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**CONSTITUTIONAL CHANGES**

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**Responsible Cabinet Member -  
Councillor Stephen Harker, Efficiency and Resources Portfolio**

**Responsible Director - Ada Burns, Chief Executive**

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**SUMMARY REPORT**

**Purpose of the Report**

1. This report sets out changes to the Constitution which are necessary to give effect to legislation and also summarises the changes to the Constitution that have already been made as a result of earlier reports. A slight change is also made in respect of Cabinet Portfolio responsibility.

**Summary**

2. The Council's Constitution sets out the framework for the governance and decision making of the Council. As new legislation is brought into force the Constitution needs to be updated to reflect and comply with the legislative framework.
3. New legislation means that the Council is required to make changes to permit the filming, photographing, recording, broadcasting and blogging of any meeting of the Council which is open to the public.
4. New legislation means that the Council is required to amend its arrangements in relation to access to information and the recording of delegated decisions made by officers concerning a number of categories of decision making.
5. The report sets out amendments that need to be made relating to the Scrap Metal Dealers Act 2013.
6. The report sets out amendments that are needed in respect of decision making concerning pay and severance payments for senior officers
7. The report sets out changes to the Audit Committees terms of reference because of recent CIPFA Guidance and to add responsibility for ethical values, following the discontinuance of the Standards Committee earlier this year

8. It is proposed to move the responsibility for rights of way from the Cabinet Member with the Leisure and Local Environment Portfolio to the Cabinet Member with the Transport Portfolio.
9. There are also a number of other changes that have previously been raised in other reports. Details of these changes are set out in the main body of the report.

## Recommendation

10. It is recommended that the constitution is amended as follows:

- (a) The Access to Information Procedure Rules are amended to include the rights relating to reporting, filming, photographing, recording, broadcasting and blogging of Council Meetings. The following provision to be inserted:

*'Anybody attending a meeting, that is held in public, can photograph, film, record and broadcast the meeting (or part of the meeting), including by digital and social media.'*

- (b) The Access to Information Procedure Rules are amended to make specific reference to disorderly conduct by an individual and relating to general disturbance. The following provisions to be inserted:

*'If any person interrupts or disrupts the proceedings of any meeting the person presiding shall warn him/her. If he/she continues to interrupt or disrupt the meeting the person presiding shall order him/her to leave the room where the meeting is being held. If he/she does not leave, the person presiding shall order him/her to be removed. If a member of the public persistently creates a disturbance, the person presiding may adjourn the meeting for an appropriate time'*

*'In the event of general disturbance which is disruptive of proceedings the person presiding may order the part or the room open to the public to be cleared and may adjourn the meeting for an appropriate time'*

- (c) The Council's Scheme of Delegation to Officers be amended to reflect new requirements about delegated decisions made by officers. The following provision to be inserted:

### *Written Records and Publicity*

*'The officer making a decision under delegation, from Council (rather than Cabinet) must produce a written record of any decision which:*

- (i) is a specific express (rather than general) delegation,*
- (ii) Grants a permission or licence,*
- (iii) Affects the right of an individual, or*
- (iv) Awards a contract, or Incurs expenditure which in either case materially affects the Council's financial position*

*The officer making a decision under delegation, from Cabinet must produce a written record of any decision which is sufficiently important or sensitive that the public would expect that decision to have been taken by an elected member decision making body, such as Cabinet rather than an officer using delegated powers:*

*A written decision record must be completed as soon as is reasonably practicable after the decision has been made. The decision record must be publically available for inspection and posted on the website (together with any background papers). The decision record must include, the date of the decision, the reasons, details of any alternative options considered and rejected and details of any conflict of interest declared (for instance of a Cabinet portfolio holder who was consulted).'*

- (d) Schedule 1 of the Constitution (Councils Committees) be amended to reflect the new arrangements for dealing with applications, variations and revocations of licences under the Scrap Metal Dealers Act 2013. The following to be inserted:

*'General Licensing Sub Committee*

*Darlington Borough Council Membership 3*

*Total Membership 3*

*Quorum 3*

*Protocols*

*Members are drawn from the General Licensing Committee*

*Terms of Reference*

*'To hear and determine contested applications, renewals, variations and revocations of licences under the Scrap Metal Dealers Act 2013'*

