

# **Report of the City Solicitor to the meeting of Governance and Audit Committee to be held on Thursday 22 April 2021**

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**Subject:**

**Review of the Constitution**

**Summary statement:**

**This report provides Members with details of proposed amendments to the Constitution for recommendation to Council.**

**Equality & Diversity**

**There are no equality and diversity implications.**

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## **1. SUMMARY**

- 1.1 This Report provides Members with details of proposed amendments to the Constitution for recommendation to Council.

## **2. BACKGROUND**

- 2.1 Article 14 of the Constitution requires the Monitoring Officer to maintain an up-to-date version of the Constitution and is authorised to make such amendments to the Constitution and related documents as may be necessary, but not including any changes of substance, to reflect and take account of changes in legislation, guidance, Council policy, decisions of the Council and Executive, and drafting changes and/or improvements.
- 2.2 Article 17 of the Constitution requires the Monitoring Officer to take steps to make herself aware of the strengths and weaknesses of the Constitution and make recommendations for improvement. Changes to the Constitution can only be made following approval by the full Council or by the Monitoring Officer, as set out in 2.1 above.
- 2.3 This report concerns proposals for amendments to the Constitution.
- 2.4 As members are aware, there are currently interim amendments in place to Council Standing Orders (“Interim Amendments to Council Standing Orders” and “Further Interim Arrangements to Standing Orders”) to reflect the provisions of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, which allow meetings of local authorities to be held remotely. Those regulations do not apply to any meeting which is held after 6 May 2021 and the Government has indicated that they will not be renewed. The Interim Amendments and the Further Interim Amendments therefore cease to apply after that date. On the face of it therefore all meetings after 6 May will have to take place in person. However, a legal challenge has been brought by Hertfordshire County Council, working with the Association of Democratic Services and Lawyers in Local Government, to seek a declaration from the High Court that councils already have powers to hold remote meetings on the basis of contemporary interpretations of terms in the Local Government Act 1972. That case is expected to be heard before end of April 2021. Of course if the outcome is known before the meeting of this Committee on 22 April 2021, an update will be provided at the meeting. Depending on the outcome of the court case, it is possible that further amendments to the Constitution may need to be made to reflect the up to date legal position.

## **3. PROPOSED AMENDMENTS TO THE CONSTITUTION**

The proposed amendments to the Constitution fall into the following categories:

1. Proposed amendments in relation to replacing the Housing and Non Domestic Rates Appeals Panel, the Education Appeals Panel, the Social Services Appeals Panel, the Hackney Carriage and Private Hire Panel and the Miscellaneous Licensing Panel with a Bradford District Appeals Panel following recommendations of the Regulatory and Appeals Committee at its meeting on 5 March 2020 – these are set out in appendix 1.
2. Proposed amendments required to Article 12B of the Constitution in relation to the composition, quorum and functions of the Chief Officer Disciplinary Committee – these are set out in appendix 2. These amendments arise from the proposed amendments to the Officer Employment Procedure Rules in Part 3H in relation to the disciplinary procedures for the Chief Executive, Monitoring Officer and Chief Finance Officer set out in appendix 3. The proposed amendments relate to the removal of references to two Independent Persons forming part of the membership of the Chief Officer Disciplinary Committee when considering whether to recommend the dismissal of the Chief Executive, Monitoring Officer or Chief Finance Officer to full Council.

In 2015 the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”) came into force which required a minimum of two Independent Persons to be involved when the dismissal of certain statutory officers was being considered. Amendments were made to the Council’s Constitution at that point, to include two Independent Persons in the membership of the Chief Officer Disciplinary Committee when the Committee was considering recommending dismissal of one of these three statutory officers. Subsequently, changes were agreed nationally to the model disciplinary procedure in the JNC conditions for Local Authority Chief Executives (these changes also apply to Monitoring Officers and Chief Finance Officers) which indicate that the Independent Persons (a minimum of two) should conduct their consideration/investigation separately by way of an Independent Panel, appointed under s.102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority in accordance with the Regulations.

3. Proposed amendments to the Officer Employment Procedure Rules in Part 3H of the Constitution in relation to the disciplinary procedures for the Chief Executive, Monitoring Officer and Chief Finance Officer - these are set out in appendix 3. These reflect the changes to the arrangements outlined in paragraph 2 above. The proposed amendments make it explicit that when considering the proposed dismissal of the Chief Executive, Monitoring Officer or Chief Finance Officer, full Council must have regard not only to the recommendations of the Chief Officer Disciplinary Committee but also any advice, view or recommendations of the Independent Panel, appointed under S102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers in accordance with the 2015 regulations. In addition, the proposed amendments remove the requirement to hold a preliminary investigation, as this stage is not referred to in the Regulations

**4. FINANCIAL & RESOURCE APPRAISAL**

The resources required to amend the Constitution can be met from existing provision.

**5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

The proposed amendments ensure that the Constitution is kept up- to- date.

**6. LEGAL APPRAISAL**

Legal implications are reflected in this report and the Appendices to this report.

**7. OTHER IMPLICATIONS**

None

**8. EQUALITY & DIVERSITY**

None

**8. NOT FOR PUBLICATION DOCUMENTS**

None

**9. RECOMMENDATIONS**

9.1 That the proposed amendments to the Constitution set out in Appendices 1-3 of this report be recommended to Council for adoption and implementation.

9.2 That the City Solicitor be granted delegated authority to make consequential amendments to the Constitution as a result of any recommendations approved by full Council.

9.3 That the City Solicitor ensures that any agreed amendments are implemented.

9.4 That in view of the expiry of the remote meetings regulations at the beginning of May and the court challenge referred to in 2.4 above, authority be delegated to the City Solicitor in consultation with the Chair of this Committee to make any necessary amendments to Council Standing Orders to permit the Annual Meeting to take place safely.

**10. APPENDICES**

- Appendix 1 Proposed amendments to Article 8 – Regulatory and Appeals Committee Panels
- Appendix 2 Proposed amendments to Article 12B in relation to the composition, quorum and functions of the Chief Officer Disciplinary Committee
- Appendix 3 Proposed amendments to the Officer Employment Procedure Rules in Part 3H of the Constitution

**11. BACKGROUND DOCUMENTS**

JNC Chief Executives Handbook