

<b>Meeting:</b>	<b>Council</b>
<b>Meeting date:</b>	<b>Friday 17 July 2020</b>
<b>Title of report:</b>	<b>Amendments to the constitution</b>
<b>Report by:</b>	<b>Chairman of the Audit and Governance Committee</b>

## **Classification**

Open

## **Decision type**

This is not an executive decision

## **Wards affected**

(All Wards);

## **Purpose**

To consider the suggested amendments to the council's constitution recommended by the Audit and Governance Committee at its meeting on 16 June 2020 and additionally as required by the anticipated new pavement licence legislation.

## **Recommendation(s)**

**That:**

- (a) the amendments to the constitution in appendix 1, are agreed with implementation immediately; and**
- (b) the monitoring officer is authorised to amend the constitution to include a right of appeal for pavement licenses to the licensing subcommittee in the committees functions.**

## **Alternative options**

1. To reject the proposed amendments and retain the current constitution un-amended: this is not recommended as the amendments have been proposed in order to improve clarity and to provide the opportunity for closer, more integrated, local partnership working on

well evidenced local health and wellbeing priorities. Without an appeal mechanism licensees have no right of appeal.

2. To propose alternative or additional amendments: it is open to the Council to propose that consideration be given to alternative or additional amendments. However, additional time may be required to consult with the health and wellbeing board as necessary.

## Key considerations

### Health and wellbeing board review

3. Following the elections in May 2019, the chairperson of the health and wellbeing board, with the agreement of the current membership, commissioned a review of the board's function, membership and deliverables.
4. This coincided with the publication of the Local Government Association's (LGA) report '[What a difference a place makes: the growing impact of health and wellbeing boards](#)' which highlighted good performing boards across the country and the factors that made them successful. The review was facilitated and supported by the LGA.
5. The review examined the current strategic landscape across health, social care and work of wider partners, and the role of the board in providing leadership and helping to bring coherence to the new ways of working that connect communities, place and system.
6. At the meeting in public on 10 February 2020, the board considered the outcomes and new arrangements in the [health and wellbeing board review and future working](#) report.
7. The board agreed an updated vision:

*Herefordshire residents are connected into communities to be resilient; lead fulfilling lives; are emotionally and physically healthy and feel safe and secure.*

Underpinned by five priorities:

- *Supporting our residents to eat well, drink safely and get active*
- *Supporting our residents to live life to the full whatever their age*
- *Supporting vulnerable residents of all ages to live and age well*
- *Supporting the mental and emotional wellbeing of all our residents of all ages*
- *Developing communities to help keep people connected*

With the following cross-cutting themes:

- *Collaborative partnership working to maximise our resources across the county*
- *Ensuring services, support and opportunities are equitable and accessible to all*
- *Improving quality of life through healthy ageing*
- *Co-producing with communities and stakeholders to help people connect and engage with the board*
- *Identify climate change action in all aspects of operational delivery*
- *Supporting and enhancing our workforce skills and opportunities*

- *Building resilience across communities and all sectors*
  - *Improving social mobility including housing, economic opportunities and learning*
8. To ensure that the board is fit for purpose in a changing health and social care environment, and recognising the need to explore the wider determinants of health and wellbeing, the board wished to expand its core membership to include representatives from: health partners - commissioners and providers; the council - councillors and all directors; police; fire and rescue; strategic partnership boards; and Healthwatch Herefordshire.
  9. Following a recommendation from audit and governance committee a review of the membership and functioning of the board will be undertaken in 12 months. The review will provide an opportunity for the Health and Wellbeing Board to consider its structure and operations in light of the response to the COVID-19 pandemic.
  10. The composition, appointment of the chairperson and vice-chairperson, voting arrangements, and role of the health and wellbeing board are set out in the constitution in part 2, article 8 (planning, licensing and other functions), paragraphs 2.8.7-2.8.14.
  11. It is recommended that the composition of the board at paragraph 2.8.9 be amended to include additional board members, as shown in appendix 1 to this report.
  12. The additional organisations and services identified have been approached to confirm their participation in the work of the board. The existing constituent organisations and services were also invited to confirm the most appropriate executive or non-executive member to serve on the board.
  13. The statutory and other functions of the board are set out in the constitution in part 3, section 5 (other functions), paragraphs 3.5.22 - 3.5.24. No amendments to the functions of the board are being recommended at this time.

### **Pavement license appeals**

14. On Thursday 25 June 2020 the Business and Planning Bill was introduced by the Government, this is being fast tracked through Parliament and anticipated to be law by the end of July 2020. The Bill amongst other matters introduces a new form of pavement licence which will allow food and drink businesses to put tables, chairs and temporary counters etc. on the “highway” outside their premises for their customers to use.
15. This new pavement licence will replace the current highways amenity licence for a temporary period until 30 September 2021. The new licence process will be streamlined in terms of determination. It is currently proposed that there will be a 5 day consultation/publicity period followed by a 5 day period for a decision to be made. If the application is not determined within the 10 days then it will be deemed to be granted. All licences decided on and granted will be valid for a minimum of 12 months. A deemed licence will not be valid beyond 30 September 2021.
16. Licences will be subject to national conditions and locally determined conditions, which will need to be justified.
17. There is not a proposed statutory right of appeal for decisions made on pavement licences under this proposed legislation therefore the draft guidance on pavement licences (outdoor seating proposals) published by MHCLG on 25 June 2020 suggests

that councils “may wish to consider the scope of an internal review process, for example permitting appeals to their Licensing committee”.

