

Scrutiny Procedure Rules

Part 4 - Scrutiny Procedure Rules Council

- 16 (d) – inclusion of "the Budget and Policy Framework, refer the matter, with".

'(d) if, but only if (having taken the advice of the Monitoring Officer and/or the Chief Finance Officer), the Committee determines that the decision is wholly or partly outside the Budget and Policy Framework, refer the matter, with any recommendations, to the Council after following the procedures in the Budget and Policy Framework Procedure Rules. Only in this case is there a continuing bar on implementing the decision.'

- Renumbering paragraph 18 to 17 and subsequent renumbering of paragraphs

Area Committee Procedure Rules

Part 4 - Area Committee Procedure Rules Council

2.5 - Vice Chair amended to Deputy Chair.

Part 5 - Whistleblowing Policy (within the Officer's Code of Conduct)

In Appendix C of the Whistleblowing Policy:-

- substitute "Lynne Bird Director of Legal Services" for "Deborah Holmes Interim Director of Legal Services"
- add "Lynne Bird Director of Legal Services 34018" under the 'Legal' heading under the Whistleblowing Co-ordinators.

Management Structure

Part 7 - Management structure

- Executive Director Children and Young People amended to ' Executive Director Children, Young People and Families'.
- Relocate 'Sustainable Development' and Climate Change and Environment Strategy from the list of the Deputy Chief Executive's responsibilities to the Executive Director Place

LYNNE BIRD

SIGNED..... *L. P. Bird*

DATED..... *31 - January 2011*

RECORD OF DELEGATED DECISION

Record of Decision of the Director of Legal Services Lynne Bird – 2734018

Dated 1.4.2011

Subject Minor Changes to the Constitution

Reasons The changes have been made to clarify the provisions of the constitution. The reference to 'Sub Committees' at Part 2 Articles of Constitution 4.02 (j) and Part 3 Responsibility for functions 3.3.5 shall be deleted. Full Council shall determine composition, terms of reference of, and appointments to Committees; Committees shall determine composition, terms of reference of, and appointments to Sub Committees. The terms of reference of the Licensing Committee have been clarified.

Recorded Decision

In accordance with the authority delegated to the Director of Legal Services by Council on 5th January 2011 to make minor and consequent changes to the Constitution, I have after consultation with the Lord Mayor on 1 April 2011 authorised the changes recorded below, which will come into immediate effect and will be reported back to Full Council.

Part 2 - Articles of the Constitution

4.02 (j) agreeing or amending the terms of reference for Committees and Sub-Committees (other than committees of the Executive), deciding on their composition and making appointments to them;

(j) Shall be amended to read as follows:

4.02 (j) agreeing or amending the terms of reference for Committees (other than committees of the Executive), deciding on their composition and making appointments to them;

Part 3 -Responsibility for Functions

3.3.5 The following non- executive functions have been delegated to Council committees.

A Committee may further delegate to a Sub Committee or Council Officer.

A Sub Committee may further delegate to a Council Officer.

The Full Council will, at its Annual Meeting, decide the constitution, membership, terms of reference and Chair and Deputy Chair of:-

- (a) each Committee (except for those matters relating to Area Committees (Community Assemblies) which are set out in legislation), and
- (b) such Sub Committee as it decides to establish

3.3.5 Shall be amended to read as follows:

3.3.5 The following non- executive functions have been delegated to Council committees.

A Committee may further delegate to a Sub Committee or Council Officer. A Sub Committee may further delegate to a Council Officer.

The Full Council will decide the constitution, membership, terms of reference and Chair and Deputy Chair of each Committee (except for those matters relating to Area Committees (Community Assemblies) which are set out in legislation).

Part 3 - Responsibility for Functions

LICENSING COMMITTEE

Terms of Reference

- (b) Except where by law or this Part of the Constitution they are functions reserved to Full Council, or where by virtue of this Constitution responsibility lies elsewhere, to exercise the functions of the Council whether as licensing authority under the Licensing Act 2003 and Gambling Act 2005 or otherwise, with regard to licensing matters under relevant legislation (including bye laws), conferring upon the Council powers and duties relating to such matters, as well as any incidental steps deemed necessary or desirable and, in particular:-
 - (i) to exercise and enforce the Council's licensing functions including but not limited to those listed in Table 1 below;
 - (ii) to consider and determine any policy of the Council in relation to the powers and duties within its terms of reference.

(b) (ii) Shall be amended to read as follows:-

- (ii) to consider and determine any plan, strategy or other policy of the Council specific to the powers and duties within its terms of reference

Lynne Bird

Signed..... *L. P. Bird*

Date..... *1. 4. 11*

RECORD OF DELEGATED DECISION

Record of Decision of the Director of Legal Services Lynne Bird – 273 4018

Dated 12 May 2011

Subject Minor Changes to the Constitution

Reasons The changes have been made to clarify the provisions of the Constitution.

