

APPENDIX 2

Consequential changes made to the Constitution by the Monitoring Officer (under specific delegation) in light of new Members' Code of Conduct with effect from 5 May 2022

Part 1 SUMMARY AND EXPLANATION

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Members' Conduct and Interests

All Members of the Council must give a written undertaking that in performing their functions they will observe the Members' Code of Conduct. The Code is set out in Part 5 of this Constitution.

The Monitoring Officer maintains a register of the interests of the Members and certain co-opted Members of the Council. This register is available for inspection by the public at County Hall, Northallerton during normal office hours, by contacting the Monitoring Officer or by viewing the electronic ~~version of the register~~ ~~interests forms~~ published on the Council's website.

Commented [MB1]: As Members now primarily register their interests electronically via ModGov committee management software system.

Part 2 ARTICLES OF THE CONSTITUTION

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Article 13 - Decision Making

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13.089 Conflicts of interest

Subject to any right to speak under the Members' Code of Conduct ~~and/or~~ dispensation obtained from the Standards Committee or Monitoring Officer, no Councillor will take, or participate in, a decision in which he or she has ~~an interest precluding participation under disclosable pecuniary interest as defined in the~~ Members' Code of Conduct; and where an individual Executive member has delegated power to take a decision, but, has ~~such an disclosable pecuniary~~ interest, the matter will be referred to the Executive for a decision.

Commented [MB2]: Amended under ACE(LDS)' general delegated power to amend typographical errors.

Commented [MB3]: As the interests regime is much wider from 5.5.22.

Part 3 RESPONSIBILITY FOR FUNCTIONS

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Schedule 2 The Executive

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Delegation of Executive Functions

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2. Individual Executive Members

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2.4 Where an individual Executive Member has ~~an disclosable pecuniary~~ interest ~~precluding participation~~ (as ~~defined set out~~ in the Members' Code of Conduct) in relation to any decision, the Member will not take that decision, but will ask the relevant Officer to refer the matter to the Executive for determination.

Commented [MB4]: As the interests regime is much wider from 5.5.22.

Part 4 RULES OF PROCEDURE

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Council Procedure Rules

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8. QUORUM

copies are available shall on request be supplied with a copy of such document, in electronic form if practicable, provided that a Member shall not knowingly inspect, and shall not call for a copy of, any document relating to a matter in which he or she has an ~~an disclosable pecuniary interest~~ interest precluding participation within the meaning of the Members' Code of Conduct. This does not affect:

Commented [MB8]: Included as the interests regime is wider with effect from 5.5.22.

- (i) the right of inspection given by section 228 of the Local Government Act 1972;
- (ii) the right to inspect and make or be supplied with copies of documents given by Part VA of the Local Government Act 1972;
- (iii) such additional rights in regard to the making available of minutes of meetings to members of the Council who are not members of the body in question;
- (iv) the right of The Assistant Chief Executive (Legal and Democratic Services) to decline to allow inspection of any document which is, or in the event of legal proceedings would be, protected by privilege arising from the relationship of solicitor and client.

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22. RIGHTS OF MEMBERS NOT SERVING ON A BODY TO ATTEND AND SPEAK

- (a) Members have the right to attend any meeting of a formal Member level body of the Council, including the Executive, including for items which are to be discussed in private because they contain exempt information, but not for items which contain confidential information, as defined in the access to information legislation, and not if the Member(s) has an interest precluding participation ~~pecuniary interest~~ as defined in the Members' Code of Conduct.
- (b) Members have the right to attend and address, for not more than five minutes, any meeting of a formal Member level body of the Council on any matter on the agenda for that meeting, subject to having no interest precluding participation ~~disclosable pecuniary interest~~ in the matter to be discussed, and may be invited to speak again, or for a longer period, at the discretion of the Chairman of that body.
- (c) Members of the public have a right to attend any meeting of the Council its committees, and the Executive, or that part of the proceedings which is held in public; to have access to any public report or other public papers and to ask questions or make statements relating to the business of that body in accordance with Council Procedure Rule 9.

Commented [MB9]: Included as the interests regime is wider with effect from 5.5.22.

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Executive Procedure Rules

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1.5 Conflicts of Interest

- (a) Where the Leader or any other member of the Executive has an interest in a matter this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.
- (b) If so great a proportion (so as to impede the transaction of business) of the members of the Executive have an interest precluding participation ~~disclosable pecuniary interest~~ as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution, the Standards Committee or Monitoring Officer may give a dispensation to allow those Members to participate in consideration and

determination of the business. Dispensations may also be granted where each member of the Executive would be prohibited from participation in any particular business to be transacted by the Executive.

- (c) If the exercise of an executive function has been delegated to a committee of the Executive, an individual Member or an Officer, and should an interest precluding participation-disclosable-pecuniary-interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

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2.2 Who may attend?