18. It is suggested that the appeals will be conducted on the same basis as licensing hearings.
19. As the legislation is not yet in force, it is suggested that authority is delegated to the monitoring officer to include this function in the licensing subcommittees functions if no right of appeal is provided for in the legislation.

## **Community impact**

20. The revised vision, priorities and cross-cutting themes align to the county plan 2020-2024 for Herefordshire Council, including the community ambition ‘strengthen communities to ensure everyone lives well and safely together’. In addition, these also align to the NHS long term plan which identifies the need for action on prevention and health inequalities.
21. The health and wellbeing board has a statutory function for the joint strategic needs assessment of health and wellbeing needs for the county (Understanding Herefordshire) which has informed the review. The board also has a statutory duty to encourage integrated working.
22. The constitution is a key part of the council’s governance arrangements and sets out how the council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. The format of the content of any amendments to the constitution should help make these arrangements clearer to understand and how the public can effectively engage with them.
23. The proposed amendments will support the health and wellbeing board to deliver its statutory and other functions efficiently and effectively.
24. The inclusion of an appeal process ensures that a full process is available to administer this new scheme.

## **Equality duty**

25. Under section 149 of the Equality Act 2010, the ‘general duty’ on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

26. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.
27. The council and its partners are committed to equality and diversity using the public sector equality duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. All equality considerations are taken into account.
28. It is not envisaged that the recommendations in this report will negatively disadvantage the following nine groups with protected characteristics: age, disability, gender, reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
29. The health and wellbeing board aims to deliver better outcomes for the residents of Herefordshire and supports the council in proactively delivering its equality duty under the act. This is through improving the health and wellbeing of people in Herefordshire by enabling them to take greater control over their own health and the health of their families, and helping them to remain independent within their own homes and communities. There are no negative impacts for looked after children or with respect to the council's corporate parenting role.

## **Resource implications**

30. None arising from the recommendations. The council already makes provision within its existing budgets to enable publication of the constitution on its website and to ensure that members and officers have the training necessary to ensure awareness and understanding of the requirements within the constitution.
31. Any additional resource implications, such as officer time and expenses, associated with the new working arrangements will be accommodated within existing staff resources and budgets, and will be kept under review.
32. The board has a statutory function to approve the better care fund plan and quarterly reports, with cabinet and Council approval of budgets. This report does not recommend for this to change. Board members have budget and resource oversight within their own organisations or services.

## **Legal implications**

33. Health and wellbeing boards were established under the Health and Social Care Act 2012 to act as a forum in which key leaders from local health and social care work together to improve the health and wellbeing of their local population.
34. The core membership of health and wellbeing boards is prescribed in section 194 of the Health and Social Care Act 2012 as follows:- at least one councillor, director of adult services, director of children's services, director of public health, representative of the local Healthwatch, representative of each relevant clinical commissioning group and such other persons as the local authority thinks appropriate. Before appointing any other person to be a board member, the local authority must consult with the health and wellbeing board. The health and wellbeing board has been consulted and deemed appropriate membership

35. The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The council's constitution sets all the basic rules governing the health and wellbeing board, including composition and role, functions and procedures. Paragraph 2.8.9 of the constitution provides the membership. The role of the board is to carry out the statutory functions as required by the Health and Social Care Act 2012, and any other functions delegated to it, as set out in paragraph 3.5.22 of the constitution.
36. There is no legal requirement to have an appeals process for the pavement licence applications but it is recommended as good practise.
37. The recommendations in the report comply with the legislation and statutory requirements

## **Risk management**

38. If the council's constitution is not accurate, up to date and understood then there is a risk that governance arrangements are not clear and robust leaving the council open to judicial review, contractual challenge or financial risk. The proposed amendments seek to mitigate this risk by improving clarity within the constitution about the governance arrangements for the health and wellbeing board.
39. The risks for the board will be managed by a health and wellbeing board risk register which will be reported through the council's appropriate governance structure and via the adults and communities directorate risk register. The key risk for ensuring the board's effectiveness is appropriate leadership and membership, and the influence and control within constituent organisations and services. If the proposed changes are not embedded, the opportunity to change will be minimal, which will have an impact on the residents of Herefordshire, future services, communities and resources.
40. Scrutiny of the board is within the remit of the adults and wellbeing scrutiny committee.

## **Consultees**

41. The current members of the health and wellbeing board have been consulted and have contributed to the review through a series of workshops. This included representation from key health partners, Healthwatch Herefordshire, appropriate cabinet members and directors of the council.
42. The Audit and Governance Committee recommended the changes contained in appendix 1 to full Council at its meeting on 16 June 2020.
43. The suggestion that appeals arising from pavement licence decisions under this new legislation was raised with the chair of the licensing sub-committee (Cllr Seldon) on 30 June 2020 and he was supportive.

## **Appendices**

Appendix 1 – Suggested amendments to the constitution part 2 article 8 planning, licensing and other functions.

## **Background papers**

None identified.