

Open Report on behalf of David O'Connor, Executive Director (Performance and Governance) and Monitoring Officer

Report to:	County Council
Date:	14 December 2012
Subject:	Amendments to the Constitution

Summary:

To consider amendments to the Constitution.

Recommendation:

- (1) To approve the changes to the Constitution as set out in this report and at Appendix A to this report.
- (2) To note the changes to the Scheme of Delegation relating to the Executive functions made by the Leader under Rule 1.5 (b) of the Executive Procedure Rules as detailed in paragraph 1.3 of the report.

1. Background

1.1 Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

1.1.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which came into effect on 10 September 2012 establish the presumption that meetings of a local authority Executive must be held in public.

1.1.2. The new regulations require some changes to the constitution in relation to procedures for managing the business of the Executive and these changes are set out in Appendix A to this report. The main points are as follows:-

- **Publicity in connection with key decisions:**

Currently the Leader is required to publish a Forward Plan of key decisions to be taken by the Executive covering a four - month period which has to be published on a monthly basis. Effective from 10 September 2012, the Forward Plan must list key decisions of the Executive 28 clear days before a key decision is made, and outline a range of other information similar in content to the current Forward Plan. If compliance with the 28 day notice period is not possible there is a requirement to notify the relevant Overview

and Scrutiny Committee Chairman and wait five clear days before the decision is taken (unless the special urgency provisions are followed). There is then a requirement to publish a notice explaining why compliance with the usual 28 day notice requirement has not been possible.

- **Procedures prior to Executive meetings where the public may be excluded:**

New provisions now apply ahead of any meeting of the Executive where the public are to be excluded due to disclosure of confidential or exempt information. 28 days before the meeting notice of the intention to hold the meeting or part of it in private must be published giving reasons. Further notice of the intention to hold the meeting in private must then be published 5 clear days before the meeting, setting out any representations received about why the meeting should be open to the public and the Executive's response to these. Where it is not practicable to meet the timescales for publication of these new notices the decision may be taken if the relevant Overview and Scrutiny Chairman has agreed that the meeting is urgent and cannot reasonably be deferred. A notice setting out the reasons for urgency and why the meeting could not be reasonably deferred must then be published.

- **Inspection of background papers:**

Previously, a list of background papers and a copy of each document listed was required to be available for public inspection at the Council's Offices. There is now a requirement for these documents to be made available on the Council's website.

- **Recording of individual officers' decisions:**

Previously, when any executive decision has been made by an individual Executive Councillor or a key decision is made by an officer, a record of that decision is made available for public inspection. The new rules require that **any** Executive decision taken by officers have to be recorded. An 'Executive Decision' is defined as 'a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the Executive of a local authority'.

1.2 Review of the Constitution

1.2.1 The Constitution requires that the Monitoring Officer monitors and reviews the Constitution and to ensure that appropriate amendments are recommended to Council as and when necessary. The following changes are proposed:-

Approved changes to the Constitution

1.2.2 Article 1 of the Constitution provides any changes to the Constitution must be approved by Council other than in limited circumstances where there are changes to the organisation which impact of the scheme of delegation or changes are necessary to Financial Regulations. In those cases, changes can be made to the constitution by the Head of Paid Service/S151 Officer

with the agreement of the Monitoring Officer, Leader, Leader of the Opposition, the Chairman of the Overview and Scrutiny Management Committee and the Chairman of Audit Committee. This means that amendments that are required arising from typographical errors, changes to matters of fact and updated or amended references to any statutory provisions will need to be approved by full Council under the current arrangements. It is therefore proposed that these types of changes can be made to the Constitution by the Monitoring Officer and it is proposed that Article 1 should be amended as follows (words in italic added):-

“1.06 Approval of changes to the Constitution

Other than changes to the Constitution which are matters of fact, update or amend references to statutory provisions or correct typographical errors in which case the amendments can be made by the Monitoring Officer, changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer. “

Scheme of Delegation

1.2.3 Page 3 of the Scheme of Delegation in Part 3 of the Constitution refers to the “Interim Executive Director of Children’s Services”. This should refer to the Executive Director of Children’s Services

1.2.4 Whilst there is a general delegation for the Executive Director (Resources and Community Safety) to act as Chief Finance Officer in the Scheme of Delegation in Part 3 of the Constitution, for the purposes of satisfying the Council’s banks that this includes a specific delegation to open and close bank accounts, it is proposed that this detail is added to the list of the Director’s delegations as follows:-

“18. To arrange appropriate banking and related services on behalf of the Council including opening and closing bank accounts”

Council Procedure Rules

1.2.5 In paragraph 10.2 of the Council Procedure Rules in Part 4 of the Constitution delete the following bullet point:-

“Any Councillor may ask any question on the discharge of the functions of the Lincolnshire Police Authority, at any meeting of the Council, except the meeting to consider the Council’s annual revenue budget and capital programme”.

