

North Yorkshire County Council

INFORMAL MEETING OF EXECUTIVE MEMBERS

25 January 2022

Proposed Changes to the Constitution for recommendation to full Council

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 **PURPOSE OF REPORT**

- 1.1 To present to Members, for their consideration for recommendation to the Chief Executive Officer under his emergency delegated decision-making powers for onward recommendation to full Council for approval, proposed changes to the Constitution.

2.0 **BACKGROUND**

- 2.1 The Constitution is maintained by the Monitoring Officer and kept under review on an ongoing basis.
- 2.2 Following on from the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, which allowed for committee meetings to be held remotely, the County Council resolved at its meeting on 5 May 2021 (before the expiry of the Regulations) to continue to hold remote live-broadcast committee meetings. These would then be informal meetings of the committee Members, with any formal decisions required being taken by the Chief Executive Officer under his standing emergency delegated decision-making powers, taking into account the views of the committee Members and all relevant information. This position was reviewed at the informal meetings of the County Council Members, and subsequently agreed by the Chief Executive Officer, under emergency delegated powers, on 21 July 2021 and 17 November 2021. The position will again be reviewed by Council at its meeting on 16 February 2022.
- 2.3 Subject to any comments they may have, should Members be minded to recommend the proposed amendments to the Constitution for approval, this will need to be a recommendation to the Chief Executive Officer under his emergency delegated powers for onward recommendation to full Council for approval.

3.0 **AMENDMENTS TO THE CONSTITUTION**

- 3.1 The more substantive items for consideration are the subject of separate sections below.
- 3.2 Other miscellaneous changes proposed to the Constitution are set out in the table of proposed amendments set out at **Appendix 1**. These minor amendments are to update the Access to Information Procedure Rules in the Constitution to reflect current practice since the implementation of the ModGov Committee Management System and also to correct any administrative/typographical amendments.
- 3.3 In Part B of the table, amendments are set out for information which have or will be undertaken by the Assistant Chief Executive (Legal and Democratic Services) under his delegated powers in Article 15.02(c) of the Constitution to reflect administrative changes,

legal requirements and changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.

- 3.4 The proposed amendment in Part B to the Management Structure (removing the reference to the post of “Assistant Chief Executive Customer Services” as this post no longer exists), has been included in the table since it was considered by the Members’ Working Group on the Constitution.

4.0 **LOCAL GOVERNMENT REORGANISATION**

Change in number of Members and wards following May 2022 County Council elections

- 4.1 Members have been kept updated on the progress being made on the implementation of a new unitary authority for North Yorkshire. It is anticipated that the Structural Changes Order will provide that the new authority will be a continuing authority model consisting of 90 members in 89 wards. Elections will be held in May 2022 for a five year period; during the first year, the 90 elected Members will act in relation to the existing County Council as well as preparing for the new authority after Vesting Day in 2023.
- 4.2 It will therefore be necessary to amend the County Council’s Constitution at the relevant time this year to reflect the administrative changes to the number of County Councillors and ward areas. The Assistant Chief Executive (Legal and Democratic Services) has delegated power in Article 15 of the Constitution to amend the Constitution in the following circumstances:
- (i) *to correct administrative issues such as cross-references, title changes, typographical errors and formatting;*
 - (ii) *to ensure that the Constitution and the Council’s procedures meet all legal requirements;*
 - (iii) *to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by the person(s) or body with authority to take such action; and*
 - (iv) *consequentially, to give effect to changes explicitly approved by the full Council;*

and any such amendments as set out in sub-paragraph (c)(ii) above shall be reported to the next meeting of the full Council.

and it is therefore proposed that the Assistant Chief Executive (Legal and Democratic Services) should use his delegated powers to update the Constitution at the relevant time following the elections in 2022 to reflect the changes in the County Council’s membership and ward areas. The changes would relate only to 2022-23, as the Constitution would be completely re-drafted as part of the creation of a new unitary authority in April 2023.

