

## SOUTH HOLLAND DISTRICT COUNCIL

**Report of:** Monitoring Officer – Maxine O’Mahony

**To:** Council – 27 February 2019

**(Author:** Jacqui Berridge Lawyer)

**Subject** Constitution

**Purpose:** To consider variations to the Constitution

### **Recommendation(s):**

- 1) **Call-in for Non-Key Officer Decisions** - That Call-in not apply to non-Key Decisions made by officers under delegated authority, and the Constitution be amended in accordance with Appendix A;
- 2) **Senior Information Risk Officer (SIRO)** - That the Shared Executive Manager Information be appointed the Senior Information Risk Officer, and the Constitution be amended in accordance with Appendix B
- 3) **Licensing functions**
  - That the terms of reference of the Licensing Committee be amended to include reference to the Animal Welfare functions, and to clarify the licensing functions for which it is responsible as shown in Appendix C
  - That the terms of reference of the Licensing Panel be amended to refer specifically to Regulation 2 of the Local Authorities (Functions and Responsibilities (England) Regulations 2000 as shown in Appendix C
  - That the Monitoring Officer be authorised to amend the Constitution to include reference to any future additional licensing matters which come under the above terms of reference, subject to a report being submitted to full Council for information.
- 4) **Staffing Procedures / Appeals Panel and Grievance Panel**
  - That paragraph 12 of the table at paragraph 15(l) of part 3 Section F be amended to that shown in Appendix D
  - That existing paragraphs 13 to 17 be deleted and the remaining section of Part 3 Section F be renumbered accordingly
  - That the Appeals Panel and the Grievance Panel be replaced with one Appeals Panel comprising 4 members (excluding any members involved in the original decision which is subject to appeal), not appointed in accordance with the Local Government (Committees and Political Groups) Regulations 1990, with a Quorum of 3 members in accordance with standing order no. 38, and with the single term of reference detailed at Appendix D
  - The duplicate delegations in the Schedule of Delegation be deleted

## 1.0 **BACKGROUND**

1.1 The Council's current Constitution was approved by full Council at its meeting on 21 January 2016. Under Article 14 of the Constitution (as amended) any proposed changes may be approved only by full Council unless the change is:

- a minor variation; or
- required to be made to remove any inconsistency or ambiguity; or
- required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

1.2 In such circumstances the variation may be made by the Monitoring Officer and comes into force with immediate effect, but must (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible. Any change only continues to have effect if full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of full Council.

1.3 All other variations must be submitted to full Council for approval.

1.4 This report seeks full Council approval for a number of non-minor variations.

1.5 The report was submitted to the Performance Monitoring Panel on 30 January 2019 and the recommendations were supported.

## 2.0 **PROPOSED VARIATIONS BEING SUBMITTED TO COUNCIL FOR APPROVAL**

### **(a) Call-in for Non-Key Officer Decisions**

2.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 have been in force since 10 September 2012. Amongst other things, the Regulations require all executive decisions taken by officers under delegated powers to be published. Prior to these Regulations only officer decisions which were key decisions had to be published.

2.2 The Constitution then requires all published executive decisions to be subject to call-in. By default, then, all officer decisions (other than very minor/administrative decisions) are subject to call-in. A large number of officer decisions are now subject to call-in but this is by default rather than by design. Under section 9F of the Local Government Act 2000 the Council is required to ensure that its Overview and Scrutiny Committee has power to review or scrutinise executive decisions, including the power to review or scrutinise decisions made but not implemented (call-in), but it is for each Council to decide which decisions are subject to call-in.

2.3 As the current Constitution requires all published officer executive decisions to be subject to call-in, this can reduce the speed of decision-making, and potentially divert attention away from those officer decisions that are likely to be of greatest interest to the Performance Monitoring Panel. The requirement was not part of the previous Constitution and is not required by law. It is suggested that, where an officer is authorised to make a decision under delegated powers, that decision should not be subject to call-in unless the decision is a key decision, and proposed amendments are shown in Appendix A to this report. A Key Decision is a decision that either (i) is above a defined financial value (currently £75,000 revenue or £180,000 capital); or (ii) has a significant effect on communities in two or more wards of the council.