- (e) The Council's Scheme of Delegation to Officers is amended to add:

Exceptions - Finance

*'To determine charges for licensing scrap metal dealers and mobile collectors and site licences. The Director of Economic growth'*

Exceptions – Legal exceptions

*'All powers and functions in respect of the Scrap Metal Dealers Act 2013 (except contested licensing applications, variations and revocations, which are dealt with by a Sub Committee of the General Licensing Committee) Assistant Director Regulatory Services'*

- (f) The Council's Scheme of Delegation to Officers, Exceptions Table – Staff and Employment is amended to add:

*'The advertising of any posts with a salary package in excess of £100,000. Requires Council decision'*

*'Severance package in excess of £100,000. Requires Council decision'*

- (g) In order to pick up on new CIPFA Guidance and changes occasioned by the Audit Committee taking on some of the functions for the ethical agenda, following the abolition of the Standards Committee, Schedule 1 of the Constitution (Councils Committees) be amended to replace the Audit Committee terms of reference with those set out in **Appendix 1**.
- (h) Schedule 2 of the Responsibility for Functions is amended to move the responsibility for rights of way from the Cabinet Member with portfolio responsibility for Leisure and Local Environment to the Cabinet Member with responsibility for Transport.

11. It is recommended that Council note the other changes to the Constitution have been made by the Assistant Director Chief Executive's during the course of the year, as set out in the main body of the report.

## **Reasons**

12. The recommendations are supported to give effect to legislative change, to absorb new responsibilities, to re allocate Cabinet Portfolio responsibility to better reflect the specialist area of responsibility and to ensure that the Council's Constitution remains accurate and up to date.

**Ada Burns**  
**Chief Executive**

## **Background Papers**

- (i) The Openness of Local Government Bodies Regulations 2014
- (ii) The Localism Act 2011
- (iii) Scrap Metal Dealers Act 2013
- (iv) Local Authorities (Members' Allowances) (England) Regulations 2003
- (v) Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014.
- (vi) CIPFA Publication entitled 'Audit Committees – Practical Guidance for Local Authorities and Police'
- (vii) The Local Authorities (Executive Arrangements) (Meetings Access to Information) (England) Regulations 2012

Luke Swinhoe: Extension 2055

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|----------------------------------|---|
| S17 Crime and Disorder           | There are no specific crime and disorder implications.  |
| Health and Well Being            | The report has no direct impact any individual's health.  |
| Carbon Impact                    | There are no carbon impact implications in this report  |
| Diversity                        | This report implements legislation and has no direct impact on individuals. There are therefore no specific diversity issues. |
| Wards Affected                   | All wards are affected equally.   |
| Groups Affected                  | All groups are affected equally.  |
| Budget and Policy Framework      | This decision does not represent a change to the budget and policy framework.   |
| Key Decision                     | This is not an Executive decision.  |
| Urgent Decision                  | This is not an Executive decision   |
| One Darlington: Perfectly Placed | This report implements legislative change.  |
| Efficiency                       | This report implements legislative change and has no implications for efficiency.   |

## MAIN REPORT

### Information and Analysis

13. The following paragraphs set out the detail of the report as per the headings that follow below.

### Reporting, filming, photographing, recording, broadcasting and blogging of Council Meetings

14. New statutory provisions, set out in the Openness of Local Government Bodies Regulations 2014, have been made that give anyone attending any meeting of the Council the right to photograph, film, record, blog, stream, or by any other means enable people not present at the meeting to see or hear the proceedings of the meeting as it takes place or later.
15. Any images, information or content sourced from the meeting can be published posted or shared, including on the internet, either during the meeting or after the meeting has ended.
16. This right will apply to any meeting of the Council which is open to members of the public to attend (including Council, Cabinet, Planning Committee, Licensing Committee, Scrutiny Committees, the Health and Well Being Board).
17. This right does not extend to any part of the meeting that is held in private. It does not include the right for the person recording or filming to orally comment as the meeting is taking place.

18. It is recommended that the Access to Information Procedure Rules are amended to include the rights relating to reporting, filming, photographing, recording, broadcasting and blogging of Council Meetings.