Other transitional arrangements

- 4.3 Once the Structural Changes Order comes into force, the main transitional function (“preparing for and facilitating the economic, effective, efficient and timely transfer of the district councils’ functions, property, rights and liabilities”) will be added to the County Council’s functions, exercisable only during the first and second transitional periods.
- 4.3.1 The first transitional period means the period beginning on the date when the Structural Changes Order comes into force and ending on the fourth day after the 2022 elections.
- 4.3.2 The second transitional period means the period beginning on the fourth day after the 2022 election day and ending on 1st April 2023.
- 4.4 NYCC’s executive arrangements must provide for the discharge of the main transitional function and certain other transitional functions (“the article 7 functions”) to be the responsibility, throughout the first transitional period, of a committee of the council’s executive, to be known as the Implementation Executive. The Implementation Executive must prepare an Implementation Plan relevant to the process of transition to single tier local government. It will also be necessary to establish a team of officers (“the Implementation Team”) drawn from NYCC and the district councils to assist the Implementation Executive during the first transitional period (and NYCC’s executive during the second transitional period). The County Council and the seven District Councils are all currently working together on an informal basis through the creation of an Implementation Board of Members and an Implementation Team of officers to commence the process of creating the Implementation Plan and carrying out the necessary work to enable the transition. Once the Structural Change Order is in force the Implementation Executive will formally replace the Implementation Board and the Implementation Team of officers will then have a formal status. Currently the Implementation Board consists of the ten Executive Members for the County Council as well as a representative from each District Council. It is envisaged that the membership of the formal Implementation Executive will mirror the Implementation Board.
- 4.5 The other transitional functions (article 7 functions) are (a) such NYCC executive and non-executive functions existing on the date on which the Structural Changes Order comes into force and (b) such other functions as the Secretary of State may specify by order or regulations.
- 4.6 At the end of the first transitional period, the Implementation Executive will be abolished and the discharge of the main transitional function, the article 7 functions, and functions under article 9 of the Structural Changes Order become the responsibility of NYCC’s Executive that will consist of the newly elected Members after the May elections.
- 4.7 It will therefore be necessary to amend the County Council’s Constitution at the relevant times to reflect the transitional arrangements which will apply in each of the transitional periods. As set out in paragraph 4.2 of this report above, the Assistant Chief Executive (Legal and Democratic Services) has delegated power in Article 15 of the Constitution to amend the Constitution to ensure that the Constitution and the Council’s procedures meet all legal requirements and it is therefore proposed that the Assistant Chief Executive (Legal and Democratic Services) should use his delegated powers to update the Constitution at the relevant times to reflect the transitional arrangements which apply in each of the transitional periods.

5.0 **THRESHOLD FOR RECORDING OFFICER DECISIONS**

5.1 At its meeting on 15 May 2019, full Council agreed an approach to the level of the recording of executive and non-executive decisions by officers and further agreed that it be reviewed after two years' implementation. It is therefore now time to review the operation of the threshold for recording officer decisions and determine whether any changes should be recommended to full Council.

5.2 Under the relevant legislative provisions, all executive decisions by officers (key or otherwise), and the following types of non-executive decisions by officers, must be the subject of a decision record:

where the non-executive decision has been delegated to an officer either:

(i) under a specific express authorisation; or

(ii) under a general authorisation to officers to take such decisions and, the effect of the decision is to:

- grant a permission or licence (although that requirement is satisfied where a written record containing the prescribed details is already required to be produced under other legislation);
- affect the rights of an individual; or
- award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.

There is no stated de minimis threshold in the legislation.

5.3 Government guidance, however, states that:

- a) in relation to executive decisions, the recording requirements should catch key decisions, significant other executive decisions falling short of a key decision, and those specifically delegated by the Executive, but not those decisions which fall within general delegated powers within which officers operate on a day to day basis and which form the substance of their operational work; and
- b) in relation to non-executive decisions, re such decisions which might affect a person's rights, the Guidance states that "These decisions do not include decisions taken pursuant to an existing framework of rights". It is therefore arguable that decisions taken within current policy would be deemed to be administrative/operational and not subject to the recording requirement. Regarding decisions affecting the Council's financial position, the Guidance states that "...what constitutes the material threshold is a judgement that should be made by individual bodies."

