

# Title of report: Constitution – Updates

**Meeting: Council**

**Meeting date: Friday 11 October 2024**

**Report by: Head of Legal Services and Deputy Monitoring Officer**

## **Classification**

Open

## **Decision type**

This is not an executive decision

## **Wards affected**

(All Wards);

## **Purpose**

A report to propose amendments to the constitution in relation to: functions of Audit and Governance Committee including recruitment and appointment of Independent Persons to Audit and Governance Committee; functions of Planning and Regulatory Committee; clarification of the Planning Code and functions rules; amendment to Fostering Panel membership to reflect practice; amendment to employment rules; amendment to the corporate scheme of delegation; amendment to enable consequential changes to be made to the Constitution; clarification to call-in; and role description for position of chair and vice chairperson .

## **Recommendation(s)**

**That Council approves changes in the Constitution:**

- a) in Appendix 1 to enable a change to the process for resolution of objections to the framework proposals, in the Budget and Policy Framework;**
- b) in Appendix 2 to enable changes to Audit and Governance Committee functions including recruitment of the Council's independent persons;**
- c) in Appendix 3 to make changes to clarify the rules in The Planning code and functions of the Planning and Regulatory Committee;**
- d) in Appendix 4 to make changes to fostering panel membership to accurately reflect practice;**

- e) in Appendix 5 to makes changes to the corporate scheme of delegation to include provision for the statutory 'Qualified Person' under the Freedom of Information Act 2000;
- f) in Appendix 6 to enable changes to the employment rules, relating to the delegation to the head of paid service to make appropriate interim arrangements when required;
- g) in Appendix 7 to enable consequential changes to be made to the Constitution;
- h) in Appendix 8 to clarify the rules relating to officer decisions and call in; and
- i) in Appendix 9 to include a role description for the chair and vice chair of a committee.

### Alternative options

1. Council may choose not to approve the proposals and agree that functions will remain as currently described in the Constitution. This is not recommended

### Key considerations

#### Appendix 1 Budget and Policy Framework

2. Part 3 Section 4 of the Constitution describes the budget and policy framework rules. The current process for approval of the framework is at 4.3.3 to 4.3.20.
3. In its current form, the rules around resolution, if a recommendation is rejected or an amendment proposed by Council, then a further meeting of Council is required (4.3.16) unless the leader indicates at the meeting itself, on behalf of the cabinet, that they accept the amendment.
4. However, it is also the case that, currently the rules say that the second Council meeting must be held even if the Cabinet subsequently agrees to the initial amendment by Council.
5. The proposed amendments at Appendix 1 aim to provide greater flexibility and a mechanism to resolve any potential differences between Council and Cabinet, and to avoid the need to hold additional meetings of Council if resolution can be reached. In the position where the Cabinet agrees with the amendments or after consideration agrees, then decision can be taken without a further meeting of Council.

#### Appendix 2 Audit and Governance

6. Section 28 (7) of the Localism Act 2011 requires at least one independent person to be appointed, whose views must be sought by the Council in relation to Code of Conduct complaints.
7. The Council had four Independent Persons pursuant to Section 28 (7) of the Localism Act 2011 until the resignation of one, in June 2024. A proposed appointment to maintain four Independent Persons will be recommended to Council in October 2024.
8. Part 3 Section 1 of the Constitution, at 47D, currently provides for recruitment of up to three Independent Persons by the Monitoring Officer. The proposed amendment will align the Constitution with current practice and allow for the recruitment of up to four Independent Persons (in consultation with the Chair of Audit & Governance).
9. Additionally, the Terms of Reference for the Audit and Governance Committee require the appointment, to that committee, of an additional independent person who is not a councillor.

This person is not appointed under the Localism Act, as described above. The proposed amendments clarify that distinction at Part 2 Article 7 of the Constitution, at 2.7.4, by referring to this person as an independent expert.

10. Currently, appointment of the Independent Persons and an independent expert, should the above amendment be approved, must be done by full Council. The proposed amendments would simplify the process, allowing the Monitoring Officer, in consultation with the Chair of the Audit and Governance Committee, to appoint both sets of the independent persons.

