

Open Report on behalf of David O'Connor, Executive Director Performance and Governance

Report to:	County Council
Date:	20 May 2011
Subject:	Constitution Changes

Summary:

The purpose of this report is to ask the Council to approve the changes as highlighted in bold within the report and Appendices A, B and C. The Council is also asked to consider the proposed changes as a result of revisions to the Accounts and Audit Regulations.

Recommendation(s):

1. That approval be given to Part 1 "A Summary of the Constitution of Lincolnshire County Council" as detailed at Appendix A.
2. That the amendments as detailed in the report and attached at Appendices B and C to the report presented be approved.
3. That approval be given for changes to be made throughout the Constitution, as a result of the Management Review.
4. That consideration be given to the proposed changes to the Constitution as a result of the changes to the Accounts and Audit Regulations as detailed at paragraph 15.

1. Background

At the Council meeting on 4 December 2009, it was agreed that a project would be undertaken to simplify and modernise the Council's Constitution.

As part of the review process, Part 1, 'Introduction' has now been created as a summary document entitled 'A Summary of the Constitution of Lincolnshire County Council'. This document has been created to provide a simplified summary version of the Council's Constitution. The document has been edited by the Plain English Campaign and has gained Crystal Mark accreditation. A copy is attached at Appendix A to this report; and approval is requested in accordance with recommendation one.

The smaller amendments to the Constitution are depicted in bold type and are detailed within this report, the larger amendments are depicted in bold and are shown separately in Appendices B and C to this report. This is in accordance with recommendation two.

It is proposed that minor grammatical and typographical changes are made as well as those relating to the Management Review, as set out in recommendation three.

1. Amendments to: Part 2 – Articles of the Constitution

Article 1 – The Constitution

1.1 Paragraph 1.08 - Publication

Paragraphs (a) and (b) now make mention to the availability of an electronic version of the Constitution:-

- (a) The Monitoring Officer will **ensure access to an electronic copy** of this Constitution to each Councillor upon delivery to him/her of that individual's declaration of acceptance of office on the Councillor first being elected to the Council.
- (b) The Monitoring Officer will ensure **that electronic copies** are available for inspection at Council Offices, libraries and other appropriate locations that can be purchased by members of the local press and the public on payment of a reasonable fee.

2. Article 2 - Members of the Public and the Council

2.1 Paragraph 2.01 - Rights of Members of the Public

Paragraph (e) Complaints - an additional paragraph has been added in relation to the Data Protection Act 1988, Freedom of Information or the Environmental Information Act 2005:-

- (iv) **the Information Commissioner about a breach of the Council's obligations under the Data Protection Act 1988, the Freedom of Information Act 2000, or the Environmental Information Act 2005.**

2.2 Paragraph 2.02 - Consultation

This paragraph should reflect the current strategy:-

The Council will consult with Members of the Public and its partner organisations in accordance with **its Community Engagement and Empowerment Strategy.**

3. Article 3 – Members of the Council

3.1 Paragraph 3.07 – Allowances

This now provides a link to the Allowances Scheme:-

Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme as **detailed at Part 6 of this Constitution.**

4. Article 4 – The Full Council

4.1 Paragraph 4.01 – Policy Framework

The Policy Framework listed at (a) has been updated:-

(a) Policy Framework

The policy framework means the following plans and strategies:

- Annual Library Plan
- **Council Business Plan and Annual Report**
- **Sustainable Community Strategy**
- Local Transport Plan
- **The Youth Justice Plan**
- Adult Learning Plan
- Quality Protects Management Action Plan
- Waste Local Plan
- Mineral Local Plan
- **Joint Municipal Waste Strategy**
- Asset Management Plan
- Financial Strategy
- Children and Young Persons Plan

4.2 Paragraph 4.02 (t) - Functions of the full Council

The inclusion of all the statutory officers:-

- (t) duty to designate Officer as the head of authority's paid service, Section 151 Officer, Monitoring Officer, **Statutory Scrutiny Officer, Director Adult Social Services, Director of Children's Services and Traffic Manager** and to provide staff to them;

5. Article 5 – The Executive

5.1 Paragraph 5.03 Leader

This paragraph now reflects the requirements of Section 44D Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007 with regard to term of office:-

The Leader will be a Councillor elected to the position of Leader by the Council at **beginning of each 4-year term. The Leader will hold office until the next election of all Councillors of the Council** or (if earlier) until:

5.2 Paragraph 5.07 - Executive Support Councillor

This paragraph has been amended to reflect the role of the Executive Support Councillor and therefore removing the need for the inclusion of the previously included Appendix A, entitled 'Position of Executive Support Councillor':-

The Leader will appoint Executive Support Councillors **who can attend and speak at meetings in place of the Executive Councillor.**

(It is proposed to put the Appendix A in the Councillors' information pack).