5.4 On 15 May 2019, full Council therefore agreed a proportionate approach to the application of the legislative framework and the level of recording of executive and non-executive decisions by officers. It did so taking into account the need for openness, accountability and transparency in decision making and balancing this against the need for a workable and proportionate recording system, to avoid an unnecessary bureaucratic burden in producing decision records for almost all decisions. Full Council agreed that purely administrative or operational decisions will not usually be subject to the decision record recording and publication requirements, ie those which:

- are routine, day to day operational decisions under general delegations; and
- are within approved budget and policy; and

- have financial implications of £50,000 or less.

and that approach was reflected by way of italicised guidance notes being added to the Access to Information Procedure Rules, as set out in **Appendix 2**. A minor amendment to the guidance notes, to include a missing word, is also proposed in **Appendix 2**.

- 5.5 Members are requested to consider whether this is still an appropriate and proportionate approach to the recording of officer decisions and to determine whether any amendments in this regard should be recommended to full Council. Consultation with the Constitution Working Party has shown that the existing criteria is a proportionate approach to the application of the legislative framework and after reviewing its operation, it is considered that no changes are needed to these Rules.

6.0 FINANCIAL IMPLICATIONS

- 6.1 There are no significant financial implications arising from this report.

7.0 LEGAL IMPLICATIONS

- 7.1 The legal implications are set out in the body of this report.

- 7.2 Subject to any comments they may have, should Members be minded to recommend the proposed amendments to the Constitution for approval, this will need to be a recommendation to the Chief Executive Officer under his emergency delegated powers for onward recommendation to full Council for approval.

8.0 ENVIRONMENTAL/CLIMATE CHANGE IMPLICATIONS

- 8.1 There are no significant environmental/climate change implications arising from this report.

9.0 CONSULTATION

- 9.1 Relevant Officers and Members have been consulted on the proposed changes set out in this report and its appendices. The proposed changes were considered by the Members' Working Group on the Constitution on 25 November 2021 and this report takes into account the Group's views.

- 9.2 Any other un-substantive amendments arising after the Group's meeting but included in this round of proposed changes to the Constitution have been highlighted in this report.

10.0 REASONS FOR RECOMMENDATIONS

- 10.1 For the reasons set out in the in the body of this report and in the Amendments Chart at **Appendix 1**, it is recommended that, subject to any comments Members may have, the recommendations and changes to the Constitution set out in the report, be proposed to the Chief Executive Officer under his emergency delegated powers for onward recommendation to the County Council for approval.

11.0 **RECOMMENDATIONS**

11.1 That, subject to any comments Members may have, it be recommended to the Chief Executive Officer under his emergency delegated decision-making powers, that:

- (i) it be recommended to full Council that the Assistant Chief Executive (Legal and Democratic Services) should use his delegated powers to update the Constitution at the relevant time following the elections in 2022 to reflect the changes in the County Council's membership and ward areas;
- (ii) it be recommended to full Council that the Assistant Chief Executive (Legal and Democratic Services) should use his delegated powers to update the Constitution at the relevant times to reflect the transitional arrangements which apply in each of the local government reorganisation transitional periods;
- (iii) the proposed changes to the Constitution set out in **Appendices 1 and 2** be recommended to full Council for approval;
- (iv) the approach to recording officer decisions be reviewed as set out in the body of this report and **Appendix 2** and no changes are recommended to be made.

11.2 The Leader formally appoints the Executive Members as the ten County Council Members to the Implementation Executive once it is created under the Structural Change Order.

BARRY KHAN

Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

County Hall
NORTHALLERTON

17 January 2022

Background Documents - The Council's Constitution

Appendices:

Appendix 1 – Amendments Chart

Appendix 2 – Revised Guidance Notes for Access to Information Procedure Rules