### **Appendix 3 Planning and Regulatory functions**

11. The Planning Code is at Part 5 Section 6 of the Constitution. The Code contains controls around members who are decision makers in respect of lobbying and / or contact with applicants and /or objectors to a planning application.
12. A ward councillor does not have these limitations because they are not decision makers, so they can speak to whomever they wish, and can represent the views of their residents as they see fit.
13. In most cases the drafting separation between the obligations and rights of members on the committee and members who are not on the committee, works correctly. However, according to The Planning Code, a ward member who is on the committee cannot vote (Constitution Part 4 at paragraph 4.8.9) but, since they are 'on the committee', they are nevertheless bound by the requirements of a decision maker (who can vote), and so cannot speak to an applicant. This effectively prevents a ward member who is on the committee from speaking to residents and representing the views of their residents as they see fit.
14. Similarly, any member of the Committee who does not intend to vote (due to a predetermination or interest) is bound by the same provisions.
15. The proposed amendments to The Planning Code at 5.6.9, and the Planning Rules at Part 4 Section 8, clarify what ward members can do, by distinguishing between voting and not voting members.
16. Part 3 Section 5 of the Constitution describes the functions of the Planning and regulatory committee.
17. The regulation of sex establishments (sex shops, sex cinemas, and sexual entertainment venues) is set out in the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. This function is not listed currently in Part 3 Section 5.
18. The proposed amendment at 3.5.7 clarifies the inclusion, in its licensing functions, of applications for the licensing of Sex establishments, which are currently determined by the Licensing sub-committee but not currently listed in its functions.
19. Part 3 Section 5 of the Constitution at 3.5.6 and 3.5.7 also describes the Council's Licensing functions. As currently drafted, the Constitution says that the functions of the licensing authority are to be taken or carried out by the licensing subcommittee which conflicts with the delegation in section 7 of the Licensing Act 2003. However, it is not the case that all functions would be carried out by the licensing subcommittee and, in particular, the Planning and Regulatory committee should determine policy and guidance, not the licensing subcommittee, that are not reserved to council.
20. The proposed amendment at 3.5.6 aims to clarify and correct this point. However, officers have requested that the 5 main licensing policies remain with full Council. Currently the policies for

gambling and alcohol are reserved to Council under statute, and taxi's is already reserved to full Council. The proposal is to add tattoo and sex establishment venues to the policies that require full Council approval.

21. Finally, an amendment is proposed at Part 2 Article 8, at 2.8.5, to clarify a point that is currently not clear, that the Planning and regulatory committee determines all policy and guidance in relation to its functions that are not delegated to officers or reserved to full Council.

#### **Appendix 4 Fostering Panel**

22. Part 2 Article 9 of the Constitution at Article 2.9.28 currently includes an absolute restriction that elected members cannot be selected to join the Fostering Panel. It not considered that this exclusion on elected members is desirable or necessary as the [The Fostering Services \(England\) Regulations 2011](#) allows elected members and these regulations already make provision in respect to the membership of the panel and the roles that elected members can play. The previous regulations [The Fostering Services Regulations 2002](#) made it mandatory that an elected member had to be on the panel so this current exclusion appears to be arbitrary and it is unclear why this is the position for Herefordshire. As the Fostering Panel itself holds the list of individuals considered appropriate to be on the panel and such already includes elected members, the proposed amendment reflects the accurate and actual position – it appears to be an unnecessary exclusion for members. The proposal is to remove this arbitrary restriction.

#### **Appendix 5 Corporate Scheme of Delegation**

23. The proposed amendment to the Constitution's Scheme of Delegation - Corporate Services, adds the role of 'Qualified Person' for the purposes of the Freedom of Information Act 2000, which is currently missing.
24. The Monitoring Officer is authorised by the Secretary of State as the primary qualified person for the purposes of the Freedom of Information Act 2000 (prejudice to effective conduct of public affairs) and the proposed amendment reflects this requirement.

#### **Appendix 6 Employment Rules**

25. Part 4 Section 9 of the Constitution currently provides, at 4.9.11, for the head of paid service to make such interim senior appointments (directors and statutory officers) to ensure that the statutory functions of the council are always adequately fulfilled. However, as currently drafted the rules restrict the type of arrangement that can be made, to a contract for services, which differs legally from an employment contract, for these roles. The head of paid service cannot engage a directly employed interims, but it is unrestricted to engage those on a locum type role (for example through an agency). This has no logical purpose.
26. The proposed amendment provides a more useful delegation in that the head of paid service can make any interim arrangements for senior roles, but this limited by length of time to appointments of up to 12 months. Any recruitment or extension of an interim senior appointment (with the same individual) for a total period of greater than 12 months requires a decision of the Employment Panel.