6. Article 6 – Overview and Scrutiny Committees

6.1 Paragraph 6.02 – Terms of Reference

This paragraph has been amended to reflect the extended role of the Communities Scrutiny Committee:-

- To consider and determine requests from Councillors submitted under the Councillor Call for Action procedure, except for requests submitted by Councillors relating to Crime and Disorder **which shall be considered by the Communities Scrutiny Committee.**

6.2 Paragraph 6.09 - Health Scrutiny Committee for Lincolnshire – Joint Arrangements

This paragraph has been amended to reflect the role of the Health Scrutiny Committee for Lincolnshire:-

The Health Scrutiny Committee for Lincolnshire may appoint members to serve on **any Joint** Health Scrutiny Committee.

7. Article 7 - Regulatory and other Committees and Bodies of the Council

7.1 Paragraph 7.02 – Pensions Committee

This paragraph has been amended to reflect proposed changes to the membership of the Pensions Committee:-

There will be a Pensions Committee having **11** members. **8** shall be Councillors representing the political balance of the Council overall in accordance with the terms of the Local Government and Housing Act 1989. **Three co-optees representing both the non County Council employers in the Fund and individual Fund participants.**

8. Article 8 – The Standards Committee

8.1 Paragraph 8.01 - Standards Committee

An amendment has been made to this paragraph in relation to the last sentence with regard to the appointment of The Chairman and Vice-Chairman:-

The Committee shall appoint its Chairman and its Vice-Chairman **who shall be independent persons**. The Committee shall produce an Annual Report to full Council.

9. Article 10 – Officers

9.1 Paragraph 10.01 (b) - Chief Officers and (c) Head of Paid Services, Monitoring Officers and Section 151 Officer

(b) Chief Officers

Bullet point two has been amended to reflect the Council's Business Plan:-

- represent and promote the County Council as a Local Authority concerned to secure high quality services **in line with the Council's Business Plan** for the people of Lincolnshire.

The table below has been amended to reflect the changes as a result of the Management Review:-

<i>Post</i>	<i>Functions and areas of responsibility</i>
Executive Director Performance and Governance	<ul style="list-style-type: none"> • Council's Business Plan • Corporate IT Policy • Member Support • Leader and Chairman's Office • Human Resources and Organisational Development • Business Improvement • Corporate Communication • Corporate Public Relations
Executive Director Adults and Children's	<ul style="list-style-type: none"> • Children in Need • Education (other than Adult Education) • Services for Adults and Older People with Social Services needs •
Executive Director for Communities	<ul style="list-style-type: none"> • Highways • Traffic and Transport • Waste Disposal and Management • Strategic Development Planning • Planning Development Control • Conservation of the Natural and Built Environment • Economic Regeneration • Cultural Services • Libraries • Archives • Museums • Customer Services • Adult Education
Executive Director Resources and Community Safety	<ul style="list-style-type: none"> • Undertake the functions of Chief Finance Officer as set out in article 10.04 • Co-ordinate and advise the Council in respect of Property matters • Procurement and Contract management • Legal Services • Fire and Rescue • Crime and Disorder • Civil Protection • Trading Standards

Director of Public Health	<ul style="list-style-type: none"> • Public Health • Health Improvement • Community Engagement
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(c) Head of Paid Service, Monitoring Officer and Section 151 Officer

The table below has been amended to reflect the changes as a result of the Management Review:-

<i>Post</i>	<i>Designation</i>
Chief Executive	Head of Paid Service under section 4 of the Local Government and Housing Act 1989
Executive Director Performance and Governance	Monitoring Officer under section 5 of the Local Government and Housing Act 1989
Executive Director of (Resources and Community Safety)	Chief Finance Officer with responsibility for the administration of the financial affairs of the Council under section 151 of the Local Government Act 1972

9.2 Paragraph 10.06 - Other Statutory Posts

The paragraph has been created to reflect the Council's other statutory posts that were not included:-

9.3 **10.06 Other Statutory Posts**

The Council is required under the Children Act 2004 to appoint officers as (1) Executive Director of Children's Services (2) Executive Director of Adult Social Care to carry out the statutory functions of those roles. The role is to exercise the functions conferred on or exercisable by, the Authority under or in accordance with Section 18 of the Children Act 2004 or regulations made there under.