Recorded Decision

In accordance with the authority delegated to the Director of Legal Services by Council on 5th January 2011 to make minor and consequent changes to the Constitution, I have after consultation with the Lord Mayor on 12 May 2011 authorised the changes recorded below, which will come into immediate effect and will be reported back to Full Council.

Part 4 – Council Procedure Rules

Paragraph 15.1 sets out the process for public questions and petitions at Council meetings but is not clear that the one hour allocated includes petitions.

The paragraph reads:

15 Public Question Time and Petitions

15.1 At Council Meetings

- (a) A period of up to one hour shall be allocated at each ordinary meeting of the Council for written or oral questions submitted by members of the public on matters relating to the City of Sheffield or the services provided by the Council to be answered by the Chair of the Cabinet or the appropriate Cabinet member.**

The paragraph shall be amended to read:

- (a) A period of up to one hour shall be allocated at each ordinary meeting of the Council for the presentation of ordinary petitions and for written or oral questions submitted by members of the public on matters relating to the City of Sheffield or the services provided by the Council to be answered by the Chair of the Cabinet or the appropriate Cabinet member.**

Part 4 - Scrutiny Procedure Rules

Paragraph 16 relating to Call-in does not make it clear that Area Committee Executive decisions are subject to Call-in.

The paragraph reads:

16. Call-In

The decision records in respect of all Executive meetings or Committees of the Executive, Individual Cabinet Member decisions and Officer Key Decisions will normally be published within two days of the meeting and copies will be made available to each member of the Council and to the statutory education representatives.

The paragraph shall be amended to read:

16. Call-In

The decision records in respect of all Executive meetings or Committees of the Executive, Area Committee Executive decisions, Individual Cabinet Member decisions and Officer Key Decisions will normally be published within two days of the meeting and copies will be made available to each member of the Council and to the statutory education representatives.

Part 4 - Scrutiny Procedure Rules

To provide greater clarity with regard to the call-in definition of an urgent item of business in paragraph 17 (1) (b) that deals with the removal from the call-in process ("fast track").

The paragraph reads:

17. Call-in and Urgency

- (1) Removal from Call-in Process ("fast track")
 - (a) A decision cannot be called in for scrutiny if a minimum of three officers, comprising an Executive Director and two Statutory Officers or, in the case of a report of the Chief Executive, that officer and one other Statutory Officer, in consultation with the appropriate Cabinet Portfolio Member or the Chair of the Cabinet, sign and certify that an item of business is urgent and that its delay for scrutiny would significantly prejudice the delivery of Council services.

- (b) The definition of an urgent item of business is considered to be something that is unforeseen or unanticipated, the failure to deal with which promptly would cause administrative, financial, or other difficulties to either the individual(s)/ organisations(s) concerned and/or the Council so that it would clearly be in the interests of the individual(s)/organisation(s) and/or the Council and consistent with the Council's fiduciary and legal obligations to deal with the matter expeditiously.
- (c) In these circumstances, the item will be "fast tracked" unless it is a key decision in which case it will be taken in accordance with Rule 16 of the Access to Information Procedure Rules but it will still be open to the Scrutiny Committee, not only to examine this decision in retrospect, but also to examine the reason for a certificate being issued.

Paragraph 17(b) shall be amended to read:

- (b) The definition of an urgent item of business is considered to be something where a failure to deal with or implement it promptly would cause administrative, financial or other difficulties to the individual(s)/ organisations(s) concerned and/or the Council; so that it would clearly be in the interests of those individual(s)/ organisation(s) and/or the Council and consistent with the Council's fiduciary and legal obligations to deal with the matter expeditiously.

Part 4 - Council Procedure Rules

Section B (Miscellaneous Matters) refers in B1 (2) to the "Assistant Chief Executive, Legal and Governance". As that post no longer exists the post title needs amending.

The paragraph reads:

B) MISCELLANEOUS MATTERS

B1 Officers

- (2) For the purposes of Section 5 of the Local Government and Housing Act 1989, "the Monitoring Officer" shall be the Assistant Chief Executive, Legal and Governance.

Paragraph B1 (2) shall be amended to read:

- (2) For the purposes of Section 5 of the Local Government and Housing Act 1989, "the Monitoring Officer" shall be the Deputy Chief Executive.

Part 4 – Budget and Policy Framework Procedure Rules

There are references to the "Financial Framework" in paragraphs 1, 2 (j) and 5 but the Financial Framework has been called the "Financial Regulations" since 2009. Also there are a number of references in paragraph 7 to the "Head of Legal Services" but this title needs to reflect the current designation of "Director of Legal Services".

