

Open Report on behalf of Richard Wills, Monitoring Officer

Report to:	County Council
Date:	26 September 2014
Subject:	Review of Constitution

Summary:

This report updates the Council on progress with the review of the Council's Constitution and seeks approval for the recommended amendments.

Recommendation(s):

1. That the Council considers whether it wishes to delegate the power of referral to the Secretary of State for Health to the Health Scrutiny Committee for Lincolnshire.
2. Subject to recommendation 1 above the Council agrees the recommended amendments to the Constitution contained in Appendices A and B to this report and notes that a further report will be received by Council on the remaining parts of the Constitution at its meeting on 19 December 2014.

1. Background

1.1 Following the County Council election in May 2013 political group leaders on the Council requested that there be a review carried out to consider the role of non-executive councillors and added members in relation to policy development and scrutiny.

1.2 At the meeting of the Overview and Scrutiny Management Committee on 27 June 2013 it was agreed that a Working Group should be established to support the Monitoring Officer in the review of the Constitution. The following councillors are members of that group:

Councillor CJTH Brewis
Councillor Mrs J Brockway
Councillor A Jesson
Councillor Mrs M J Overton MBE
Councillor R B Parker
Councillor T M Trollope-Bellew

1.3 At its meeting on 30 August 2013 the Overview and Scrutiny Management Committee considered proposals for amendments to the Constitution, which focused on the opportunities and mechanisms for policy development and scrutiny. These proposals were approved by Council on 13 September 2013 and were then reflected in amendments to the relevant sections of Part 2 – Articles of the Constitution and Part 4 – Rules of Procedure.

1.4 It was agreed that the Review of the Constitution Working Group should continue to meet to review the other parts of the Constitution. The Group has met on several occasions and reported back to the Overview and Scrutiny Management Committee on its progress.

1.5 At its meeting on 26 June 2014 the Overview and Scrutiny Management Committee supported recommended amendments to Parts 2 and 3 of the Constitution. These amendments, highlighted as coloured tracked changes, are attached as Appendix A and Appendix B to this report.

1.6 Part 6 of the Constitution, the Members' Allowances Scheme, was approved at the Council meeting on 21 February 2014. Part 7 of the Constitution, the Senior Management Structure, was approved at the annual council meeting on 16 May 2014. Further meetings of the Constitution Review Working Group are planned to finalise amendments to Parts 1, 4 and 5, which will be presented to the Overview and Scrutiny Management Committee prior to being considered by the Council on 19 December 2014.

2. Referrals to the Secretary of State for Health

2.1 Subsequent to the amendments to Part 2 being supported by the Overview and Scrutiny Management Committee in June there has been further guidance from the Secretary of State for Health on the Health Scrutiny function.

2.2 The guidance expands on elements in the Health Scrutiny Regulations, which relate to consultations by commissioners of NHS-funded services, on "any proposal for a substantial development of the health services in the area of the local authority or for a substantial variation in the provision of such service".

2.3 The new regulations, which were effective from 1 April 2013, provide for a referral process to the Secretary of State for Health on one or more of the following grounds:

- a) The consultation on the proposal has not been adequate in relation to the content or the time allowed;
- b) Where the commissioner has decided not to consult because of a risk to the safety or welfare of patients or staff, the reasons given for this approach are not adequate; or
- c) The proposal would not be in the best interests of the health service in the area.

2.4 It should be stressed that prior to making any referral, every effort must be made to seek a local resolution between the responsible commissioner and the

Council's health scrutiny function. However, if there is a disagreement, a referral may be made, which has to include the following information:

- An explanation of the proposal
- In the case of grounds (a) and (b) above, the reasons why there is no satisfaction; or in the case of ground (c) above, a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area.
- The steps taken to reach an agreement with the commissioner, or where the commissioner has not responded in a reasonable time to take steps to reach an agreement an explanation of this;
- An explanation of the reasons for making a referral;
- Any evidence in support of those reasons.

2.5 The existing terms of reference of the Health Scrutiny Committee for Lincolnshire reflect the legal advice given at the time the regulations were issued in 2013, to the effect that any decision to make a referral to the Secretary of State in accordance with the above process can only be made by a meeting of the County Council and such decisions cannot be delegated to a committee.

2.6 In view of the content of the guidance issued in June 2014, the earlier legal advice has been clarified and the County Council may, if it wishes, delegate the power of referral to a health overview and scrutiny committee. This would mean that all the County Council's health scrutiny functions would be undertaken by the Health Scrutiny Committee for Lincolnshire.

2.7 Should the Council wish to delegate this power to the Health Scrutiny Committee for Lincolnshire, a revised wording has been set out on pages 2/24 and 2/25 of Appendix A, and is shown in the form of tracked changes.

2.8 Members of the Review of the Constitution Working Group have been consulted on the suggested revised wording and have supported the amendments.

3. Members Appeal Hearing Panel

3.1 In addition the Working Group agreed that there was a need for the Articles to include a section on the Members Appeal Hearing Panel.

3.2 This has been amended slightly since being approved for submission to Council by the Overview and Scrutiny Management Committee, to reflect further legal advice.

3.3 The Review of the Constitution Working Group has been consulted on the final version of this section, which can be found on page 2/34 of Appendix A.

4. Conclusion

Amendments to the Council's Constitution are the responsibility of Full Council. Councillors are therefore asked to consider the recommended amendments appended to this report.

5. Legal Comments:

Changes to the Council's Constitution, other than minor amendments, typographical changes and the like, must be approved by Full Council.

6. Resources Comments:

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

7. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The Overview and Scrutiny Management Committee considered amendments recommended to it by the Constitution Review Group at its meeting on 26 June 2014 and supported them.

d) Policy Proofing Actions Required

n/a

8. Appendices

These are listed below and attached at the back of the report

(PLEASE NOTE: Due to the size of the appendices, they have only been circulated electronically and are available at www.lincolnshire.gov.uk/committeerecords, paper copies are available on request)

Appendix A	Proposed amendments to Part 2 - Articles of the Constitution
Appendix B	Proposed amendments to Part 3 - Responsibility for Functions

9. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Local Authority Health Scrutiny - Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny	Democratic Services

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