

	REPORT TO CABINET TO BE HELD ON 15 FEBRUARY 2011 AND COUNCIL ON 25 FEBRUARY 2011
	Key Decision NO Forward Plan Ref No N/A
Corporate Priority Improving the Council	Cabinet Portfolio The Leader Holder

REPORT OF: HEAD OF LEGAL AND SUPPORT SERVICES 11/107

WARDS AFFECTED: All

SUBJECT: REVISIONS TO THE CONSTITUTION

RECOMMENDATION (S):

That Cabinet recommend to Council:

- (a) The amendments to the Council Procedure Rules relating to the appointment of the Leader identified at Appendix 1.
- (b) The amendments to Article 7 relating to the role of the Executive identified at Appendix 2.
- (c) The amendments to the Scheme of Delegation to Individual Cabinet Members (Schedule 2) and the Scheme of Delegation to Officers (Schedule 3) identified at Appendix 3.
- (d) The consequential and clarifying amendments to Articles 4 and 8, and 10 at Appendix 4.
- (e) The amendments to the Access to Information Rules at Appendix 5 relating to the management of exempt information.
- (f) The amendments to the Additional Overview and Scrutiny Committee and Area Committee Rules identified at Appendix 6.
- (g) The introduction of the External Appointments protocol identified at Appendix 7.

REASON FOR RECOMMENDATION (S):

1. The Local Government and Public Involvement in Health Act 2007 required local authorities to introduce the strong leader model of Local Government. This requires a number of amendments to the Constitution.
2. A reduction in the number of Heads of Service has been agreed with effect from 1 April, this requires amendments to be made to the scheme of delegation to officers.
3. The Southern Area Committee has given support to an arrangement under which its functions are delegated to the Southern cluster of Parish Councils and Eastfield Parish Council.
4. A separate report on the agenda proposes the adoption of the amended provisions of the Local Government (Miscellaneous Provisions) Act 1982 relating to the licensing of Sexual Entertainment Venues. This requires amendment to the Constitution and the opportunity has been taken to tidy other provisions within the delegations to Regulatory Committees.
5. Concerns in relation to the breach of confidentiality by Members of Council has led to proposals for improvements to the management of Council papers.
6. Improvements have been made to the governance of the Council's relationships with its external partners over the last two years. It is proposed to improve the appointments process for external bodies to enhance this process.

HIGHLIGHTED RISKS: If the Council's Constitution is not maintained up to date there is a risk that the Council's decisions could be challenged.

1. INTRODUCTION

- 1.1 As a consequence of the Local Government and Public Involvement in Health Act 2007 the Council is required to introduce changes to its Constitution with effect from May 2011 that introduce "Strong Leader" arrangements.
- 1.2 Following a period of consultation, at its meeting on 1 November 2010 Council agreed to introduce strong leadership arrangements with effect from the May 2011 election.
- 1.3 In September Cabinet agreed to establish a Constitutional Working Group to develop proposals for changes to the Constitution to bring before Cabinet and Council. The proposals in this report have been developed by the working group in conjunction with the Monitoring Officer. The group have taken the opportunity to address a number of issues within the Constitution in addition to the introduction of strong leadership. Those changes encompass:
 - (a) revised arrangements for the election of the Leader of Council which reflect the importance of the decision to elect a Leader for a term of four years;
 - (b) revised arrangements reflecting the delegation of all executive powers of the Council to the Leader;

- (c) provision allowing for the Leader to delegate on such powers to Cabinet, a Harbour Committee, Area Committees and by agreement with parish councils or clusters of parish councils;
- (d) clarifying provisions to update delegations to regulatory committees and address the adoption of the Local Government (Miscellaneous Provisions) Act 1982 in relation to Sexual Entertainment Venues;
- (e) revised arrangements for external appointments to provide improved governance in relation to such appointments;
- (f) revised arrangements in relation to the operation of Area Committees allowing for Area Committees to be replaced by direct arrangements with Parish Councils, where this is considered appropriate;
- (g) clarifying provisions in relation to Overview and Scrutiny call in arrangements;
- (h) improvements to the management of confidential information.

1.4 This report seeks the agreement of Full Council to the proposed changes to the Constitution.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

2.1 The proposals in this report are relevant to the objective of Improving the Council.

3. BACKGROUND AND ISSUES

3.1 The Council is required to review its Constitution at least every four years. In practice there are continuing changes to elements of the Constitution as the Council has revised its approach to the management of its business, for example in relation to the revisions to Scrutiny and Area Committees and the officer structure. The Constitution is therefore effectively kept under constant review.

3.2 Strong Leadership

3.2.1 The Local Government and Public Involvement in Health Act 2007 required Councils to introduce strong leadership arrangements. In November 2010 Council determined to adopt these arrangements with effect from May 2011. To enable this changes are required to be made to the Constitution.

3.2.2 The primary change is that Executive powers are delegated to the Leader of the Council who in turn is empowered to appoint a Cabinet to assist him or her to manage the Council. Thus the decision on the identity of Cabinet members will no longer be a matter for Council.

3.2.3 Given the significance of placing power in the hands of one individual, the working group has considered how to provide Council with the mechanisms for appointing the Leader that reflect the importance of this decision and the nature of Scarborough Borough Council. The proposals that have been brought forward through this report propose the use of a nomination process with a single transferable vote.