The Council is also required to appoint a Statutory Scrutiny Officer. This enables the Council to comply with its obligation under Section 21ZA of the Local Government Act 2000 as inserted by Section 31 of the Local Democracy, Economic and Construction Act 2009.

The Council is also required under Section 17 of the Traffic Management Act 2004 to appoint a Traffic Manager.

10. Part 3 – Responsibility for Functions – Delegations to Chief Executive and all Chief Officers

Due to recent Management changes, Part 3 has been amended to reflect the revised responsibility for functions, as detailed at Appendix B to this report.

11. Part 4 - Rules of Procedure

11.1 Paragraph 5 Appointments of Fixed Term Members of Committee and Sub-Committees

This paragraph has been amended to include the Audit Committee as a committee to which a Councillor has to undergo training before an appointment can be made:-

The Chief Executive will not be required to and shall not appoint to the Planning and Regulation Committee, Definitive Map and Statement of Public Rights of Way Sub-Committee, Pensions Committee or **Audit Committee** any Councillor nominated in accordance with this rule unless that Councillor has undergone the relevant training. Earlier training will be considered to have expired two months after the quadrennial election to the County Council, and only members who have received training after the said election may be appointed to the above bodies.

11.2 Paragraph 9 – Quorum

The paragraph has been amended to include non-elected members:-

For the purpose of calculating the quorum where membership is not divisible by four, the quorum shall be one quarter of the next number below which is so divisible. During any meeting if the Chairman counts the number of members **(including non-elected members)** of the body present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting of the body concerned.

11.3 Paragraph 13.4 – Content and length of speeches

The paragraph has been amended to provide clarity:-

Speeches must be directed to the question under discussion or to a personal explanation, point of order or information. A Councillor proposing a motion, **including the moving of an amendment**, or a Chairman or Executive Councillor responding shall not speak for more than 6 minutes and no other speech shall exceed 3 minutes except with the consent of the meeting.

11.4 Access to Information Procedure Rules - Paragraph 9 – Summary of Public's Rights

The paragraph has been amended to include the use of the website:-

A written summary of the public's rights to attend meetings and to inspect and copy documents is **on the website** and **is** available to the public at County Offices, Lincoln.

11.5 Budget and Policy Framework Procedure Rules - Paragraph 6 – Urgent Decisions outside the Budget or Policy Framework (ii)

This paragraph has been amended to provide clarity:-

- (ii) the Chief Executive or his nominee, in consultation with
- the Leader of the Council or if he cannot act, a Deputy Leader, the Chairman of **a relevant Overview and Scrutiny Committee** or, if the Chairman cannot act, the Vice-Chairman of a relevant Overview and Scrutiny Committee or if neither can act, a nominee of the Chairman or if he cannot nominate, a nominee of **the** Vice-Chairman and the relevant Chief Officer or his/her nominee.

11.6 Overview and Scrutiny Procedure Rules -Paragraph 9 – Task and Finish Groups and Scrutiny Reviews (H)

This paragraph has been amended to provide clarity:-

- (H) Each Task and Finish Group, on completion of their review activity, will compile a draft report, which will be submitted to the appointing **Overview and Scrutiny** Committee for approval and onward referral to as appropriate.

11.7 Paragraph 10 – Reports from Overview and Scrutiny Committees (a) and (b)

This paragraph has been amended to provide clarity:-

- (a) Once it has formed recommendations on proposals for development, the relevant Overview and Scrutiny Committee will prepare a formal report and submit it for consideration by the Executive or relevant Executive Councillor (if the proposals are consistent with the existing Budgetary and Policy Framework), or to the Council (if the recommendation would require a departure from, or a change to the agreed Budget and Policy Framework) and to **external organisations as appropriate**.