#### **Appendix 7 Updates to the Constitution**

27. Part 3 Section 1 of the Constitution (Council Functions) makes provisions including for changing the constitution. In relation to technical changes or those required by law only, this is delegated to the Monitoring Officer.

28. However, as currently drafted, this means that consequential changes to correct an error, or to resolve an inconsistency, or as a result of a subsequent decision of Council are not included, and such changes would have to be approved by Council. The proposed amendment would enable the Monitoring Officer to make such changes where necessary.

#### **Appendix 8 clarification of the rules relating to officer decisions, key decisions and call in**

29. Part 3 Section 7 of the Constitution (Officer Functions) describes the rules around types of decisions, including decisions that can be taken by the chief executive or delegated by the CEO to senior officers.
30. As currently drafted, this could imply that subsequent decisions taken by officers, to implement a key decision of cabinet or a cabinet member, is itself a new key decision. This is considered not to be the intention of Council, and the proposed amendment to implement a delegated key decision is not a new key decision (requiring a further 28-day notification period).
31. Part 4 Section 5 of the Constitution (Scrutiny Rules) at 4.5.62 defines the provisions for call in of decisions. As drafted, this could be interpreted to mean that officer decisions could be called in when the officer is operating under an express and precise delegation from a key decision of cabinet or a cabinet member. As drafted, this means that the implementation by an officer of a delegated key decision (which could have been called in at cabinet) could again be subject to further call-in. The proposed amendment clarifies that an officer acting under such express delegation is not included in the general definition at 4.5.62.

#### **Appendix 9 Role Description of Chair and Vice Chair of committees**

32. The constitution currently does not include a role description for Vice Chair of council committees. A separate report from the Independent Remuneration Committee recommends that the role of the Vice Chair is developed and this requires both positions to be reviewed. The proposed amendment includes these role descriptions.

#### **Community impact**

33. The proposals do not have any community impact, nor do they link to other local or national strategies or policies. They are proposals that fall within Council's powers to make local arrangements.

#### **Environmental Impact**

34. The proposals do not have any environmental impact.

#### **Equality duty**

35. 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.

36. 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. As this is a decision in respect to the internal decision making for the Council, we do not believe that it will have an impact on our equality duty.

### **Resource implications**

37. There are no resource implications to the proposed amendments.

### **Legal implications**

38. Legal implications are referred to in the sections above, where relevant.

### **Risk management**

39. There are no risks arising directly from the report.

### **Consultees**

40. Group Leaders were consulted on 16<sup>th</sup> September 2024. The Chair of Audit & Governance was consulted on 4<sup>th</sup> October 2024.

41. Instructions were received from relevant lead officers who were consulted on 04 September 2024.

### **Appendices**

Appendix 1 Budget and Policy Framework  
Appendix 2 Audit and Governance  
Appendix 3 Planning and Regulatory  
Appendix 4 Fostering Panel  
Appendix 5 Corporate Scheme of Delegation  
Appendix 6 Employment Rules  
Appendix 7 Updates to the Constitution  
Appendix 8 Clarifications for key decisions and call in  
Appendix 9 role description for the chair and vice chairperson

### **Background papers**

None identified.

### **Useful links:**

[Part 4 Section 3 Budget and Policy Framework Rules.pdf \(herefordshire.gov.uk\)](#)  
[Part 3 Section 1 Council Functions.pdf \(herefordshire.gov.uk\)](#)  
[Part 2 Article 7 The audit and governance committee.pdf \(herefordshire.gov.uk\)](#)  
[Part 3 Section 5 Other Functions.pdf \(herefordshire.gov.uk\)](#)  
[Part 5 Section 6 Planning code.pdf \(herefordshire.gov.uk\)](#)  
[Part 4 Section 8 Planning Rules.pdf \(herefordshire.gov.uk\)](#)  
[Part 2 Article 8 Planning licensing and other functions.pdf \(herefordshire.gov.uk\)](#)  
[Part 2 Article 9 Joint arrangements.pdf \(herefordshire.gov.uk\)](#)

[- Herefordshire Council](#) (Schemes of Delegation)  
[Part 4 Section 9 Employment Rules.pdf \(herefordshire.gov.uk\)](#)

### Report Reviewers Used for appraising this report:

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