

Council report

Report of Head of Legal and Democratic Services

Author: Susan Harbour

Tel: 01235 550306

E-mail: susan.harbour@southandvale.gov.uk

To: COUNCIL

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Review of the council's constitution

Recommendations

That Council:

1. notes the work done by the Joint Constitution Review Group and the intention to bring forward wholesale revisions of the council's constitution for consideration by Council;
2. notes the overall approach of the review group to develop "mirror" constitutions with Vale of White Horse District Council and commonality of wording where possible;
3. authorises the Head of Legal and Democratic services to make the necessary amendments to the constitution to amend the Scrutiny call-in procedures and the definition of key decisions;
4. approves the attached amendments of the officer employment procedure rules for inclusion in the constitution;
5. authorises the Head of Legal and Democratic Services or a deputy monitoring officer to appoint a panel of independent persons drawn from the independent persons appointed by South Oxfordshire and Vale of White Horse district councils under the Localism Act 2011;
6. authorises the Head of Legal and Democratic services to make any minor or consequential amendments to the constitution.

Purpose of report

1. To consider proposed amendments to the constitution and amendments to the officer employment procedure rules to enable the council to meet the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which the council is required to include within its constitution.

Strategic objectives

2. The constitution underpins all of the council's areas of activities and, therefore, contributes to the achievement of all its strategic objectives.

Background

3. A review is currently being undertaken of the constitution in accordance with the Council's decision when it first approved the constitution and in pursuance of the requirements of Section 37 of the Local Government Act 2000 to keep the constitution under review. The purpose of this review is to make the constitution more user-friendly and accessible, bring it up to date and to achieve, as far as possible, "mirror" constitutions for this council and Vale of White Horse District Council for the benefit of users who operate in or with both councils. Where there are no political issues or essential differences, wording will be the same at both councils. Differences will be found under "mirror" sections. This will enable both councils to retain their own political priorities and local flavours whilst improving the user-friendliness of the documents. The approach will affect the order and structure of both constitutions and will be in a new format. Sections on committees will become self-contained, a particular benefit to councillors, officers and public users. The full constitution will come to Council for consideration during the course of next year, but there are some more time critical items which will be brought as required. The Joint Constitution Review Group meets regularly to consider issues. This group comprises councillors Toby Newman, David Turner and Ian White, plus three Vale of White Horse district councillors. Officers from Legal and Democratic Services support and advise the group. Additional councillors (eg Chairs and Cabinet members) together with specialist officers, attend the group as required. Items within this report have been agreed by the Review Group and they have also consulted within their own political groups.

Scrutiny Call in arrangements

4. The current constitution has the following arrangements for the call-in of decisions by the Scrutiny Committee:

"When a decision is made by the cabinet, an individual cabinet member, a committee of the cabinet, or a key decision is made by an officer with delegated authority from the leader of council, the decision shall be published, within two working days of being made. During the five working day period following publication of a notice, the proper officer shall call-in a decision for scrutiny by the scrutiny committee if so requested by the chairman or any five members of the scrutiny committee, or any ten councillors, and shall then notify the decision-taker of the call-in. ... and the decision shall not be implemented until the scrutiny committee has considered it. "

5. This creates significant difficulties not necessarily foreseen at the time these rules were put into place at the council. Since the provisions were last reviewed, Council has agreed that the Scrutiny Committee shall be chaired by a councillor appointed by Council or the Scrutiny Committee with no requirement that this should be an opposition councillor. The committee is currently chaired by a councillor from the ruling group (previously it was with the opposition). Therefore, no opposition numbering less than 10 councillors can call-in an executive decision.
6. At the current time, this means that the opposition do not have a method of calling items into Scrutiny. Although the role of Scrutiny is not group political, it is questionable whether good governance would suggest that an opposition with less than 28 percent of members are unable to call a decision into Scrutiny without the consent of the ruling group. In terms of future proofing, this does not only affect the current make-up of the council, but could have implications for future configurations of the council.
7. The issue of which decisions should be available for call-in was also reviewed, and clarity sought on what constituted a “key decision”. The review group considered that it was essential that major decisions should be open to scrutiny call-in, but that the effective running of the council could be hampered if every single decision was potentially open to call-in. Advice from the Centre for Public Scrutiny is that where The Act (Local Government Act 2000, as amended) refers to “decisions”, these should be considered as “key decisions”. The definition of key decision below is consistent with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, but defines the financial limit (on which the regulations are silent) as £75,000. It also adds the grant limit of £25,000.
8. The Review Group considered a range of options, based on research on what other councils do and the needs of this council. It concluded that it would recommend to Council:
 - that the chair of the Scrutiny Committee **or** any three members of the council (one of whom must be a member of the Scrutiny Committee) should be permitted to call-in a decision.
 - to use the following definition of a “key decision”: “A key decision is a decision of the cabinet, individual cabinet member or an officer acting under delegated powers which is likely: (a) to incur expenditure, make savings or to receive income of more than £75,000; (b) to award a revenue or capital grant of over £25,000; or (c) to agree an action that, in the view of the relevant strategic director, would be significant in terms of its effects on communities living or working in an area comprising more than one ward in the area of the council. (this is consistent with the current South