11.8 Paragraph 11 – Consideration of Scrutiny Reports by the Executive (a)

This paragraph has been added to take into consideration the requirement of Section 21(B) Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007:-

- b) In accordance with Section 21(B) Local Government Act 2000 (As amended) the Council or Executive must respond within two months of receipt of the report.**

11.9 Paragraph 15 - Call In (f) - paragraphs (g) and (i)

These paragraphs have been amended to provide clarity:-

- (g) The Chief Executive **shall only permit the call-in if in** consultation with the Chairman and Vice-Chairman of the Overview and Scrutiny Management Committee the request meets the requirements of paragraphs (e) and (f). If a call-in is rejected as inappropriate the signatories will be advised of the decision and the reason for it. The Committee will be informed at its next meeting. Where the Chief Executive is satisfied that a request complies with paragraphs (e) and (f) he shall certify the decision as being called-in for scrutiny by the Overview and Scrutiny Management Committee and notify the decision taker of the call-in. The date of the Chief Executive's certification shall be the date of call-in for the purposes of paragraph (m)
- (i) The following **decisions shall not be relevant decisions and are therefore not subject to call in:**

11.10 Financial Regulations and Procedures – Financial Regulation C: Risk Management and Control of Resources

The Treasury and Investment Management Section have been updated to reflect up to date financial guidance:

TREASURY AND INVESTMENT MANAGEMENT

- C.16 Lincolnshire County Council adheres to the requirements of the CIPFA Code of Practice in Treasury Management in Public Services 2009 and in doing so has adopted the following clauses within these financial regulations.**
- C.17 The Council will create and maintain, as the cornerstones for effective treasury management:**
- **A treasury management policy statement, stating the policies, objectives and approach to risk management of its treasury management activities;**

- Suitable treasury management practices (TMPs) setting out the manner in which the Council will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.
- C.18 The content of the policy statement and TMPs will follow the recommendations contained in Sections 6 and 7 of the Code, subject only to amendment where necessary to reflect the particular circumstances of this Council. Such amendments will not result in the Council materially deviating from the Code's key principles.
- C.19 The Executive Councillor for Finance will receive reports on its treasury management policies, practices and activities, including as a minimum, an annual treasury management strategy and annual investment strategy in advance of the year, a mid-year review and an annual report after its close, in the form prescribed in its TMPs.
- C.20 The Council delegates responsibility for the approval and regular monitoring of its treasury management policies and practices to the Executive Councillor for Finance, and for the execution and administration of treasury management decisions to the Executive Director (Resources and Community Safety), who will act in accordance with the Council's policy statement and TMPs and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.
- C.21 The Council nominates the Value for Money Scrutiny Committee to be responsible for ensuring effective scrutiny of the treasury management strategy and policies, including the consideration of all reports as detailed in C.19 above and in addition, quarterly treasury monitoring reports.

12. Part 5 – Policies and Protocols - Section D2 – Protocol on Councillor Involvement in Commercial Transactions

Protocol – For an officer

Bullet point four has been amended for clarity:-

- disciplinary proceedings by the Council, possibly leading to dismissal;
- personal liability to the Council for any loss caused by their negligence or reckless or deliberate misconduct; and
- Prosecution for **Misconduct in a Public Office**.

12.1 Section D4 - Planning Development Control Process

Paragraph 5.1 Declarations of Interests

The inclusion of reference to Prejudicial Interests:

Where a member has a prejudicial interest this must be disclosed. The member must not take part in the decision making process and must leave the room.

12.2 Section D6 – Petitions Scheme

Section - What will the Council do when it receives my petition?

The insertion of a new paragraph five:-

It is not intended that the petitions scheme should be used by staff to raise employer/employee issues. It should also not be used to cover matters usually dealt with through the Corporate Complaints System, those being handled through external agencies such as the Ombudsman, or issues which are usually handled through alternative means.

13. Part 6 Members' Allowance Scheme - Schedule 4 – Members' Duties which attract Travel and Subsistence Expenses

That the following non post holder specific approvals to claim travel and subsistence allowances be added to the existing list:-

Lincolnshire Show rota

Citizen of the Year Awards (judging and local member involvement)

Personal Development Plan meetings

Briefings by Senior Officers

Briefings relating to Outside Body representation

Safer Driving Courses

LGA Boards

14. Part 7 – Management Structure

A revised version of the Management Structure is detailed at Appendix C to this report.