2.4 If approved, non-key decisions will continue to be published in order to ensure openness and transparency and to enable members and the public to scrutinise decisions taken. Rather than publishing individual decisions, it is proposed that non-key decisions are published in weekly lists – which will continue to show matters including rationale/reasons for the decisions, background to the decisions and alternative options considered. The Performance Monitoring Panel may wish to consider these weekly decision lists regularly at scheduled meetings in order to hold decision-makers to account.

**(b) Senior Information Risk Officer (SIRO)**

2.5 The Senior Information Risk Officer (also variously known as the Serious Information Risk Officer and the Senior Information Risk Owner) takes overall ownership of the Council's information management framework, including its information risk policy. The SIRO is responsible for managing information risks.

2.6 The SIRO should:

- be an Executive Director, or a member of the senior management team
- be familiar with information risks
- provide the focus for the management of information risk at senior management level
- provide assurance that information risk is being managed appropriately and effectively across the organisation and for any services contracted by the organisation.

2.7 The Executive Manager - Governance is currently the Data Protection Officer (DPO), and the Senior Reporting Officer for the purposes of managing information risks generally, and for monitoring authorisations granted under the Regulation of Investigatory Powers Act 2000. However, best practice is now to ensure that the responsibilities of the SIRO and DPO are separated. It is recommended that the SIRO role be allocated to the Shared Executive Manager Information, and that the Constitution be amended as shown in Appendix B to take this into account.

**(c) Licensing functions**

2.8 The Licensing Committee is currently responsible for all Policy related decisions for Hackney Carriage & Private Hire Vehicles, Operators and Drivers, Sex Establishments, Hypnotism, Street Trading, functions relating to health and safety at work and “any other Licensing provisions that the authority is required to undertake not mentioned elsewhere in this Constitution”.

2.9 The Licensing Panel is then authorised to deal with applications for licences for Hackney Carriages and Private Hire Vehicles, in so far as these are not delegated to officers, “and all other licences/permits/registrations etc detailed at Part B of Schedule 1 of the 2000 Regulations in so far as these are not delegated to officers and are not the responsibility of the Committee of the Licensing Authority”.

2.10 The “2000 Regulations” means the Local Authorities (Functions and Responsibilities (England) Regulations 2000. By virtue of Regulation 2 and Schedule 2 of these Regulations most licensing functions of the Council, including (Regulation 2) the imposition of conditions/limitations, enforcement, amendment, modification, variation or revocation of licenses etc and the determination of any charges and fees, are functions which cannot be undertaken by the executive. However, this may not always be the case.

2.11 The Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018 came into effect on 1 October 2018. In accordance with the 2000 Regulations all of the functions of those Regulations cannot be the responsibility of the executive, and a report proposing delegations to officers and fees and charges was submitted to the Licensing Panel for consideration.

2.12 Arising from this it is recommended that;

- the terms of reference of the Licensing Committee be amended to include reference to the Animal Welfare functions, and to clarify the licensing functions for which it is responsible as shown in Appendix C
- the terms of reference of the Licensing Panel be amended to refer specifically to Regulation 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as shown in Appendix C
- the Monitoring officer be authorised to amend the Constitution to include reference to any future additional licensing matters which come under the above terms of reference, subject to a report being submitted to full Council for information.

**(d) Staffing Procedures / Appeals Panel and Grievance Panel**

2.13 The Council currently has an Appeals Panel comprising 4 members. The single term of reference of the Appeals Panel is to deal with *“appeals in respect of grading and grievances by employees of the Council, but not appeals under the Job Evaluation scheme where an alternative appeals procedure exists”*.

2.14 The Council also has a Grievance Panel comprising 4 members. The single term of reference of the Grievance Panel is *“to hear staff grievances when the usual procedure is inappropriate, as judged by the Monitoring Officer or the Section 151 Officer, and where this has not been possible to resolve the matter by mediation.”*

2.15 At the same time, some officers have delegated authority to deal with all staffing matters such as discipline, capability under both the Schedule of Delegation and the Constitution.

2.16 It is proposed that this is now clarified by including full details of officer staffing delegations in the Constitution, deleting duplicate delegations from the Schedule of Delegations, and clarifying the role of members in appeals.

