
CONSTITUTIONAL CHANGES

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

Responsible Director – Catherine Whitehead, Assistant Chief Executive

SUMMARY REPORT

Purpose of the Report

1. This report sets out changes to the constitution, to give effect to legislation, to clarify the responsibility for functions, to deal with changes to the constitution required from staffing and structural changes and also to summarise the changes to the Constitution that have already been made as a result of earlier reports.

Summary

2. The Council's constitution sets out the framework for the governance and decision making of the Council. It needs to be kept up to date to ensure that it complies with new legislation and also reflects locally agreed changes that are considered necessary.
3. New legislation abolishes the requirement to appoint a designated independent person in respect of disciplinary process applying to certain statutory officers. In place of this local authorities are required to appoint a panel of at least two independent persons (with the same meaning of the Localism Act 2011). The legislation also extends the requirement for full Council to approve any decision to dismiss the Head of Paid Service, to include the Chief Finance Officer and the Monitoring Officer. Details of the proposed changes are set out in the main body of the report.
4. The Council is responsible for the register of land classified as village greens. The procedure for dealing with new applications for entry onto the register is not currently set out in the constitution and needs to be clarified. Details of the proposed arrangements are set out in the main body of the report.
5. The report sets out interim arrangements to ensure that the Monitoring Officer, Borough Solicitor functions and the Proper Officer functions of the Assistant Chief Executive are discharged after the departure of the Assistant Chief Executive at the end of August 2015.

6. Structural changes were previously agreed by Council on 4 June 2015 for the Service Director, Children's Services and the Assistant Director, Adult Social Care posts to be replaced with a new post of Director of Adults and Children's Services. This report asks for the Assistant Chief Executive to be authorised to make any necessary amendments to the delegations, statutory and proper officer functions that result from these changes
7. 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

8. It is recommended that Council agree the constitution is amended as follows:
 - (a) That in respect of the disciplinary processes concerning the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer that:
 - (i) a local authority committee be formed, known as the Human Resources Advisory Panel, and comprised of a least two Independent Persons, to advise the Council before any dismissal decision is taken
 - (ii) Independent Persons who will sit on the Human Resources Advisory Panel be drawn from (and in the following priority), Independent Person(s) appointed by this Council and then Independent Persons appointed by neighbouring authorities from the Tees Valley or region
 - (iii) the role of the Independent Person (s) appointed by this Council be widened to include the new function of sitting on the Human Resources Advisory Panel
 - (iv) The Officer Employment Procedure Rules be amended to delete references to the Designated Independent Person and substitute in place the Human Resources Advisory Panel.
 - (v) The Responsibility of Functions is amended to include reference to the Human Resources Statutory Advisory Panel.
 - (vi) The Officer Employment Procedure Rules be amended to require the approval of full Council in respect of decisions to dismiss the Chief Finance Officer and the Monitoring Officer (as well as the Head of Paid Service)
 - (b) That the scheme of delegation and the list of proper officer functions is amended to give the Borough Solicitor the function of determining uncontested applications for inclusion on the register of village greens and to appoint an inspector to deal with applications which are contested.
9. That as an interim arrangement, from 31 August 2015, the Head of Legal Services is appointed as the Monitoring Officer and takes on the Borough Solicitor functions

and the statutory and proper officer functions of the Borough Solicitor and Assistant Chief Executive.

10. That the Assistant Chief Executive is authorised to make any necessary amendments to the delegations, statutory and proper officer functions that result from the deletion of the Service Director, Children's Services and the Assistant Director, Adult Social Care the posts and replacement with a new post of Director of Adults and Children's Services.
11. It is recommended that Council note the other changes to the constitution that have been made during the course of the year, as set out in the main body of the report.

Reasons

12. The recommendations are supported to update the Council's constitution in order comply with legislative change, to clarify the responsibility for functions, to deal with changes to the constitution required from staffing and structural changes and to ensure that the Council's constitution remains accurate and up to date.

Catherine Whitehead
Assistant Chief Executive

Background Papers

- (i) The Localism Act 2011
- (ii) Local Authorities (Standing Orders) (England) Regulations 2001/3384
- (iii) Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015/881
- (iv) the Commons Act 2006
- (v) the Commons (Registration of Town or Village Green) (Interim Arrangements) (England) Regulations 2007

Luke Swinhoe: Extension 5490

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.

Officer Employment Procedure Rules

14. The Government have reconsidered the provisions that apply to the disciplinary processes followed in respect of certain statutory officers. The statutory posts this applies to are the Head of Paid Service (in this Council the Chief Executive), the Chief Finance Officer (in this Council the Director of Neighbourhood Services and Resources) and the Monitoring Officer (in this Council the Assistant Chief Executive).
15. Prior to amendment, the provisions stipulated that before any local authority could discipline or dismiss the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer, a designated independent person had to be appointed to review the case. The function of the designated independent person in this process had been criticised for being bureaucratic, slow and costly, and a barrier to dealing efficiently with poor performance or misconduct.
16. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 have removed the designated independent person role and authorities are required to modify their procedures to comply with revised arrangements that are set out in the Regulations.

