

WEST NORTHAMPTONSHIRE COUNCIL

CABINET

8TH JUNE 2021

LEADER OF THE COUNCIL: COUNCILLOR JONATHAN NUNN

Report Title	Report of Amendments to the Constitution
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List of Appendices

Appendix 1 – Report of the Amendments to the Constitution

1. Purpose of Report

- 1.1 The purpose of this report is to make amendments to the constitution to enable decisions to be made which are necessary for the delivery of services.
- 1.2 To identify the need for a further Constitutional review by the Democracy and Standards Committee to consider wider improvements to the Constitution.

2. Executive Summary

- 2.1 This report is the same report which was recently approved by Council in relation to non-executive functions. This report enables those matters for example the changes to the Constitution which relate to Joint Arrangements which are Executive matters to be approved by the Executive.

3. Recommendations

3.1 It is recommended that:

- 3.1.1 The changes to the Constitution already made by the Monitoring Officer under her delegated power be noted.
- 3.1.2 The proposed changes to the Constitution set out in Appendix 1 be agreed
- 3.1.3 Delegated power be granted to the Monitoring Officer to amend the Constitution to give effect to the agreements for joint arrangements with LGSS (Cambridgeshire, Bedford, Milton Keynes) Northampton Partnership Homes and North Northamptonshire Council.
- 3.1.4 A further review of the Constitution and Member Officer Protocol be carried out by the Democracy and Standards Committee and referred to a future meeting of Council.

4. Reasons for Recommendations

The proposed reasons for the decisions are:

- a) The Council must have a Constitution and that document must be kept up to date.*
- b) Executive delegations and amendments require approval by the Executive as all Executive functions sit solely with the Executive.*
- c) The proposed changes will support decision making and enable the Council to carry out its functions.*

5. Report Background

The West Northamptonshire Constitution was developed over a relatively short period to ensure that the new Council had governance arrangements in place. It was recognised at the approval stage that further review of the Constitution would be necessary once the new Council had been elected.

6. Changes to the Constitution made by the Monitoring Officer

6.1 **The Monitoring Officer has powers to amend the Constitution as follows:**

- 6.1.1 To make consequential amendments to the Constitution to give effect to a lawful decision; as a direct consequence of a change made outside the council eg a change in legislation and to correct an error or resolve an inconsistency. All such changes to be reported to Council.
- 6.1.2 To Interpret the Constitution where the meaning is uncertain or there is a dispute about its meaning.

6.2 This provision enables necessary changes to be made to ensure consistency and accuracy in the terminology.

6.3 Changes made to the Constitution under this power since Shadow Council on 10th March have been as follows:

6.3.1 The addition of the Director of Public Health to the Areas of Responsibility section of the 9.2 Scheme of Delegation to be consistent with the Management Structure Chart in Part 9.1 of the Constitution.

Amendments to the Contract Procedure Rules

6.3.2 Contracts £250,000 to £1m were to be signed by the Executive Director of Finance – this would be impracticable and so the words ‘or his representative’ were added to enable agreements to be signed by staff within Financial Services.

6.3.3 Sealing was identified as being required on contracts over £100,000 this was a typographical error as it was intended to say £1,000,000 to make it consistent with other parts of the Constitution.

Legislative Change

6.3.4 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392 expired on 7th May 2021 and are no longer extant legislation and the sections of the Constitution in particular Rule 53 and Schedule 1 to the CPR have been removed from the Constitution.

6.3.5 The Northamptonshire (Structural Changes Order 2020) provided for interim arrangements for West Northamptonshire Council during the interim period including the Shadow Executive and Shadow Leader – the interim arrangements are set out in Part 10 of the Constitution. The interim arrangements expired on 10th May 2021 and therefore Part 10 and all references to the interim period and shadow arrangements have been removed from the constitution.