New provision to be inserted:

*'Anybody attending a meeting, that is held in public, can photograph, film, record and broadcast the meeting (or part of the meeting), including by digital and social media.'*

19. In order to ensure that the new rights are not disruptive to any meeting (for instance, by filming in a disruptive way or the continued or excessive use of flash photography) a review of the provisions relating to order has been undertaken. This is not to deny the transparency rights but to enable the good order of the meeting to be maintained.
20. As matters currently stand we have provisions relating to the conduct of members and also about general disturbance. It is suggested that a more specific provision be included that makes clearer reference to the conduct of individual members of the public. This would potentially enable appropriate steps to be taken should a meeting be disrupted by the conduct of a member of the public.
21. It is recommended that the Access to Information Procedure Rules are amended to make specific reference to disorderly conduct by an individual.

New provision to be inserted:

*'If any person interrupts or disrupts the proceedings of any meeting the person presiding, shall warn him/her. If he/she continues to interrupt or disrupt the meeting the person presiding shall order him/her to leave the room where the meeting is being held. If he/she does not leave, the person presiding shall order him/her to be removed. If a member of the public persistently creates a disturbance, the person presiding may adjourn the meeting for an appropriate time'*

It is also recommended that after this provision reference is made to the general disturbance provision (as set out in the Council Procedure Rules):

*'In the event of general disturbance which is disruptive of proceedings the person presiding may order the part or the room open to the public to be cleared and may adjourn the meeting for an appropriate time'*

22. While these provisions will only be used in exceptional circumstances, it is felt that it is helpful to clarify the rules governing conduct.
23. A number of consequential changes will also need to be made to Council Procedure Rules, Cabinet Procedure Rules.

## Decisions made under delegation

24. Decisions can be delegated, depending on where the function lies, from either Council or Cabinet. New statutory provisions in the Openness of Local Government Bodies Regulations 2014, set out new requirements about delegated decisions made by officers (these the delegation is of a Council rather than Cabinet function). The requirements apply to any decision made by an officer that :
- (a) Is a specific express (rather than general delegation)
  - (b) Grants permission or licence
  - (c) Affects the right of an individual, or
  - (d) Awards a contract, or Incurs expenditure which in either case materially affects the Councils financial position
25. When a decision of this nature is made by an officer, as soon as is reasonably practicable, a written statement of the decision must be published (together with any background papers). The written statement of decision must be made available for inspection and published on the website. The statement must contain a number of details including, the date of the decision, the reasons, details of any alternative options considered and rejected and details of any conflict of interest declared by the Cabinet member consulted (and any dispensation granted).
26. Provisions relating to delegated decisions made by officers from Cabinet are set out in different legislation, the Local Authorities (Executive Arrangements) (Meetings Access to Information) (England) Regulations 2012
27. It is recommended that the Council's Scheme of Delegation to Officers be amended to reflect this new requirement.

New provision to be inserted:

### *Written Records and Publicity*

*'The officer making a decision under delegation from Council (rather than Cabinet) must produce a written record of any decision which:*

- (a) is a specific express (rather than general) delegation,*
- (b) Grants a permission or licence,*
- (c) Affects the right of an individual, or*
- (d) Awards a contract, or incurs expenditure which in either case materially affects the Council's financial position*

*The officer making a decision under delegation, from Cabinet must produce a written record of any decision which is sufficiently important or sensitive that the public would expect that decision to have been taken by an elected member decision making body, such as Cabinet rather than an officer using delegated powers:*

*A written decision record must be completed as soon as is reasonably practicable after the decision has been made. The decision record must be publically available for inspection and posted on the website (together with any background papers). The*

*decision record must include, the date of the decision, the reasons, details of any alternative options considered and rejected and details of any conflict of interest declared (for instance of a Cabinet portfolio holder who was consulted).'*

28. Appropriate guidance will also be made available for officers as to the requirement to produce a written statement.

### **Scrap Metal Dealers Act 2013**

29. In a previous report to Council (26 September 2013) members were asked to approve new arrangement relating to dealing with applications and variations for licences to collect scrap metal.
30. The report recommended that the power to deal with uncontested applications for licences be given to officers and that contested applications, renewals, variations and revocations of licences be determined by a Sub Committee of the General Licensing Committee.
31. It is recommended that the Councils Committees (Schedule 1) be amended to include:

