

Amendments to the Council's Constitution

Report of the Democracy and Governance Portfolio Holder

Recommended:

1. That the amendments made to the Council's Constitution by the Monitoring Officer under delegated authority as shown in the Annex to the report be noted.
2. That in the absence, incapacity or unavailability of the Chief Executive in circumstances where the post of Deputy Chief Executive remains vacant, the Head of Planning Policy and Economic Development in consultation with the s151 Officer and Monitoring Officer be authorised to exercise such powers as are delegated to the Chief Executive or Deputy Chief Executive as circumstances may reasonably require.
3. That the Monitoring Officer makes the necessary changes to the Constitution to give effect to recommendation 2 above.

SUMMARY:

- The Council's Constitution (Article 14.3) permits the Monitoring Officer to make minor amendments to the Constitution subject to reporting those amendments to full Council.
- A number of minor amendments have been made by the Monitoring Officer and these are now reported Council.
- It is also proposed that the scheme of delegation for officers be amended as set out in the report.

1 Introduction

- 1.1 The Council's Constitution underpins all of the Council's areas of activity. Ensuring it reflects current legislation and working practices is important.

2 Background

2.1 Constitutional Changes

From time to time it becomes necessary to make amendments to the Council's constitution as job-titles, posts and legislation change.

- 2.2 Authority is delegated to the Council's Monitoring Officer to make the following changes to the Constitution subject to reporting the changes to full Council:

- (a) changes to the delegated functions to Chief Officers (as defined in the Officer Employment Procedure Rules in Part 4 of the Constitution);
 - (b) Changes required giving effect to any change in the law or directives issued under legal powers by Government
 - (i) typographical or similar changes; or
 - (ii) in consultation with the Democracy and Governance Portfolio Holder, minor changes, as may be identified from time to time such as changes to the names of Committees, Portfolios or job titles etc.
- 2.3 Certain procedural amendments have been made which are reported to Council by way of this report. The amendments are shown in the attached Annex in track-changed format for ease of reference. These changes comprise removal of reference to Corporate Directors and addition of the post of Deputy Chief Executive, amalgamation of the delegations to and assimilation of the Head of Service job title for the Finance and Revenues Service, amending Portfolio titles, dealing with post name changes, removal of reference to PHE Wessex and replacement with UKHSA, amending reference to Partnership for Urban Hampshire to Partnership for South Hampshire.
- 2.4 Only the pages with changes are included in the Annex to the report, rather than annexing a full copy of the Constitution.
- 2.5 **Recommendation for delegation authorising exercise of the Chief Executive and Deputy Chief Executive's powers**
- Members will be aware that the Council is in the midst of a comprehensive recruitment process to appoint to the post of Deputy Chief Executive.
- 2.6 The Deputy Chief Executive post-holder is delegated authority as follows "In the absence of the Chief Executive, the Deputy Chief Executive be authorised to exercise the powers and duties of the Chief Executive".
- 2.7 The Chief Executive has concurrent authority to take any action delegated to the Deputy Chief Executive.
- 2.8 In a surfeit of caution and to mitigate against the hopefully remote possibility that the Chief Executive might become unexpectedly unavailable in any period before a Deputy takes up post, it is recommended that the Head of Planning Policy and Economic Development in consultation with the section 151 Officer and Monitoring Officer be delegated authority to exercise the powers of the Chief Executive and the Deputy Chief Executive should the need arise.
- 2.9 It is further recommended that the Monitoring Officer be authorised to amend the Constitution in line with this proposal with the intention that the delegations be returned to the current position once the new Deputy Chief Executive is in post.

3 Corporate Objectives and Priorities

- 3.1 As set out in Article 14 of the Constitution the Monitoring Officer has a duty to monitor and review the operation of the Constitution and ensure that the aims and principles of the Constitution are effective.
- 3.2 Maintaining and improving the Constitution is essential in order to deliver effective and lawful decisions in the day to day implementation of the Corporate Plan.

4 Options and Option Appraisal

- 4.1 With regard to the Constitutional amendments already made by the Monitoring Officer, the requirement is to report these changes to Council, which is what this report does. There is no substantive decision to be made, though the recommendation does seek a formal resolution that Council notes the changes.
- 4.2 With regard to recommendations 2 and 3, the options are to either approve the proposals, reject them or to propose some other form of arrangement.
- 4.3 Rejection of recommendation 2 is not recommended since it provides enhanced resilience to the organisation. The proposal would put arrangements in place to guard against the hopefully unlikely eventuality that the Chief Executive should become unexpectedly unavailable during any period whilst the post of Deputy Chief Executive is vacant.
- 4.4 Whilst Heads of Service are delegated authority to take such action as may be appropriate to deal with a major incident in the absence of both the Chief Executive and Deputy Chief Executive, the broader and more nuanced proposal set out in the recommendation 2 extends beyond that existing emergency delegation. The recommendation includes consultation with the section 151 Officer and Monitoring Officer so that in the unlikely event that the recommendation was triggered, the Head of Service taking action would consult with and be supported by two statutory officers in any decision-making.
- 4.5 Insofar as any 'other arrangements' are concerned, the proposal at recommendation 2 presents the most robust process to deal with any decision-making should the Chief Executive be unexpectedly unavailable.
- 4.6 For these reasons, dismissal of the recommendation or adoption of some other arrangements is not recommended and the preferred option is that set out in recommendation 2. Recommendation 3 flows from recommendation 2.

5 Risk Management

- 5.1 A Risk Management questionnaire has been completed and indicates this report does not require a risk assessment because the changes/issues covered by this report are not significant in terms of risk.

6 Resource Implications

6.1 None.

7 Legal Implications

7.1 Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution under review.

8 Equality Issues

8.1 An Equality Impact Assessment of the matters in this report is not required as no potential for unlawful discrimination or breach of the Council's Public Sector Equality Duty.

9 Other Issues

9.1 Community Safety – none.

9.2 Environmental Health Issues – none.

9.3 Sustainability and Addressing a Changing Climate – none.

9.4 Property Issues – none.

9.5 Wards/Communities Affected – none.

10 Conclusion and reasons for recommendation

10.1 This report notifies Council of amendments made to the Constitution and makes a recommendation to mitigate against the unlikely event that the Chief Executive might become unexpectedly unavailable whilst the Deputy Chief Executive post remains vacant.

Background Papers (Local Government Act 1972 Section 100D)

None.

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	1	File Ref:	N/A
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(Portfolio: Democracy and Governance) Councillor I Jeffrey

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Report to:	Council	Date:	7 September 2022
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