6.4 These changes were made by the Monitoring Officer under her delegated power.

7. Proposed Changes to the Constitution

7.1 A number of matters have been identified as necessary changes for the Constitution to operate effectively, as set out below:

Licensing Committee

7.1.1 The Licensing Committee is required to have two separate committees a general committee and a ... committee which must be separately constituted. These can have the same membership and can follow each other in terms of timing but they must be separate committees. It is therefore proposed to establish a separate Licensing Committee as set out in Appendix 1.

7.1.2 The Licensing Committee has powers which overlap with the officer delegation some changes are necessary to ensure that it is clear which powers are delegated to and will be exercised by officers and which are retained by the Committee. If the Committee wishes to make decisions delegated to officers, it can remove the delegation on individual cases.

Key Decisions Definition

7.1.3 The definition of the Key Decision within the constitution is the statutory definition as this avoids the need to amend the definition if the law changes. It is however helpful to have guidance which sits alongside the statutory definition particularly in relation to the financial value which should be regarded as significant. It is proposed that guidance on the financial value is at £500,000. It is therefore recommended that members approve the guidance as set out in the Appendix 1.

Joint Arrangements Agreements

7.1.4 Agreements have been inherited or developed which set out shared arrangements which require delegations under s101 Local Government Act 1972 to external organisations to carry out powers on behalf of the council. These are as follows:

7.1.4.1 LGSS Partnership

- NCC entered into a revised agreement shortly before vesting day which abolished the previous Joint Committee and put in place partnership arrangements. The agreement revised the delegations required by partner authorities. These partnerships require constitutional changes to enable delegations to be in place. These delegations were not recorded in the Northamptonshire County Council constitution at the time the West Northamptonshire Council was drafted and were therefore not carried across. Delegations need to be included within the constitution to give effect to this agreement.

7.1.4.2 NPH

- Northampton Borough Council had a delegation through a management agreement with Northampton Partnership Homes, the agreement requires a number of delegations to NPH to carry out functions on behalf of the Council and these are set out in the agreement. The Constitution of Northampton Borough Council did not reflect these delegations and they have therefore not been carried into the West Northants Constitution. Delegations need to be included within the Constitution to give effect to this agreement.

7.1.4.3 North Northamptonshire

- The Council agreed the Inter Authority Agreements through its executive in March 2021 however some of the arrangements for the delivery of services, in particular those relating to Highways required delegations to be included within the constitution and these were agreed by the executive but require non-executive approval.

Delegated power is therefore requested to the Monitoring Officer to draft delegations in each case to give effect to the existing agreements with LGSS, NPH and North Northamptonshire Council as necessary.

Powers to the Monitoring Officer

- 7.1.5 The Constitution includes a power to enable the MO to seal contracts more than £1 million but land deeds require sealing and there is no separate specific power for the MO to attest deeds for land and property. This amendment is set out in Appendix 1.
- 7.1.6 Parish Councils who have insufficient members are unable to meet. The Council has a power to appoint members of a parish council on a temporary basis so that they can act and are quorate. This power sits under s91 Local Government Act 1972. This power should be delegated to the MO so that the decision to appoint members can be made as necessary and prior to the annual meetings of parishes to enable parish councils to continue to act.

8. Review

- 8.1 The proposed changes set out the immediate decisions necessary to provide lawful decision making.
- 8.2 Further review will enable the Constitution to be further improved to reflect the wishes of the new Council during the first year of its operation. Future review will be carried out and any changes recommended by the Democracy and Standards Committee.

9. Implications (including financial implications)

- 9.1 Resources and Financial
 - 9.1.1 There are no resources or financial implications arising from the proposals.
- 9.2 Legal
 - 9.2.1 The proposed changes to the Constitution ensures that the Council complies with various statutory obligations.
- 9.3 Risk
 - 9.3.1 There are no significant risks arising from the proposed recommendations in this report.
- 9.4 Consultation
 - 9.4.1 There has been no formal consultation in relation to this report.
- 9.5 Climate Impact

9.5.1 No impacts have been identified.

9.6 Community Impact

9.6.1 No specific impacts have been identified.

10. **Background Papers**

10.1 There are none.

Report 5.1.1-5.1.2 – Licensing committee change to constitution:

Part Four - Committees

“4.3 Regulatory Committees

4.3.1 Alcohol and Gambling Licensing Committee

Members 15: Quorum 5. Appointments will be made having regard to the rules on political proportionality.

