

 CITY OF YORK COUNCIL	
Audit and Governance Committee	14 February 2011
Report of the Assistant Director of Governance and ICT	

Constitutional Changes

Summary

- 1.1 This report seeks the Committee's comments on proposed constitutional changes which arise from the Council being required to implement a new form of Executive in May. The report also identifies a number of minor proposed amendments which have been identified.

Amendments arising from changes to Executive arrangements

- 2.1 Appendix 'A' to this report identifies amendments which flow from the legal requirement for the Council to adopt a new form of Executive and from the Council's decision in December that this would be a "new style" Leader and Cabinet Executive.
- 2.2 In summary the amendments deal with new legal requirements that:
- The Leader be appointed for the remaining term of his office rather than be appointed on an annual basis (provision is made though for the Council to remove the Leader at an earlier time).
 - The Leader rather than Council determines the identity of Executive Members.
 - The Leader rather than Council determines the allocation of Executive responsibilities and portfolios.
- 2.4 No changes are proposed to the Council's Scheme of Delegations which will remain as set out in the current Constitution until the new Leader determines otherwise in respect of Executive functions.

Other proposed amendments

- 3.1 Annex 'B' to this report contains amendments which are not linked to the change in Executive arrangements. The rationale for each proposal is set out in the table of proposals.

Future Constitution Review

- 4.1 The Localism Bill which is currently before Parliament includes a number of provisions relating to governance structures which the Council will need to consider in due course. These include provisions in relation to the operation of Executives and the functions of the Standards Committee. The implementation of those provisions is likely to require a full review and significant rewrite of the Constitution and the Audit and Governance Committee will no doubt wish to consider this prospect in determining its work plan for the next municipal year.

Corporate Priorities

- 5.1 The Council's Constitution is its key governance document and contributes to an 'effective organisation'.

Implications

- 6.1
- **Financial** – no implications
 - **Human Resources (HR)** – no implications
 - **Equalities** – no implications
 - **Legal** – the proposed amendments described in Annex 'A' bring the Council's Constitution in line with the legal requirements for a new form of Leader and Cabinet Executive. Annex 'B' includes a number of amendments which bring the Constitution in line with a number of changes to legal requirements.
 - **Crime and Disorder** – no implications
 - **Information Technology (IT)** - no implications
 - **Property** - no implications
 - **Other** – none

Recommendations

- 7.1 The Audit and Governance Committee is recommended to support the forwarding of this report to Council with the recommendation that the proposals contained in it be approved for implementation after the May elections.

Reason: To ensure that the Constitution remains up to date and fit for purpose.

Contact Details

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	Report Approved	<i>tick</i>	Date	<i>Insert Date</i>
	Chief Officer's name Title			
	Report Approved	<i>tick</i>	Date	<i>Insert Date</i>
Wards Affected: <i>Not applicable</i>				All <i>tick</i>
For further information please contact the author of the report				

Background Papers

None

Annexes

Annex 'A' – Proposed amendments arising from changes to Executive Arrangements

Annex 'B' – Other proposed amendments

Appendix A	
<i>Existing wording</i>	<i>Proposed wording</i>
<p>Part 1A Paragraph 4</p> <p>The Executive is made up of a leader and six other Councillors, who are appointed by the Council</p>	<p>“The Executive is made up of a Leader and up to nine other Councillors who are called “Executive Members”. The Leader appoints Executive Members, gives them areas of responsibility and allocates decision making powers.</p>
<p>Article 7 Paragraph 2.2</p> <p>The Executive will consist of the Leader together with at least 2, but no more than 9, Councillors appointed to the Executive by Full Council. Should any Member(s) of the Executive cease to be a Councillor, or in the opinion of the Leader become disabled (temporarily or permanently) from performing the duties of their office, the Leader may remove them from office, and may appoint any other Councillor(s) to the Executive, and the Councillor so appointed shall hold office until the next meeting of Full Council. The Leader’s powers of removal/appointment shall be exercisable by giving written notice to the Head of Civic, Democratic and Legal Services.</p>	<p>The Executive will consist of the Leader together with at least 2, but no more than 9 Councillors appointed to the Executive by the Leader. The Leader may remove any Member from the Executive and may appoint any other Councillor(s) to the Executive, The Leader’s powers of removal/appointment shall be exercisable by giving written notice to the Monitoring Officer.</p>
<p>Article 7 Paragraph 3</p> <p>The Leader will be a Councillor appointed annually to the position of Leader by Full Council. The Leader will hold office until:</p> <p>(a) he/she resigns from the office; or (b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or (c) he/she is no longer a Councillor; or (d) he/she is removed from office by resolution of the Council</p>	<p>The Leader will be a Councillor elected to the position of Leader by Full Council for a term of four years or the balance of his/her current term of office as a Councillor.</p> <p>The Leader will hold office until:-</p> <p>(a) he/she resigns from the office; or (b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or (c) he/she is no longer a Councillor; or (d) he/she is removed from office by</p>