2.17 To secure this, it is recommended that:

- paragraph 12 of the table at paragraph 15(l) of part 3 Section F be amended to that shown in Appendix D
- existing paragraphs 13 to 17 be deleted and the remaining section of Part 3 Section F be renumbered accordingly
- the Appeals Panel and the Grievance Panel be replaced with one Appeals Panel comprising 4 members (excluding any members involved in the original decision which is subject to appeal), not appointed in accordance with the Local Government (Committees and Political Groups) Regulations 1990, with a Quorum of 3 members in accordance with standing order no. 38, and with the single term of reference detailed at Appendix D
- duplicate delegations in the Schedule of Delegation be deleted.

### 3.0 **OPTIONS**

3.1 Members have the option to approve or not approve the variations, or to require alternative variations.

### 4.0 **REASONS FOR RECOMMENDATION(S)**

4.1 To remove anomalies, improve efficiency and effectiveness, and to ensure that the Constitution is kept up to date with changing circumstances.

### 5.0 **EXPECTED BENEFITS**

5.1 To ensure business continuity; secure necessary minor typographical, referencing and numbering variations to the Constitution; reduce bureaucracy and the administrative burden; and ensure clarify of function.

### 6.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

#### 6.1 **Constitutional & Legal**

6.1.1 Any legal implications are set out in the relevant paragraphs. Amending the Constitution is a function reserved to full Council.

### 7.0 **WARDS/COMMUNITIES AFFECTED**

7.1 None

### 8.0 **ACRONYMS**

8.1 SIRO means Senior Information Risk Officer.

8.2 DPO means Data Protection Officer.

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Background papers:-	The Council's Constitution which is available on the Council's website.
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#### **Lead Contact Officer**

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<b>Key Decision:</b>	N
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**Exempt Decision:** N

**This report refers to a Mandatory Service**

**Appendices attached to this report:**

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| Appendix A | Proposed amendments if deletion of call-in to non-key officer decisions is approved   |
| Appendix B | Proposed amendments to allocate the post of Senior Information Risk Officer   |
| Appendix C | Proposed amendments to the terms of reference of the Licensing Committee and the Licensing Panel  |
| Appendix D | (a) Proposed amendments to sub-paragraph 12 of paragraph 15(l) of Section F of Part 3 of the Constitution (delegation to officers) and (b) proposed term of reference of the proposed Appeals Panel |

**Appendix A** – proposed amendments if deletion of call-in to non-key officer decisions is approved

Part 3 - Section D – Delegation to Committees - Section D1 – General provisions relating to Executive Powers

Paragraph 7 be amended to read as follows:

“7. All Executive Decisions are subject to the Call-In procedure set out later in Part 3, other than urgent decisions (as set out in the Access to Information Procedure Rules) **and non-Key Decisions made by officers.**”

Function of Performance Monitoring Panel – the paragraph describing the Call-in Procedure for Executive Decisions be amended as follows:

“! 1. No Executive action shall be taken to implement a decision by the Leader, a Cabinet Member or by the Cabinet, a Sub-Committee of the Cabinet or ~~an~~ **a Key Decision by an officer** for a period of five clear Working Days from the date of publication of the decision to members, and if any reference is made within this time under the following paragraph, Executive action shall be further delayed pending consideration by the Performance Monitoring Panel. However, Executive action can proceed at once if the action is urgent and the procedures set out in the Access to Information Procedure Rules are followed.”

Section F1 – Officer Delegations

Paragraph 11.0 be amended to read as follows:

11.0 Where a decision to be made by any Officer under delegated authority meets the definition of an Executive Decision ~~including a Key Decision~~, that Officer shall be obliged to **publish the decision. Where that Executive Decision is also a Key Decision that Officer shall be obliged to** comply with all relevant rules in this Constitution relating to Key Decisions (with particular regard to publishing Key Decisions in advance, publishing decision notices and complying with Call-In).

**Appendix B** – Proposed amendments to allocate the post of Senior Information Risk Officer

Part 3 Section F3 (Delegation to Executive Directors)

Paragraph 6 be amended to read as follows:

“6.0 Information

6.1 The Senior Legal Officer is authorised to make all determinations on exemptions and fees under the Freedom of Information Act 2000.

6.2 The Senior Legal Officer is the Senior Reporting Officer (SRO) for the purposes of managing information risks generally and for monitoring authorisations granted under the Regulation of Investigatory Powers Act 2000.