- a. The Alcohol and Gambling Licensing Committee is responsible for determining licensing policy and applications across a wide range of local authority licensing functions in accordance with its role and functions set out below.
- b. Members shall not participate as Members of the Alcohol and Gambling Licensing Committee or any of its sub-committees in relation to Licensing Act and Gambling Act matters until they have received appropriate training in respect of their functions on the committee or sub-committees.

4.3.1.1 Role and Functions

- To deal with all the licensing functions of the Council under the Licensing Act 2003 and the Gambling Act 2005 (except such functions as cannot be delegated).
- For the avoidance of doubt, the Alcohol and Gambling Licensing Committee shall exercise an advisory role in relation to executive functions.
- To approve licensing policy (except matters specifically reserved by statute to Council or the Cabinet).
- The Alcohol and Gambling Licensing Committee has the power to appoint such sub-committees as may from time to time be necessary to discharge its duties.
- Sub-committees will have full delegated powers to determine contested applications and adjudicate over the review of licences.
- Each sub-committee will comprise three Members drawn from the Alcohol and Gambling Licensing Committee.

4.3.1.2 Sitting as a sub-committee comprising 3 Members (drawn from the full Committee on an ad-hoc basis):

- to hold hearings to determine licensing matters where such hearings are required by the Licensing Act 2003 (“the 2003 Act”) and associated regulations;
- to determine applications for a provisional statement or the grant, variation, or transfer of a premises licence under the Gambling Act 2005 (“the 2005 Act”) where a representation has been received or where the Executive Director of Place and Economy proposes that the power under Section 169(1)(b) be exercised to exclude certain licence conditions;
- to determine all matters in relation to the review of a premises licence under the 2005 Act;

- to determine applications for club gaming and club machine permits under the 2005 Act where objections have been received and matters relating to the cancellation of club gaming and club machine permits or licensed premises gaming machine permits;
- to determine all matters relating to temporary or occasional use notices under the 2005 Act where objections have been received.

4.3.2 Taxi and General Licensing Committee

Members 15: Quorum 5. Appointments will be made having regard to the rules on political proportionality.

- a. The Taxi and General Licensing Committee is responsible for determining licensing policy and applications across a wide range of local authority licensing functions in accordance with its role and functions set out below.
- b. Members shall not participate as Members of the Taxi and General Licensing Committee or any of its sub-committees until they have received appropriate training in respect of their functions on the Committee or sub-committees.

4.3.2.1 Role and Functions

- To deal with all functions relating to licensing and registration as set out in Schedule 1 of the Functions Regulations.
- To deal with all functions relating to health and safety under any relevant statutory provision within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as an employer.
- For the avoidance of doubt, the Licensing Committee shall exercise an advisory role in relation to executive functions, such as the fixing of fares for hackney carriages.
- To approve licensing policy (except matters specifically reserved by statute to Council or the Cabinet).
- The Taxi and General Licensing Committee has the power to appoint such sub-committees as may from time to time be necessary to discharge its duties.
- Sub-committees will have full delegated powers to [determine contested applications and adjudicate over the review of licences].
- Each sub-committee will comprise three Members drawn from the Taxi and General Licensing Committee.