*'General Licensing Sub Committee*

*Darlington Borough Council Membership 3  
Total Membership 3  
Quorum 3*

*Protocols*

*Members are drawn from the General Licensing Committee*

*Terms of Reference*

*'To hear and determine contested applications, renewals, variations and revocations of licences under the Scrap Metal Dealers Act 2013'*

32. The report recommended a number of delegations of powers be given to officers in connection with the exercise of these functions.
33. It is recommended that the Council's Scheme of Delegation to Officers is amended to add:

Exceptions - Finance

*'To determine charges for licensing scrap metal dealers and mobile collectors and site licences. The Director of Economic growth'*

Exceptions – Legal exceptions



*'All powers and functions in respect of the Scrap Metal Dealers Act 2013 (except contested licensing applications, variations and revocations, which are dealt with by a Sub Committee of the General Licensing Committee) Assistant Director Regulatory Services'*

### **Senior Management Structures**

34. A previous report to Council (28 November 2013) set out details of a revised management structure
35. A number of amendments were necessary to the Scheme of Delegation to reflect the revised structure and job roles. These have been made by the Assistant Director Chief Executive's.

### **Planning matters, Amendments to Delegations**

36. A previous report to Council (28 November 2013) set out details of a number of amendments to the scheme of delegation relating to planning matters.
37. A number of amendments to the Scheme of Delegation have been made by the Assistant Director (Chief Executive).

### **Pay Policy**

38. A previous report to Council (27 February 2014) set out the pay policy statement for 2014/15. Supplementary Guidance issued under the Localism Act encourages local authorities to vote for salary packages and severance packages in excess of £100,000.
39. It is therefore recommended that the Council's Scheme of Delegation to Officers, Exceptions Table – Staff and Employment is amended to add:

*'The advertising of any posts with a salary package in excess of £100,000. Requires Council decision'*

*'Severance package in excess of £100,000. Requires Council decision'*

### **Budget Votes at Council Meetings**

40. A previous report to Council (27 February 2014) gave details of a statutory requirement for Councils to amend their Standing Orders to record in the minutes the way that Members vote at budget meetings (a named vote).
41. Changes have been made to the Budget and Policy Framework Rules to insert requirements to hold a named vote. The amendments were included as an appendix to the Council report of 27 February 2014.

## **Members Allowances**

42. A previous report to Council (20 March 2014) set out a number of changes to the Code of Conduct and the arrangements for dealing with complaints. One of those changes was the abolition of the Standards Committee.
43. One of the consequential changes concerns the Members' Allowance Scheme. The scheme currently refers to payments to co-optees to the Standards Committee (Independent Members and Parish Council Members of the Standards Committee)
44. Legislation requires that any amendments to the Members' Allowance Scheme should first be considered by an Independent Remuneration Panel, and then advertised before adoption.
45. For reasons of efficiency and cost it is not proposed to make any change to the scheme at present.

## **Audit Committee**

46. A previous report to Council (20 March 2014) set out a number of changes to the Code of Conduct and the arrangements for dealing with complaints.
47. One of those changes was the abolition of the Standards Committee. It was proposed that the Audit Committee take on some of the functions for overseeing the ethical agenda.
48. In addition the Audit Committee Terms of Reference have been refreshed in line with the recent CIPFA Publication entitled 'Audit Committees – Practical Guidance for Local Authorities and Police' that refers to annual governance statements and associated guidance and reflects the requirements of the Public Sector Internal Audit Standards and Local Government Application Note.
49. It is proposed that Schedule 1 of the Constitution (Councils Committees) be amended to replace the Audit Committee terms of reference with those set out in **Appendix 1**.

## **Cabinet Portfolio Change**

50. Following consultation between the respective portfolio holders, it is proposed to move the responsibility for rights of way from the Cabinet Member, with portfolio responsibility for Leisure and Local Environment to the Cabinet Member with the Transport portfolio.
51. This will require an amendment to Schedule 2 of the Responsibility for Functions.

## **Summary**

52. This report sets out a number of changes to the Constitution which reflect changes arising from legislation and also pick up on changes that have previously been agreed over the course of the year. A slight change is also made in respect of Cabinet Portfolio responsibility. This report represents a regular report to Council to keep the Constitution up to date.