	resolution of the Council; or (e) the time period for which he/she was appointed has elapsed.
<p>Article 7 Paragraph 4</p> <p>Other Executive Members shall hold office until: they resign from office; or (b) they are suspended from being Councillors under Part III of the Local Government act 2000 (although he/she may resume office at the end of the period of suspension); or (c) they are no longer Councillors; or (d) they are removed from office, either individually or collectively, by resolution of the Council, or by the Leader under paragraph 1.1.2 (a) above.</p>	<p>Other Executive Members shall hold office until: (a) they resign from office; or (b) they are suspended from being Councillors under Part III of the Local Government act 2000 (although he/she may resume office at the end of the period of suspension); or (c) they are no longer Councillors; or (d) they are removed from office by the Leader under paragraph 2.2 above.</p> <p>The Deputy Leader The Leader will appoint a Deputy Leader who will be a member of the Executive and will have all the powers of the Leader if the Leader is unable to act or the office is vacant.</p>
<p>Article 7 Paragraph 7</p> <p>[this is a new paragraph]</p>	<p>Responsibility for Executive Functions</p> <p>The Leader may exercise any executive function.</p> <p>The Leader will maintain a list in Part 3 of this Constitution setting out functions which the Executive, individual members of the Executive or Committees of the Executive may exercise and which Officers have delegated power to exercise Executive Functions.</p>
<p>Part 3A – Functions of full Council</p> <p>Paragraph 3.1 (g)</p> <p>appoint and remove the Leader and other Members of the Executive</p>	<p>appoint and remove the Leader</p>
<p>Part 3A Paragraph 3.1 (h)</p> <p>Agree and/or amend the scheme of delegation to the Executive, Committees and or sub-committees of Full Council</p>	<p>[this paragraph is to be omitted]</p>
<p>Part 3A Paragraph 4 – Functions of the Executive</p> <p>The Executive may exercise any Executive function delegated to an</p>	<p>The Leader may exercise any Executive function and may determine whether</p>

Executive Member, an Officer or Ward Committee where requested by such persons or bodies to do so.	such functions may be exercised by the Executive, a Committee of the Executive, an Executive Member, an Officer, a Ward Committee or a Joint Committee
<p>Part 4A – Council procedure Rules Annual meeting</p> <p>(e) To establish an Executive for the purposes of the Local Government Act 2000. In so doing;</p> <p>i. To appoint a Member as the Executive Leader for the ensuing municipal year (called the ‘Executive Leader’).</p> <p>ii. To appoint a Member to act as Deputy Executive Leader of the Executive.</p> <p>iii. To appoint other Members of the Executive up to any maximum as may be defined by law.</p> <p>iv. To approve the portfolios of the Council’s Executive so appointed.</p>	(e) At the first Annual Meeting following local elections to appoint a Member as the Executive Leader

