



Council – 9 January 2012

Changes to the Constitution in relation to Chief Officers Appointment and Termination

Purpose of report

To clarify for Members the position in relation to proposals discussed at Policy and Resources and Scrutiny Committees to strengthen the constitutional arrangements for the appointment and reporting arrangements in relation to statutory officers. This report also seeks to delegate to Personnel Sub Committee responsibility for the development of any appropriate additional changes to the constitution to clarify the role of Council in relation to the termination of Chief Officers.

Attachment(s)

Appendix A - Changes to the Constitution agreed for recommendation to Council by both Policy and Resources and Scrutiny Committees

1.0 Background

1.1 Members will be aware that, as a result of concerns expressed in relation to recent changes in statutory officers, changes to the Constitution would be proposed to ensure clarity in relation to future decisions. Consequently the following changes were proposed at the Policy and Resources Committee and agreed to recommend to full council

1.2 Changes to Part 4.7:

1.2.1 Insert at the end of Paragraph 2 the text in bold italics:

Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:

(a) draw up a statement specifying:

- i) the duties of the officer concerned (the job description); and
- ii) any qualifications or qualities to be sought in the person to be appointed (the person specification);

(b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;

(c) make arrangements for a copy of the statement mentioned in paragraph (i) to be sent to any person on request.

Where an appointment is not to be made via the route described above, the appointment will be made by recommendation to a meeting of full council.

1.2.2 Insert new paragraph 9 as follows (and renumber all existing subsequent paragraphs):

9. Any changes to the agreed arrangements for Chief Officers should be reported by the Monitoring Officer to all Members as quickly as possible (and at the latest within three working days)

1.3 However when Scrutiny Committee considered these changes they did not feel able to endorse them. Instead, members felt that the Scrutiny Committee should be given the responsibility to review the constitution with a view to reducing the business continuity risks in relation to the recruitment and termination of chief officer appointments and also examine the current emergency procedures.

- 1.4 Their view appeared to be based on concerns that if a council meeting were required before appointments could be made, then the council was at risk of being legally challenged or acting 'ultra vires' in the intervening additional days that this would take when compared to an 'Urgency Report' arrangement. The legal advice is that provided no actions were taken which required the authorisation of the 'vacant' Chief Officer then there was no risk of a successful legal challenge or being 'ultra vires'.
- 1.5 Council must weigh up the potential benefits in terms of transparency and member involvement that the proposed changes in paragraph 1.2.1 would bring to the appointment of Chief Officers with the potential risks of important council actions being delayed by removal of the option to use the Urgency Procedure in certain circumstances.
- 1.6 One solution would be to require permanent appointments to be made by a meeting of council but allow flexibility for interim or acting arrangements to be made by the urgency provisions. This would necessitate the addition at the end of Paragraph 2 of the text in bold italics together with the word permanent:

Where a permanent appointment is not to be made via the route described above, the appointment will be made by recommendation to a meeting of full council.

2.0 Additional Changes to clarify the position in relation to termination of Chief Officer arrangements

- 2.1 Policy and Resources Committee on 5 December did not consider there should be a restriction on the Head of the Paid Service holding the post of Chief Finance Officer (providing the appropriate accountancy qualification was present). However it asked the Monitoring Officer to consider similar wording to the change in Part 4.7 paragraph 2 to cover the termination of Chief Officer arrangements which are not covered by current Constitutional Arrangements (such as where there is no direct employment relationship or the reason for termination does not arise out of disciplinary procedures.) Members asked that this wording be presented when this item is considered at Council.
- 2.2 The Monitoring Officer and Head of Resources and OD have given careful consideration to this request, and in particular to the range of circumstances under which termination may be desirable or necessary. A quick survey of the Constitutions of other councils indicates that none have a level of detailed provision of the type being suggested. This may be because consideration must also be given, where the arrangement is that of direct employment, to the terms and conditions of Chief Officers, which prescribe specific arrangements that must be followed. In other cases it may be because the council wishes to provide some flexibility in cases such as that at Kent and Suffolk whereby the relationship between Chief Officers and the council or lead councillors has broken down for some reason.
- 2.3 In view of the potential complexities and implications of any such changes to the Constitution it is proposed that this matter be considered in detail by Personnel Sub Committee whose terms of reference cover such matters. A report would then be presented to a future Council meeting with recommendations for any appropriate additional changes to the constitution to clarify the role of Council in relation to the termination of Chief Officer appointments.

3.0 Equality and Diversity Implications

- 3.1 There are no known equalities issues arising from this report.

4.0 Legal Implications

4.1 There are no legal implications arising from this report other than those noted in paragraphs 1.4. & 2.2

5.0 Risk Management

5.1 There are no significant risks arising from this report other than those noted in paragraph 1.4. and 2.2

6.0 Financial Implications

6.1 There are no financial implications arising from this report.

7.0 Corporate Outcomes

7.1 The following outcome is applicable:-

- Effective Management

8.0 Recommendation

- 8.1 Council is asked to consider the changes proposed and either
- a) approves the addition of the wording in paragraphs 1.2.1 and 1.22 to the Council's Constitution as agreed to resolve to recommend by Policy and Resources Committee,
[Reason: The changes will improve the transparency and involvement of Members in key officer appointments at all times]
OR
 - b) approves the additional wording in paragraph 1.6 and 1.22 to the Council's Constitution, which reflects in part of concerns of Scrutiny Committee
[Reason – to provide flexibility for the appointment of interim or acting Chief Officers in some circumstances]
OR
 - c) Delegates to Scrutiny Committee the responsibility to review the constitution with a view to reducing the business continuity risks in relation to the recruitment and termination of chief officer appointments and also examine the current emergency procedures as resolved to recommend by that Committee
[Reason: to carry out a more fundamental review of Constitutional provisions in respect to the recruitment and termination of chief officers.]
- 8.2 Council is asked to approve the delegation to the Personnel Sub Committee, responsibility for the development of any appropriate additional changes to the constitution to clarify the role of Council in relation to the termination of Chief Officer appointments.
[Reason: so that full consideration can be given to the employment legislation or reputational implications of any proposed changes to the Constitution.]

Legal	Power: Local Government Acts 1972 and 2000; The Local Authorities (Alternative Arrangements (England) Regulations 2001 ----- Other considerations: Council's Constitution		
Background Papers: None			
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Date: 21/12/2011			
CFO	MO	CX	

(Committee Report Normal Rev. 22)

Changes to the Constitution agreed for recommendation to Council by both Policy and Resources and Scrutiny Committees and which will be resolved by Council outside of this report

1. The following change to paragraph 9.1 (a) will provide clarity that public speaking time will be provided at all council and committee meetings:

*Members of the public who have given notice of their intention to speak may address the Council at **ordinary all** meetings of the Council and committees in accordance with the Council's published procedures. A period of not more than 15 minutes will be allowed before the formal business of the meeting during which members of the public may speak for up to 3 minutes on a matter due for consideration at the meeting. A 'member of the public' includes a local resident, a Parish or Town Council representative and an applicant (in the case of the Development Control Committee, this can be an agent). This right reflects Articles 6 and 10 of the European Convention of Human Rights (Right to be heard and Freedom of Expression).*

2. The following insertions to paragraph 10.2 will provide clarity that members' questions may be tabled at all council meetings:

*Questions on notice at **all full Council meetings***

Subject to Rule 10.4, a Member of the Council may ask:

- *the Chairman;*
- *the Leader; or*
- *the Chairman of any committee or sub-committee or Board*

a question on any matter in relation to which the Council has powers or duties or which affects East Northamptonshire.