Oxfordshire definition but includes “make savings” in order to properly reflect the legislation).

- that call-in should apply only to key decisions made by councillors and officers and not to day to day decision which are not key decisions.

Changes to officer employment procedure rules

9. The officer employment procedure rules describe the procedures to be followed for the appointment, dismissal or disciplining of the head of paid service and strategic directors. The amended regulations make further provision in regard to the monitoring officer and chief finance (Section 151) officer; these new requirements are incorporated in the **attached** revision to our rules.
10. The dismissal of the monitoring officer or chief finance officer may now be effected only by decision of the full council.
11. The procedure for taking disciplinary action against one of the three statutory officers is amended. The previous requirement was to appoint a designated independent person who would investigate and make a binding recommendation, whereas the 2015 regulations require that a panel of at least two independent persons is now to be appointed which will investigate and make a recommendation to Council.
12. The Council has already appointed independent persons to advise on complaints under the councillors’ code of conduct. Should it be necessary to appoint a panel under these regulations, membership could be drawn from the existing pool of independent persons appointed by both Vale of White Horse and South Oxfordshire district councils in order of priority as specified in the revised procedure rules.
13. Council is asked to adopt the revised officer employment procedure rules, with any consequent minor changes to the constitution (such as the scheme of delegation), and to authorise the head of legal and democratic services (or a deputy monitoring officer) to appoint and convene the panel in the event that it is necessary to do so.

Revised constitution

14. Council is requested to approve the changes set out in this report for implementation from 1 January 2016.

Financial Implications

15. The democratic services budget for printing will meet the costs of producing copies of the amended constitution.

Legal Implications

16. Section 37 of the Local Government Act 2000 requires the Council to keep its constitution under review. The council is required to amend its officer employment procedure rules to comply with the requirements of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Conclusion

17. This report sets out proposals to amend the constitution. Officers recommend that Council supports these proposals and authorises the head of legal and democratic services to make these changes and any further minor or consequential amendments to the constitution.

Background paper: Paper to the Joint Constitution Review Group

Officer employment procedure rules

RECRUITMENT AND APPOINTMENT

1. Declarations

- (a) The council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the council; or of the partner of such persons.
- (b) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant strategic director or an officer nominated by him/her.

2. Seeking support for appointment.

- (a) The council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the council. The content of this paragraph will be included in any recruitment information.
- (b) Subject to paragraph (c), no councillor will seek support for any person for any appointment with the council.
- (c) Nothing in paragraphs (a) and (b) above will preclude a councillor from giving a written reference for a candidate for submission with an application.

Recruitment and appointment of head of the council's paid service and strategic directors

3. Where the council proposes to appoint the head of the council's paid service or a strategic director the council will:

- (a) draw up a statement specifying:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

- (c) make arrangements for a copy of the statement mentioned in paragraph (3) (a) to be sent to any person on request.