Appendix B		
Current Wording	Proposed wording	Reason
<p>Article 13 Paragraph 1.2</p> <p>The Council designates the following posts as shown:</p> <p>a) Head of Paid Service - Chief Executive</p> <p>b) Chief Finance Officer - Director of Resources</p> <p>c) Monitoring Officer - Head of Civic, Democratic and Legal Services</p> <p>d) Chief Internal Auditor - Audit & Fraud Manager</p> <p>Such posts will have the functions described in the section 'Structure' below.</p>	<p>The Council designates the following posts as shown:</p> <p>a) Head of Paid Service - Chief Executive</p> <p>b) Chief Finance Officer - Director of Customer and Business Support Services</p> <p>c) Monitoring Officer – Assistant Director of Governance and ICT</p> <p>d) Chief Internal Auditor - Audit & Fraud Manager</p> <p>Such posts will have the functions described in the section 'Structure' below.</p>	<p>To reflect revised structures</p>
<p>Article 13 Paragraph 7</p> <p>Article 15</p> <p>Article 17</p> <p>All references to the Head of Civic, Legal and Democratic Services</p>	<p>Replace with references to the Monitoring Officer</p>	<p>To reflect revised structures and to simplify any future revisions of the Constitution</p>
<p>All references to principal and senior solicitors</p>	<p>Replace with reference to a solicitor nominated by the Monitoring Officer</p>	<p>To reflect changes to structures in legal services</p>
<p>Article 14 paragraph 4.2</p> <p>For the purpose of the above, savings or expenditure are significant if they are equal to or greater than £500,000 or equal to or greater than £100,000 where the savings or expenditure exceeds</p>	<p>For the purpose of the above, savings or expenditure are significant if they are equal to or greater than £500,000 or equal to or greater than £100,000 where the savings or expenditure exceeds 10% of the budget for the</p>	<p>Words are added to ensure that the Article is consistent with the Contract Procedure Rules which have previously been approved by Council</p>

<p>10% of the budget for the service plan area whichever is the less. Expenditure in excess of the above levels will not constitute a key decision if such expenditure is made as part of the implementation of a decision which itself was a key decision e.g. the award of a contract.</p>	<p>service plan area whichever is the less. Expenditure in excess of the above levels will not constitute a key decision if such expenditure is made as part of the implementation of a decision which itself was a key decision e.g. the award of a contract <i>or where the expenditure is routine expenditure as described in the Contract procedure rules.</i></p>	
<p>Part 3A Paragraph 3</p> <p>Functions of the Full Council</p> <p>3.1 a) The functions reserved to Full Council are to:</p> <p>a) approve, adopt, amend, monitor and/or review the following plans, strategies and policies which together make up the Council's Policy Framework,</p> <p>i. Best Value Performance Plan</p> <p>ii. Children's Services Plan</p> <p>iii. Community Strategy and the Local Strategic Partnership</p> <p>iv. Crime and Disorder Reduction Strategy</p> <p>v. Early Years and Childcare Development Plan</p> <p>vi. Education Development Plan</p> <p>vii. Plans and</p>	<p>Functions of the Full Council</p> <p>3.1 The functions reserved to Full Council are to:</p> <p>a) approve, adopt, amend, monitor and/or review the following plans, strategies and policies which together make up the Council's Policy Framework,</p> <p>i. Children and Young People's Plan</p> <p>ii. Sustainable Community Strategy</p> <p>iii. Crime and Disorder Reduction Strategy</p> <p>iv. Plans and alterations which together comprise the Local Development Framework</p> <p>v. Youth Justice Plan</p> <p>vi. Local Transport Plan</p> <p>vii Licensing Authority Policy Statement in relation to Gambling</p>	<p>A number of the plans specified in this Article are no longer required to be produced or have been retitled. Changes to legal requirements have added some new plans.</p>

<p>alterations which together comprise the Local Development Framework</p> <p>viii. Youth Justice Plan</p> <p>ix. Local Transport Plan</p> <p>x. Food Law Enforcement Service Plan</p> <p>xi. Local Agenda 21 Strategy</p> <p>xii. the Council's Corporate Plan or its equivalent</p> <p>xiii. HR Strategy</p> <p>xiv. Risk Management Strategy</p> <p>xv. Procurement Strategy</p> <p>having regard to the recommendations of the Executive and in accordance with the Standing Orders of the Council set out in Part 4.</p>	<p>viii Licensing Act 2003</p> <p>Policy Statement</p> <p>x. Food Law Enforcement Service Plan</p> <p>xii. the Council's Corporate Plan or its equivalent</p> <p>xiii. HR Strategy</p> <p>xiv. Risk Management Strategy</p> <p>xv. Procurement Strategy</p> <p>having regard to the recommendations of the Executive and in accordance with the Standing Orders of the Council set out in Part 4.</p>	
<p>Part 3.C paragraph 1.3 (Planning Committee functions)</p> <p>To designate new Conservation Areas or modify boundaries of existing Conservation Areas.</p> <p>To approve Supplementary Planning Guidance (SPG's) and Supplementary Planning Documents (SPD's).</p>	<p>[These words to be omitted]</p>	<p>To reflect the legal position</p>