17. The revised arrangements require local authorities to remove reference to the designated independent person in their standing orders relating to the dismissal of statutory officers. What is required to be put into place in respect of disciplinary action against persons in these specific posts is a panel comprised of at least two independent persons to advise the authority before any decision is taken to dismiss one of these statutory officers.
18. The Regulations also specify that where any Committee, Sub Committee or officer discharging the function of dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer, that any decision to dismiss must be approved by full Council (and after receiving the advice, views or recommendation of the Panel). The requirement for the approval of full Council previously existed for decisions to dismiss the Chief Executive but is now extended to the Chief Finance Officer and the Monitoring Officer.
19. The Regulations specify that the independent persons who will serve on this panel are to be drawn from persons who have been appointed under the provisions of the Localism Act 2011. The Localism Act 2011 requires principal authorities to appoint at least one independent person whose views are to be sought and considered in connection with complaints against members concerning allegations of breaches of the code of conduct. This Council has appointed Joanne Kidd, a barrister to carry out this role. She is willing to serve on the new panel if the need arises.
20. The proposal is that this panel be called the Human Resources Advisory Panel and that it be comprised of three independent persons (with a quorum of two), in the following priority, independent person(s) appointed by this Council for the time being (currently Joanne Kidd) and then independent persons appointed from a neighbouring authority from the Tees Valley or region.
21. The Constitution includes the Officer Employment Procedure Rules and within those rules are provisions concerning the arrangements for the discipline and dismissal of statutory officers. These provisions will need to be amended to include reference to the Human Resources Advisory Panel and the role of independent persons in place of the designated independent person. Amendments will also be needed to require the approval of full Council in respect of decisions to dismiss the Chief Finance Officer and the Monitoring Officer (as well as the Head of Paid Service).

Commons Registration

22. The Council is the Commons Registration Authority (CRA) for the Borough as defined in the Commons Act 2006, as amended by the Growth and Infrastructure Act 2013. The CRA is responsible for maintaining the register of village greens for its area, including dealing with new applications. The register is maintained by Legal Services.
23. Any person or body may apply to the CRA for land to be registered as village green, if 20 years of continuous use for lawful sports and pastimes as of right by local inhabitants of the land in question can be proven, provided that there has been no trigger event, such as an earlier planning application.

24. Once registered as village green local inhabitants have the right to use the green for lawful sports and pastimes and, it cannot be developed. That right is protected by statute and unlawful interference with the green may be punishable as a criminal offence.
25. Once an application is received by the CRA it must check if any trigger events have taken place which would put an immediate stop to the process. If none have been received then there follows a six week consultation period for landowner(s) and any interested parties to make their views known and to object to the registration.
26. At present there is no internal procedure for deciding how an application for inclusion on the register of village greens should be dealt with. The Regulations do not stipulate a decision making process and it is up to each CRA to put in place its own procedure. However, decisions are susceptible to judicial review and it is important that the procedure adopted is open, transparent and fair.
27. It is proposed is that in cases where, following statutory consultation, there are no objections to the application, that the decision is delegated to the Borough Solicitor to determine on the papers received whether to include land in the register of village greens.
28. If valid objections are received or if the application is otherwise not straightforward, it is proposed that (following suggestions in case law) that the Borough Solicitor be authorised to appoint an independent inspector to determine the application. This may be a planning inspector or a barrister specialising in village green law. The independent inspector will decide if the matter can be dealt with on papers submitted or if a public inquiry is needed.
29. It is proposed that the scheme of delegation and the list of proper officer functions are amended to include specific reference to role of the Borough Solicitor in determining uncontested applications and in appointing an inspector to deal with more contested applications.

Departure of the Assistant Chief Executive

30. The Assistant Chief Executive leaves the Council at the end of August 2015. This post will not be replaced. The role includes the function of the Monitoring Officer, the Borough Solicitor and a number of proper officer functions.
31. It is proposed that, as an interim arrangement, from 31 August 2015 the Head of Legal Services is appointed as the Monitoring Officer and takes on the Borough Solicitor functions and the statutory and proper officer functions of the Borough Solicitor and Assistant Chief Executive.
32. Council is requested to approve this change and authorise the Assistant Chief Executive to make any necessary amendments to the Constitution and Scheme of Delegation that may be required.

Senior Management Structures

33. To deal with forthcoming departures of the Service Director, Children's Services and the Assistant Director, Adult Social Care the posts are being deleted and replaced with a new post of Director of Adults and Children's Services
34. In a previous report to Council (4 June 2015) the structural changes were agreed.
35. This report in now addresses the position concerning the delegations, statutory and proper officer functions that result from the structural change. Council is requested to approve authorise the Assistant Chief Executive to make any necessary amendments to the Constitution and Scheme of Delegation that may be required.

Scrap Metal Dealers Act 2013

36. The Scrap Metal Dealers Act 2013, replaced the Scrap Metal Dealers Act 1964 and the Motor Vehicles Crime Act 2001. It created a new licensing regime for motor salvage operators and also collectors of scrap metal, the latter of which was formerly subject to a registration scheme.
37. In a previous report to Council (2 September 2014) members were asked to approve the delegation of powers in respect of dealing with applications and variations of licences to collect scrap metal ; the reviews of such licences and the setting of fees in respect of both mobile collector and site licences.
38. The amendments to the Scheme of Delegation have been made by the Assistant Director Chief Executive's.

Public Spaces Protection Orders

39. The Anti-Social Behaviour Crime and Policing Act 2014 makes provision for Councils to issue a PSPO after consultation with the Police, Police and Crime Commissioner and other relevant parties. A PSPO is designed to stop individuals or groups persistently committing anti-social behaviour in a public place.
40. In a previous report to Cabinet (14 October 2014) members were asked to approve the delegation of authority to approve Public Spaces Protection Orders (PSPOs) to the Director of Public Health.
41. The amendments to the Scheme of Delegation have been made by the Assistant Director Chief Executive's.

Contract Procedure Rules

42. The Contract Procedure Rules (CPR) specifies the procedure to be followed by the Council in respect of procurement processes and contracting requirements. The rules reflect both the Councils own rules and also UK and European requirements.

43. In a previous report to Council (19 March 2015) revised CPR were approved to incorporate changes arising from the new Public Contracts Regulations 2015 and also a number of other changes required to update the CPR.
44. The amended CPR has been incorporated into the constitution by the Assistant Director Chief Executive.