Paragraphs 1, 2 (j) and 5 shall be amended to read:

1. The framework for executive decisions

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a Budget or a Policy Framework is in place, it will be the responsibility of the Cabinet to implement it.

The arrangements for the management of the City Council's Budget are set out in the Financial Procedure Rules (The Financial Regulations) which appear later in this part of the Constitution. The arrangements shall also be subject to the financial requirements relating to Key Decisions as defined in Article 13 of this Constitution.

2. (j) In approving the Corporate Plan, Revenue Budget and Capital Programme, the City Council will also specify the degree of in-year changes which may be undertaken by the Cabinet to:

- the Corporate Plan; and/or
- the rules relating to virement within the Revenue Budget and Capital Programme, as set out in the Financial Regulations and associated Codes of Practice (see (5) below).

Any other changes to the Corporate Plan, Revenue Budget or Capital Programme are reserved to the City Council.

5. Virement

The rules relating to virement within the Revenue Budget and Capital Programme are set out in the Financial Regulations and associated Codes of Practice.

Paragraph 7 shall be amended to read:

7. Call-in of decisions contrary to, or not wholly in accordance with, the approved Budget and Policy Framework (Corporate Plan, Revenue Budget or Capital Programme)

Where a Scrutiny Committee considers that a decision is, or would be, contrary to, or not wholly in accordance with, the City Council's Policy Framework, Corporate Plan, Revenue Budget or Capital Programme, then it will seek advice from the Director of Legal Services and the Director of Corporate Resources.

In respect of functions which are the responsibility of the Cabinet, the Director of Legal Services and/or the Director of Corporate Resources's report(s) will be to the Cabinet with a copy to every Member of the City Council. The Cabinet must meet to decide what action to take in respect of the Director of Legal Services' and/or the Director of Finance's report(s) and to prepare a report to the City Council if the Director of Legal Services or the Director of Corporate Resources conclude that the decision is, or would be, a departure; or to the Scrutiny Committee if the Director of Legal Services and Director of Corporate Resources conclude that the decision is not, or would not be, a departure.

If the decision has not yet been taken, or has been taken but not yet implemented, and the advice from the Director of Legal Services or the Director of Corporate Resources is that the decision is, or would be, contrary to, or not wholly in accordance with, the City Council's Corporate Plan, Revenue Budget or Capital Programme, the Scrutiny Committee may refer the matter to the City Council. In such cases, no further action will be taken in respect of the decision or its implementation until the City Council has met and considered the matter. The City Council will meet within 7 days of the request by the Scrutiny Committee. At the meeting, it will receive a report on the decision or proposals and the advice of the Director of Legal Services and the Director of Corporate Resources. The City Council may either:-

- (i) approve the decision as being in accordance with the Corporate Plan, Revenue Budget or Capital Programme, in which case no further action is required except that a copy of the Council's decision is circulated to all Members in the usual way; or
- (ii) accept that the decision is, or would be, contrary to, or not wholly on accordance with, the Corporate Plan, Revenue Budget or Capital Programme, and require the Cabinet to reconsider the matter in accordance with the advice of the Director of Legal Services and the Director of Corporate Resources.

Part 2 – Articles of the Constitution

To clarify in Article 12 that the statutory role relating to Adults and Children's social services is the responsibility of the relevant Executive Director.

Paragraph 12 reads:

12.01 Management Structure

- (a) **General.** The Full Council may engage such staff (referred to as officers) as it considers necessary to carry out its functions.
- (b) **Chief Officers.** The Full Council will engage a person for the post of Head of the Paid Service (known as the Chief Executive) and other Chief Officers (Executive Directors) to form the Executive Management Team. The Council will also engage Heads of Service (or Directors). The Head of the Paid Service will maintain a description of these posts and of the overall management structure of the Council in Part 7 of this Constitution.

- (c) **Statutory Officers**

In addition to the Head of the Paid Service, the Council will designate officers, as identified in Part 7 of this Constitution, to the following posts:

Monitoring Officer, under the Local Government and Housing Act 1989

Chief Finance Officer, under Section 151 of the Local Government Act 1972

Director of Children's Services, under the Children Act 2004

Director of Adult Social Services under the Local Authority Social Services Act 1970

Paragraph 12.01 (c) shall be amended to read:

- (c) **Statutory Officers**

In addition to the Head of the Paid Service, the Council will designate officers, as identified in Part 7 of this Constitution, to the following posts:

Monitoring Officer, under the Local Government and Housing Act 1989

Chief Finance Officer, under Section 151 of the Local Government Act 1972

Director of Children's Services, under the Children Act 2004

Director of Adult Social Services under the Local Authority
Social Services Act 1970

(The Director of Adult Services and Director of Children's
Services will be the relevant Executive Director with
responsibility for Adults and Children respectively).

Lynne Bird

Signed..... *L.P. Bird*

Date..... *12-5-11*