**6.3 The Shared Executive Manager Information is the Senior Information Risk Officer (SIRO) for the purposes of taking overall ownership of the Council’s information management framework, including its information risk policy “**

**APPENDIX C** – proposed amendments to the terms of reference of the Licensing Committee and the Licensing Panel

The terms of reference of the Licensing Committee be amended to read as follows:

“1. To deal with all Policy related decisions relating to:

(a) Hackney Carriage & Private Hire Vehicles, Operators and Drivers

(b) Sex Establishments

(c) Hypnotism

(d) Street Trading

(e) Functions relating to health and safety at work ... (etc)

**(f) Animal Welfare**

(g) Any other Licensing provisions that the authority is required to undertake not mentioned elsewhere in this Constitution **including all functions detailed at part B of Schedule 1 of the 2000 Regulations and where those functions either cannot be, or may be (but need not be), the responsibility of an authority's executive.** “

The terms of the Licensing Panel be amended to read as follows:

“1. To deal with applications for licences for Hackney Carriages and Private Hire Vehicles, in so far as these are not delegated to officers, and all other licences/permits/registrations etc **and functions** detailed at **Regulation 2 and** Part B of Schedule 1 of the 2000 Regulations in so far as these are not delegated to officers and are not the responsibility of the Committee of the Licensing Authority.

2. To deal with applications for performances of Hypnotism, Drinking in Public Places Byelaws: Permits

3. To deal with objections to applications for permits for the use of the highway for the provision of facilities for refreshments under Section 115(E) of the Highways Act 1980.

4. Street Trading

5. To consider and determine applications for licences recommended for refusal, or recommendations for revocation of a licence.”

**APPENDIX D** (a) Proposed amendments to sub-paragraph 12 of paragraph 15(l) of Section F of Part 3 of the Constitution (delegation to officers) and (b) proposed term of reference of the proposed Appeals Panel

(a) Proposed amendments to sub-paragraph 12 of paragraph 15(l) of Section F of Part 3 of the Constitution (staffing functions delegated to Chief Officers)

	<b>POWER ALLOCATED</b>	<b>EXERCISABLE BY</b>
12.	<p><i>Except for matters reserved to the Joint Appointments and Disciplinary Committee and the Joint Appointments and Disciplinary Appeals Committee and matters dealt with under Standing Orders relating to Staff:</i></p> <ul style="list-style-type: none"> <li>• <i>recruitment of staff (whether permanent, temporary or probationary and in whatever manner)</i></li> <li>• <i>appointment of staff including grading (whether permanent, temporary or probationary and in whatever manner)</i></li> <li>• <i>disciplinary action, including dismissal, and termination of temporary, permanent or probationary employment for any reason (including but not limited to capability relating to skill, aptitude, ill health or any other physical or mental quality, efficiency of the service, redundancy or retirement) (EXCEPT termination of employment under a settlement agreement subject to a settlement figure of £30,000 or above which shall be dealt with by full Council) including appeals in relation to any of those actions</i></li> <li>• <i>grievance including determination of appeals</i></li> </ul> <p><i>This delegation does not include amending the establishment which function remains with full Council.</i></p>	<p><i>The relevant Chief Officer in consultation with the Chief Executive and (in cases of disciplinary action, dismissal and termination of employment) in consultation with the Monitoring Officer and the Section 151 Officer subject to compliance with the Council's approved staffing policies UNLESS</i></p> <p><i>the Monitoring Officer or the Section 151 Officer considers it inappropriate for the matter to be dealt with under this delegation in which case the matter be delegated to the Chief Executive in consultation with the portfolio holder; OR</i></p> <p><i>(in relation to appeals) the matter shall be dealt with by the Appeals Panel</i></p>

(b) Proposed single term of reference of proposed Appeals Panel

“(Excluding (a) matters reserved to the Joint Appointments and Disciplinary Committee and the Joint Appointments and Disciplinary Appeals Committee and matters dealt with under Standing Orders relating to Staff and (b) appeals under the Job Evaluation scheme where an alternative appeals procedure exists). To consider and determine any appeals by employees on staffing matters (including but not limited to grading, disciplinary action, dismissal, termination of employment for any reason, redundancy, retirement and grievance) where the Monitoring Officer or Section 151 Officer considers it inappropriate for the matter to be dealt with under officer delegations.”