15. Proposed Changes to the Accounts and Audit Regulations

The Accounts and Audit Regulations contain important provisions relating to the financial management, annual accounts and audit procedures affecting local authorities. The current Regulations date from 2003 with substantial revisions in 2006 and 2009. In January 2011 a consultation exercise was launched by the Communities and Local Government on proposals to consolidate the existing Regulations and revisions into one document and to make a number of changes to the Regulations themselves. These changes have now been approved and will apply this spring/summer to the 2010/2011 accounts.

There is one change that would be of benefit to this Council in terms of accounts closure and approval process. This change would require a minor change to the Constitution.

A combination of the current Regulations and our own practise means that the financial statements have to be approved by full Council by 30th June having first been the subject of detailed review and scrutiny by the Audit Committee. The Audit Committee has received specific externally provided training in order to carry out that role. After approval by Council the statements are subject to external audit with the outcome of that being reported back to the September Audit Committee. The audited accounts need to be published by the Council by 30th September each year.

The revised Regulations effectively remove the requirement for the Council to approve the draft accounts by 30th June, but do require the Executive Director of Resources & Community Safety to sign and date them by that date, as representing a true and fair view of the finances of the authority. The statements are then externally audited as before. The authority must now approve the audited accounts and publish them by 30th September each year. Clearly it is more logical for members to approve audited statements rather than unaudited accounts as now. The ability for Council to delegate the accounts approval process to a relevant Committee is also available under the revised Regulations. These changes are sensible and afford the opportunity for Lincolnshire County Council to change its processes as a consequence.

Given these changes have now been implemented it is suggested that the accounts approval process from summer 2011 onwards is as follows:

- The May County Council meeting formally delegates responsibility for approval of the financial statements to the Audit Committee.

- The Audit Committee receives appropriate accounts scrutiny training in June/July 2011.
- The accounts are signed by the Executive Director of Resources & Community Safety by 30 June and passed to external audit.
- The Audit Committee undertake a scrutiny of the accounts at their scheduled meeting on 10th July to enable their views to be reflected in the final statements
- The Audit Committee meets in late September to receive feedback from the external audit and to approve the statements. (Note that the Audit Committee meeting scheduled for 19th September would need to be delayed a week to allow the external auditors the maximum time to complete their work. Should full Council wish to retain the approval power they will have to meet around that time delaying the scheduled meeting by one or two weeks).
- The audited statements are published by 30th September.

In putting this proposal forward please note the following points:

- The switch this year to the International Financial Reporting Standards (IFRS) basis of accounts preparation will make the financial statements much more lengthy (doubling in size up to 200 pages) and technically more complex.
- The real work in reviewing the accounts is already done at the Audit Committee with the outcome of that review being reported to full Council via the minutes of the meeting in question.
- The Chairman and Vice Chairman of the Audit Committee have been informally consulted on the issue and would support the change suggested in this note. They are willing, for example, to move the date of the September Audit Committee to accommodate this change.

The proposed changes to the Constitution would be as follows:-

Part 2 – Articles of the Constitution

Article 4 – The Full Council - Paragraph 4.02 (u)

“(u) duty to approve authority’s statement of accounts, income and expenditure and balance sheet “

This paragraph would need to be transferred to Article 7 – Regulatory and Other Committees and Bodies of the Council and inserted as a new bullet point at the 7.05 Audit Committee at the end of the Accounts section.

Part 3 – Responsibility for Functions – Table 1 - Matters which it is the Responsibility of the Full Council to Discharge would then have to be amended with the deletion of paragraph 22 (see below):-

“22 Duty to approve authority’s statement of accounts, income and expenditure and balance sheet”

2. Conclusion

The Constitution requires to be updated to reflect current legislation and internal reorganisation therefore, on this basis this report is brought to full Council.

3. Legal Comments:

The report reflects the required changes to the Constitution from a legislative perspective and also from review. The comments are lawful and within the remit of Full Council.

4. Resource Comments:

There are no material financial implications from accepting the recommendations in this report.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

n/a

d) Policy Proofing Actions Required

n/a

6. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Katrina Cope, who can be contacted on 01522 552104 or katrina.cope@lincolnshire.gov.uk.