3.3 Scheme of Delegation

- 3.3.1 As a consequence of the loss of the Highways Agency the Council has reviewed the number of Heads of Service required to deliver its services and reduced the number by one.
- 3.3.2 Consequently changes are required to the delegations to officers to reflect the revised sub-division of functions between officers.

3.4 Access to Information

- 3.4.1 Council has experienced leaks of confidential information. On an interim basis arrangements were introduced by Cabinet in relation to Executive Reports to allow for the watermarking of documents with the name of the member who received those documents. These arrangements are proposed for formalisation and extension to working groups established by the Executive. The two key long term executive working groups, namely Corporate Finance and Strategy Group and Corporate Efficiency Board are also proposed to be identified within the Constitution, given the likelihood of the need for their longer term continuation to drive the efficiency agenda.

3.5 Changes to arrangements for appointments to External Bodies

- 3.5.1 The Council has significantly improved its guidance in relation to partnership working in recent years. However, appointments to external bodies are presently determined at Annual Council upon very limited information.
- 3.5.2 To improve the arrangements a members protocol has been prepared in conjunction with the working group for consideration.

3.6 The Local Government (Miscellaneous Provisions) Act 1982

- 3.6.1 The proposal for the adoption of this Act is included as a separate report on the agenda. Subject to agreement being given for this Act to be introduced it will require changes to the constitution.
- 3.6.2 The opportunity has been taken to tidy other provisions of the Constitution in relation to the delegations to regulatory committees.

3.7 Area Committees

- 3.7.1 A separate report on the agenda relates to the future operation of Area Committees. If the proposals within that report are adopted provision needs to be made in the constitution to allow the flexibility for the development of arrangements with Parish Councils to replace Area Committees.
- 3.7.2 The changes proposed simply facilitate subsequent change if the Executive determine to make the proposed changes.

3.8 Call-in provisions

- 3.8.1 It has been noted that the wording of the urgent call in provisions is not compliant with the Access to Information Rules. A minor amendment is proposed to ensure consistency between the arrangements and the Access to Information Rules.

4. CONSULTATION

- 4.1 The proposals have been the subject of consultation with the constitution working group.

5. ASSESSMENT

- 5.1 A number of the proposed changes are necessary to bring into effect statutory changes.
- 5.2 The assessment therefore focusses upon those parts of the Constitution that are open to alternate approaches.

5.3 The appointment of the Leader

- 5.3.1 The present arrangements for the appointment of the Leader are by simple majority of members at the annual meeting. In future the election of the Leader by Council at the first meeting after the May election is for a period of four years, and the Leader will be responsible for the exercise of all executive powers either personally or through delegation to a Cabinet he or she appoints.
- 5.3.2 Clearly there are a number of options for the election of the Leader. The Leader could continue to be elected on the day of Council by a simple majority as presently, or there could be varying requirements for nomination.
- 5.3.3 However, given the significance of this change and the duration of appointment the working group have recommended that the present arrangements be enhanced. The working group proposes that candidates for the position of Leader be nominated by a minimum of 5 members, and that a single transferable vote mechanism be used to identify the candidate with the broadest support across the entire Council.
- 5.3.4 The proposed arrangements allow for nominated Leaders to set out their case as to why they should be elected for the duration of the Council and allow members to indicate that they support no candidate. The working group considered that the adoption of this process was important to reflect the importance of this decision.

5.4 Appointments to External Bodies

- 5.4.1 The Council has significantly improved its guidance in relation to partnership working in recent years. However, appointments to external bodies are presently determined at Annual Council upon very limited information.
- 5.4.2 In furtherance of the introduction of the Member Training Strategy it is suggested that Council introduce a protocol for appointments to external bodies to encourage members to put themselves forward with a full understanding of the obligations that they are committing to and to provide better governance arrangements.
- 5.4.3 A draft protocol has been prepared for consideration and identifies external bodies which are executive responsibilities and therefore under the new

arrangements for the Leader to determine, and those which are for full Council.

- 5.4.4 It is also proposed that the term of appointment be extended to the duration of ordinary Council (ie four years) to ensure the provision of a consistent member to the external body. Given this extended term and the importance of the appointment it is proposed that members be given the opportunity to present a short summary in writing why they should be the member representing the Council.

5.5 Access to Information

- 5.5.1 The proposal is to formalise an extension to executive working groups of the current arrangements relating to the management of confidential information presented to Committee. A minor change is proposed to the temporary arrangements namely that members may either destroy confidentially any exempt documents themselves or return the documents to Council officers for destruction.

5.6 Area Committees

- 5.6.1 As explained at paragraph 3.7 the changes proposed simply facilitate subsequent change if the Executive determine to make the proposed changes.

5.7 Officer Scheme of delegation

- 5.7.1 As a consequence of the loss of the Highways Agency the Council has reviewed the number of Heads of Service required to deliver its services and reduced the number by one. The arrangements reflect the proposals included in earlier reports to the Appointments Committee and the Individual Cabinet Member.

5.8 Call-in provisions

- 5.8.1 It has been noted that the wording of the urgent call in provisions is not compliant with the Access to Information Rules. A minor amendment is proposed making clear that an urgent scrutiny meeting will be convened on five days notice where a matter is identified for urgent call in to ensure consistency between the arrangements and the Access to Information Rules.

6. IMPLICATIONS

- 6.1 Financial:
None.

- 6.2 Legal:
The Constitution is required to be kept up to date by the Monitoring Officer.

- 6.3 Other implications:
None.

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