Petitions

1.2.6 Paragraph 13 of the Summary to the Constitution says that “by law, we have to have adopted a petitions scheme...”. The Localism Act 2011 removed the duty established by the Local Democracy, Economic Development and

Construction Act 2009 for local authorities to respond to local petitions, and to provide a facility for e-petitions. However, many Councils have retained their petition schemes. It is therefore proposed that the wording in paragraph 13 be amended as follows:-

“13a ~~By law,~~ We have ~~to have~~ adopted a petitions scheme, which is set out in part 5, section D6 of the constitution”.

- 1.2.7 On page 5/45 of Section D.6 of Part 5 of the Constitution relating to the Petitions Scheme, reference to Peter Duxbury should be replaced with Debbie Barnes.

Contract Regulations

- 1.2.8 Following a review of the Contract Regulations set out in part 4 of the Constitution, it is proposed to increase the financial thresholds for letting low value contracts. The thresholds for low value contracts for which a suitable supplier can be approached without the need to obtain quotations will be increased from £5,000 to £10,000. The threshold range of low medium value from £5,001 to £10,000 where two written quotations were to be obtained is proposed to be removed. The proposed changes are as follows:-

3.3 Procurement Processes

For quotations below £25,000 there is a requirement to use a local supplier where this gives value for money.

Low Value Procurement (Below £5, 10,000)

For these purchases direct approach to a single supplier is acceptable, competitive quotations are not required. The purchasing officer should be satisfied that the costs are reasonable. It is expected that ESPO will be considered for the majority of this type of purchase.

A local supplier should be used where appropriate. Where a local supplier is not used the reason must be recorded in writing.

~~Low Medium Value Procurement (£5,001 to £10,000)~~

~~For contracts or orders of a low medium value at least two written quotations should be sought. Where applicable, quotations should be sought from contractors on the Council's Approved List of Contractors. Where it is not possible to obtain two competitive quotes the officer must keep a record of the reasons for this.~~

~~At least one of the quotations must be from a local supplier and a local supplier should be used where they provide the most economically advantageous offer. Where a local supplier is not used the reason must be recorded in writing.~~

Middle Medium Value Procurement (£10,001 to £25,000)

For contracts or orders of a ~~middle~~ medium value at least three written quotations should be sought. Where applicable, quotations should be sought from contractors on the Council's Approved List of Contractors. Where it is not possible to obtain three competitive quotes the officer must keep a record of the reasons for this."

1.3 **Changes to the Scheme of Delegation by the Leader**

- 1.3.1 The Department for Transport has indicated that the County Council should receive Car Parking Enforcement powers at the end of November 2012 and implementation should commence on the 3 December 2012. In accordance with Rule 1.5(b) of the Executive Procedure Rules the Leader has amended the Scheme of Delegation relating to the Executive functions to give delegated powers to the Director of Communities to carry out the statutory requirements of the Council as the Enforcement Authority for all aspects of Civil Parking Enforcement and appeals processes as follows:-.

Add:-

17. To carry out the statutory requirements acting on behalf of Lincolnshire County Council as the Enforcement Authority for all aspects of Civil Parking Enforcement and appeals processes as specified in the Traffic Management Act 2004 part 6, the Road Traffic and Regulation Act 1984, the Road Traffic Act 1991, Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.

2. Legal Comments:

The proposed changes to the Constitution set out in paragraphs 1.1 and 1.2 above can only be approved by the Council.

3. Resource Comments:

There are no material financial implications arising from the acceptance of the recommendations in this report.

4. 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

5. Appendices

These are listed below and attached at the back of the report	
Appendix A	Proposed amendments to the Constitution arising from the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

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 Anne Heard, who can be contacted on 01522 553750 or anne.heard@lincolnshire.gov.uk.