4.3.2.2 Sitting as a Panel comprising 3 Members (drawn from the full Committee on a politically proportionate basis):

- to determine all matters relating to the grant, renewal or review of taxi licences (which, for the avoidance of doubt, shall include hackney carriage and private hire vehicle driver and operator licences) where evidence exists as to whether the applicant is a fit and proper person and to suspend or revoke taxi licences in accordance with legislation;
- in cases where the Head of Service has on public safety grounds revoked with immediate effect a taxi licence, to determine an application for the grant of a new licence submitted by the driver/operator whose earlier licence was revoked;

- to determine all matters relating to street trading consents where representation or objections have been received.
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Report 5.1.3 - Key Decision definition and guidance;

Part Five – Executive

Section 5.4 Access to Information Procedure Rules, A. Access to Information Procedures Rules);

Definition of Key Decision and procedure before taking a Key Decision

- 10.1 A Key Decision means an executive decision, which is likely:
- a. to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
 - b. to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Council.
- 10.2 In deciding what amounts to 'significant' in relation to paragraph 10.1a above, a guidance threshold figure of £500,000 is suggested, but discretion should be used to determine whether the amount in question is significant with regard to the particular budget area to which the decision relates.
- 10.3 Subject to Rules 12 or 13, a Key Decision cannot be taken unless:
- a. a notice (“the Forward Plan”) has been published in connection with the matter in question and made available to the public at the main office(s) of the Council;
 - b. at least 28 clear calendar days have elapsed since publication of the Forward Plan; and
 - c. where the decision is to be taken at a meeting of the Cabinet, including a committee or Sub-Committee of the Cabinet, public notice of the meeting has been given under Rule 2 above.”
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Part 8 – Councillors

Section 8.4 Member Officer Protocol

7. Member Enquiries

7.1 Members have the right to a timely response to enquiries and complaints. Member's enquiries should be directed to the Members Enquiry Service provided by Customer Services. Enquiries directed to individual officers will not be monitored and this may lead to a delay in response times. The Member Enquiry Service will ensure that the enquiry is logged and response times are monitored.

7.2 If a member does not receive a response or is not satisfied with the quality of the response, they have received they should direct their concerns in the first instance to the Assistant Director of Customer Services.

8. When Things go Wrong

8.1 From time to time the relationship between councillors and officers may break down or become strained. If this is the case, matters may be resolved informally, or through conciliation by an appropriate senior manager or councillor. It is hoped that most issues will be dealt with informally where possible.

8.2 Procedure for Officers

- a. Complaints against councillors must follow the Code of Conduct processes found elsewhere in the Constitution.
- b. Before an officer initiates a formal complaint under the Code of Conduct, he/she should consider raising their concerns about the behaviour of a given councillor with the Monitoring Officer. Officers also have recourse to the Whistleblowing Procedure, or to the Council's Monitoring Officer, as appropriate to the circumstances. Complaints will be taken through the appropriate process, including investigation, under the Council's arrangements for Code of Conduct complaints.

8.3 Procedure for Councillors

- A member who is concerned about the responses or services on behalf of a constituent should direct their concern to the Assistant Director Customer Services in the first instance.
- If a member is concerned about the individual behaviour of a member of staff the member should approach the line manager of the member of staff in the first instance.
- In the event that a councillor remains dissatisfied with the conduct, behaviour or performance of an officer, the matter should be raised with an appropriate Corporate Director, usually one with authority over the officer concerned. Where the officer concerned is a Corporate Director, the matter should be raised with the Chief Executive.
 - i. Where the officer concerned is the Chief Executive, the matter should be raised with the Monitoring Officer. If the matter cannot be resolved informally the Councillor can raise a formal complaint under the Officer Code of Conduct which

can in appropriate cases lead to the application of the Council's disciplinary procedures.

Part 9 – Officer Scheme of Delegation

Report 5.1.5-5.1.6 - Powers to the Monitoring Officer:

Section 9, Officers, Areas of Responsibility, Exceptions – Legal Exceptions’

"To attest the seal of the Council (and to authorise any other Solicitor of the Council to attest the seal) and hold a book kept for the purpose that contains a consecutively numbered entry of every sealing initialled by the person who has attested the seal.	Director of Legal and Democratic
<i>Under section 91 of the Local Government Act 1972 to appoint by order persons to fill vacancies in the office of parish or community councillor.</i>	Director of Legal and Democratic"