- (a) Any person may attend a meeting of the Executive, unless and until excluded by a resolution to exclude the public, passed in accordance with the Access to Information Procedure Rules.
- (b) Members of the Council have the right to attend any meeting of the Executive, including for items which are to be discussed in private because they contain exempt information, but not for items which contain confidential information. Members so attending may address the Executive for not more than five minutes, on any item on the agenda, and may be invited to speak again, or for a longer period, at the discretion of the person presiding. These rights are subject to the Member not having an interest precluding participation under the Members' Code of conduct-disclosable-pecuniary-interest in any matter for which they are present or on which they wish to speak.
- (c) Where the Executive is considering a report of an overview and scrutiny committee, the Chairman of that committee may address the Executive for not more than ten minutes by way of introduction of the report, and for not more than five minutes at the conclusion of the debate, to answer any point which may have been raised.

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PART 5 CODES AND PROTOCOLS

Members' Code of Conduct

Replace existing Members' Code of Conduct with the version that was agreed by full Council on 16 February 2022 to apply with effect from 5 May 2022.

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GUIDANCE FOR COUNCILLORS AND OFFICERS ON OUTSIDE BODIES

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- 3. Some other key points to consider at the outset**
- 3.1 Firstly, make sure you are given a clear statement of what is expected of you if you are going to be nominated. →A list of questions to ask about the organisation is attached at Appendix 1. The Council should be able to obtain this from the organisation involved.
- 3.2 Being on an outside body can bring many benefits to the Council, the organisation and the community, but it will sometimes create conflicts with your work as a Councillor or officer. For Council Members, it may have to be included as one of your interests in the Members' Register of Interests and you may have an disclosable-pecuniary-interest in Council business referring

to it (as detailed in the Members' Code of Conduct). You will need to be sure that involvement with the organisation will not prevent you from fully participating in your work as a Councillor or officer, particularly in areas that interest you, or, where you need to represent the community who elected you. This will depend on the nature of the body and type of involvement.

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10. Code of Conduct – Councillors' Interests

10.1 **Code of Conduct:** All Councillors are subject to the Council's Code of Conduct for Members. You will find a copy of the full Code in the Constitution. The Code sets out the standards of behaviour required of you whenever you are acting in your official capacity as a Councillor. When Councillors act as the Council's representative on any other sort of outside body, they must comply with the County Council's Code of Conduct unless it conflicts with the lawful obligations of the other body.

10.2 Councillors may have to include their appointment to outside bodies in their register of interests, and must advise the Monitoring Officer of any change to registered interests within 28 days. Councillors may have an disclosable pecuniary interest in any matter to be considered at a meeting arising out of such registered interests.

Commented [MB11]: Amended as the interests regime is now wider with effect from 5.5.22.

10.3 This means that if you are present at a meeting when a matter is to be considered or is being considered, in which you have an interest precluding participation (as set out in the Members' Code of Conduct), disclosable pecuniary interest, you must declare that you have an interest, (if the interest is not already registered in the Register of Members' Interests) you may speak if permitted under the Code but you may not participate in the discussion or vote and you must leave the meeting room (subject to the granting of a dispensation by the Standards Committee or Monitoring Officer).

10.4 **Bias:** Where you might be inclined to the view that you have no disclosable pecuniary interest which might preclude your participation in the discussion and vote, your duties as a director, or trustee, or member of a management committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a Council committee meeting by a Councillor who is biased potentially invalidates the decision.

10.5 Where membership of the outside body is on an advisory or consultative basis, bias will not be assumed from mere membership. However, once the outside body has a line which is being advocated by you, this could potentially be viewed as bias, and the Council's decision on the issue could be vulnerable to challenge if you participate in those circumstances. It will depend on the facts, and in such circumstances advice should be sought from the Assistant Chief Executive (Legal and Democratic Services).

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12. Gifts and Hospitality

12.1 Councillors and officers must not accept gifts or consideration as an inducement for doing or not doing something in their roles as Members or officers of the County Council. Where officers accept inducements from anyone who has or is seeking a contract with the Council, the gift or consideration is deemed to have been accepted corruptly unless the officer

can prove to the contrary. It is therefore very important to be completely open about any significant gift or hospitality, to avoid the suspicion of misconduct.

- 12.2 Members are required to register electronically, via the Council's committee management software, any gift or hospitality received by/offered to them because of their office with a value of £25 or more. This Register of Members' Gifts and Hospitality is ~~held and~~ maintained by the Monitoring Officer. Every Business Unit holds a similar register of Gifts and Hospitality for Officers, and the Monitoring Officer maintains a central Register of Officers' Gifts and Hospitality.
- 12.3 A particular issue arises for officers seconded to work on behalf of outside bodies, as Section 117(2) of the Local Government Act 1972 provides that an officer shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his/her proper remuneration. It is therefore essential that, where an officer is to be seconded and might be in receipt of any payment from the authority to which s/he is to be seconded, that the Council agree that his/her proper remuneration shall include any payment to the officer by the body to which s/he is seconded.
- 12.4 A revised legal framework to deal with bribery was introduced in The Bribery Act 2010 which introduced new bribery offences, the main offences relating to bribing another person, being bribed, bribing a foreign official and the failure of commercial organisations to prevent bribery.

Commented [MB12]: To reflect current practice for Members to register gifts and hospitality electronically via ModGov committee management software.