Appointment and dismissal of strategic directors and statutory officers

4. The full Council will approve the appointment or dismissal of the head of the council's paid service and strategic directors, or the dismissal of the monitoring officer or chief finance officer, following the recommendation of such an appointment or dismissal by the joint staff committee. The joint staff committee must include at least one member of the cabinet. No offer of appointment may be made, or notice of dismissal given, until the council has approved any recommendation to that effect.
5. The full Council may not make or approve the appointment of the head of the council's paid service or a strategic director until:
 - (a) the joint staff committee has notified the head of HR, IT and technical services (head of HR) of the name of the person to whom the joint staff committee wishes to make the offer and any other particulars which the joint staff committee considers are relevant to the appointment;
 - (b) the head of HR has notified every member of the cabinet of:
 - (i) the name of the person to whom the joint staff committee wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the joint staff committee has notified to the head of HR and
 - (iii) the period within which any objection to the making of the offer is to be made by the leader of the council on behalf of the cabinet to the head of HR and
 - (c) either:
 - (i) the leader of the council has, within the period specified in the notice under paragraph (5)(b) above notified the joint staff committee that neither he/she nor any other member of the cabinet has any objection to the making of the offer;
 - (ii) the head of HR has notified the joint staff committee that no objection was received by him/her within that period from the leader of the council; or
 - (iii) the joint staff committee is satisfied that any objection received from the leader of the council within that period is not material or is not well founded.
6. The full Council may not give notice of the dismissal of the head of the council's paid service, the monitoring officer, the chief finance officer or a strategic director until:

- (a) the joint staff committee has notified the head of HR of the name of the person whom the joint staff committee wishes to dismiss and any other particulars which the joint staff committee considers are relevant to the dismissal;
- (b) the head of HR has notified every member of the cabinet of:
 - (i) the name of the person who the joint staff committee wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the joint staff committee has notified to the head of HR and
 - (iii) the period within which any objection to the dismissal is to be made by the leader of the council on behalf of the cabinet to the head of HR; and
- (c) either:
 - (i) the leader of the council has, within the period specified in the notice under paragraph (6)(b) above notified the joint staff committee that neither he/she nor any other member of the cabinet has any objection to the dismissal;
 - (ii) the head of HR has notified the joint staff committee that no objection was received by him/her within that period from the leader of the council; or
 - (iii) the joint staff committee is satisfied that any objection received from the leader of the council within that period is not material or is not well founded.

Disciplinary action against statutory officers

7. In the following paragraphs—

- (a) “the 2011 Act” means the Localism Act 2011;
- (b) “chief finance officer”, “disciplinary action”, “head of the council’s paid service” and “monitoring officer” have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;
- (c) “independent person” means a person appointed under section 28(7) of the 2011 Act;
- (d) “local government elector” means a person registered as a local government elector in the register of electors in the council’s area in accordance with the Representation of the People Acts;
- (e) “the Panel” means a committee appointed by the council under section 102(4) of the Local Government Act 1972 for the purposes of advising the council on matters relating to the dismissal of relevant officers of the council;
- (f) “relevant meeting” means a meeting of the full Council to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) “relevant officer” means the chief finance officer, head of the council’s paid service or monitoring officer, as the case may be.

8. A relevant officer may not be dismissed by the council following disciplinary action unless the procedure set out in the following paragraphs is complied with.
9. The council must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.
10. In paragraph 9 “relevant independent person” means any independent person who has been appointed by the council or, where there are fewer than two such persons, such independent persons as have been appointed by another council or councils as the council considers appropriate.
11. Subject to paragraph 12, the council must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order—
 - (a) a relevant independent person who has been appointed by the council and who is a local government elector;
 - (b) any other relevant independent person who has been appointed by the council;
 - (c) a relevant independent person who has been appointed by another council or councils.
12. The council is not required to appoint more than two relevant independent persons in accordance with paragraph 11 but may do so.
13. The council must appoint any Panel at least 20 working days before the relevant meeting.
14. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the full Council must take into account, in particular—
 - (a) any advice, views or recommendations of the Panel;
 - (b) the conclusions of any investigation into the proposed dismissal; and
 - (c) any representations from the relevant officer.
15. Any remuneration, allowances or fees paid by the council to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person’s role as independent person under the 2011 Act.

OFFICERS BELOW STRATEGIC DIRECTOR

Appointment

16. The appointment of officers below strategic director (other than assistants to political groups) is the responsibility of the head of the council's paid service or his/her nominee, and may not be made by councillors.
17. The appointment of an assistant to a political group, as defined in the Local Government and Housing Act 1989, shall be made in accordance with the wishes of that political group.

Dismissal

18. Councillors will not be involved in the dismissal of any officer below strategic director, other than the monitoring officer or chief finance officer as set out in paragraphs 4 and 6 above.

Disciplinary action

19. Councillors will not be involved in disciplinary action against any officer below strategic director, other than the monitoring officer or chief finance officer as set out in paragraphs 7 to 15 above.