**Ada Burns**  
**Chief Executive**

## AUDIT COMMITTEE – SUGGESTED TERMS OF REFERENCE

### Statement of Purpose

The Audit Committee is a key component of corporate governance. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial standards.

The purpose of the Audit Committee is to provide independent assurance to the members of the adequacy of the risk management framework and the internal control environment. It provides independent review of governance, risk management and control frameworks and oversees the financial reporting and annual governance processes. It oversees internal audit and external audit, helping to ensure efficient and effective assurance arrangements are in place.

### Governance, Risk and Control

To review the Council's corporate governance arrangements against the good governance framework and consider annual governance reports and assurances.

To review the Annual Governance Statement prior to approval and consider whether it properly reflects the risk environment and supporting assurances, taking into account internal audit's opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and control.

To consider the Council's arrangements to secure value for money and review assurances and assessments on the effectiveness of these arrangements.

To consider the Council's framework of assurance and ensure that it adequately addresses the risks and priorities of the Council.

To monitor the effective development and operation of risk management in the Council.

To monitor progress in addressing risk-related issues reported to the Committee.

To consider reports on the effectiveness of internal controls and monitor the implementation of agreed actions.

To review the assessment of fraud risks and potential harm to the Council from fraud and corruption.

To monitor the counter-fraud strategy, actions and resources.

## **Internal Audit**

To approve the internal audit charter.

To review proposals made in relation to the appointment of external providers of internal audit services and to make recommendations.

To approve the risk-based internal audit plan, including internal audit's resource requirements, the approach to using other sources of assurance and any work required to place reliance upon those other sources.

To approve significant interim changes to the risk-based internal audit plan and resource requirements.

To make appropriate enquiries of both management and the head of internal audit to determine if there are any inappropriate scope or resource limitations.

To consider reports from the head of internal audit on internal audit's performance during the year, including the performance of external providers of internal audit services. These will include:

- Updates on the work of internal audit including key findings, issues of concern and action in hand as a result of internal audit work.
- Regular reports on the results of the Quality Assurance and Improvement Programme.
- Reports on instances where the internal audit function does not conform to the Public Sector Internal Audit Standards and Local Government Application Note, considering whether non-conformance is significant enough that it must be included in the Annual Governance Statement.

To consider the head of internal audit's annual report:

- The statement of the level of conformance with the Public Sector Internal Audit Standards and Local Government Application Note and the results of the Quality Assurance and Improvement Programme that supports the statement – these will indicate the reliability of the conclusions of internal audit.
- The opinion on the overall adequacy and effectiveness of the Council's framework of governance, risk management and control together with the summary of the work supporting the opinion – these will assist the Committee in reviewing the Annual Governance Statement.

To consider summaries of specific internal audit reports as requested.

To receive reports outlining the action taken where the head of internal audit has concluded that management has accepted a level of risk that may be unacceptable to the Authority or there are concerns about progress with the implementation of agreed actions.

To contribute to the Quality Assurance and Improvement Programme and in particular, to the external quality assessment of internal audit that takes place at least once every five years.

To consider a report on the effectiveness of internal audit to support the Annual Governance Statement, as required by the Accounts and Audit Regulations.

To support the development of effective communication with the head of internal audit.

### **External Audit**

To consider the external auditor's annual letter, relevant reports, and the report to those charged with governance.

To consider specific reports as agreed with the external auditor.

To comment on the scope and depth of external audit work and to ensure it gives value for money.

To commission work from internal and external audit.

To advise and recommend on the effectiveness of relationships between external and internal audit and other inspection agencies or relevant bodies.

### **Financial Reporting**

To review the annual statement of accounts prior to approval. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council.

To consider the external auditor's report to those charged with governance on issues arising from the audit of the accounts.

## **Treasury Management**

To examine effectively the treasury management strategy, policies and performance and recommend approval or otherwise by Council, via Cabinet.

## **Ethical Values**

To be satisfied that there are arrangements in place to discharge the Council's responsibility to promote and maintain high standards of conduct.

To review the effectiveness of the Council's whistleblowing arrangements.

## **Accountability Arrangements**

To report to full council on a regular basis on the Committee's performance in relation to its terms of reference and the effectiveness of the Committee in meeting its purpose.