

CONSTITUTION WORKING PARTY		
Report Title	CONSTITUTIONAL UPDATE	
Key Decision	N/A	
Ward	All	
Contributors	Head of Law	
Class	Part 1	Date 14 March 2013

1 Summary

This report makes proposals to change the constitution to reflect the Council's responsibility for public health from 1st April 2013 and the formal establishment of the Health and Wellbeing Board; reflects the impact of the Public Services (Social Value) Act 2012 and proposes other minor amendments to the Council's Constitution

2 Purpose

The purpose of the report is to make recommendations to full Council to ensure that the Council adopts a Constitution that reflects its current responsibilities and changing law.

3. Recommendation

To propose to Council that it amend the Constitution in accordance with Appendix 1, or make alternative suggestions to Council

4. Background

4.1 In September last year, Council agreed a number of changes to the Council's constitution based on a report which was considered by CWP prior to that. That report now appears at Appendix 2.

4.2 Since then there have been a number of developments including:-

- Regulations - SI2013/218 – (the “new regulations”) - which deal with health and wellbeing boards and introduce new provisions for scrutiny of health
- The imminent transfer of public health functions to the Council on 01.04.13

- The introduction of the Public Services (Social Value) Act 2012 on 31st January this year

the implications of which of which were referred to in the previous report.

- 4.3 This report deals with the implications of these developments, makes proposals for change to the Constitution as a result and also recommends some other minor changes.

5. Health and Wellbeing Board (HWB)

- 5.1 The Council must appoint an HWB formally from 1st April 2013. Its statutory composition is set out in Appendix 2. By law it is a Council committee and the usual rules apply unless they are disapplied by regulation. The new regulations make some provisions in relation to the HWB the most significant of which in this context are summarised below:-

- a. The HWB does not need to be politically balanced
- b. Non-elected members of it may vote unless the Council decides to the contrary having first consulted the HWB
- c. The HWB may appoint subcommittees or delegate to an officer of the Council. Where the Council delegates non statutory functions to the HWB, its sub committees may delegate those functions to an officer of the Council if the Council agrees.
- d. Members who would be disqualified from membership of the Council may nonetheless be members of the HWB unless they are disqualified because of a bankruptcy order or criminal conviction.

- 5.2 These new regulations have been reflected in the proposed amended constitution appearing at Appendix 1.

- 5.3 Other provisions relating to committees – for example, the applicability of the Member Code of Conduct, access to meetings, minutes, agendas, the conduct of business, the Equality Act duties and Freedom of Information legislation all apply to the HWB. Where necessary, these have been incorporated into the proposed amended Appendix 1.

- 5.4 This still leaves decisions for the Council to make. For example, subject to the minimum statutory requirements, what should the membership of the HWB be? Council will also need to decide on the conditions for a quorum – should there be a requirement for a set number of councillors and/or non-councillors to be present. What

should the minimum quorum be?

- 5.5 A decision is needed as to who may chair. Given that all members of the HWB can have a vote unless the Council decides to the contrary, in theory this could be any member of it.
- 5.6 The Council also needs to decide whether any members of the HWB should not be allowed to vote. The Head of Law suggests that it may not be appropriate for officers to have a vote at HWB meetings, as it would confuse an advisory with a decision making role, and that consultation should take place with the HWB once established about this.
- 5.7 Whatever the Council decides about the HWB it would be possible for the arrangements to operate for a year and then be reviewed for the next AGM which will be after the next local elections in 2014 and a new administration will be in place.

6 The Director of Public Health (DPH)

- 6.1 On transfer of the public health functions to the Council on 1st April 2013 the PCT's existing DPH will transfer by statutory order. However the Act and guidance from the Department of Health to which the Council is bound to have regard sets out special provisions for the appointment and dismissal of the DPH and for his accountabilities.
- 6.2 These are reflected in the proposed amended constitution and might be summarised as follows:-
 - a. The DPH to be appointed jointly by the Council and the Secretary of State, with the appointment process to reflect Public Health England (PHE) guidance, which currently incorporates a role for an advisory appointments committee and for the role of the Secretary of State to be carried out by PHE.
 - b. The DPH to have statutory roles and to report on public health matters directly to the Chief Executive and members. It is proposed that the DPH have a reporting line to the Chief Executive on public health matters and direct access to members but for day to day management is located within the Executive Directorate of Community Services
 - c. The DPH to be a statutory chief officer for the purposes of the Local Government and Housing Act 1989, and to be politically restricted.
 - d. The DPH role is defined in statute and includes the production of an annual report, statutory membership of the HWB

- 6.3 These proposals are reflected in Appendix 1. The other already existing constitutional provisions applying to senior officers also apply to the DPH.

7 Scrutiny of Health

- 7.1 The new regulations referred to above make some changes to the way in which scrutiny of health can be carried out. Whilst many of the provisions remain the same, the new regulations allow the scrutiny of health to be carried out through an overview and scrutiny committee or otherwise by the Council. In view of the comments of the CWP at the last meeting, the proposals at Appendix 1 do not suggest any change in this respect. The Healthier Communities Select Committee retains this function in Appendix 1.
- 7.2 However, the new regulations require that where a Council is consulted on proposed significant variation or significant development of service by a relevant health body, the decision to make any referral to the Secretary of State in relation to the adequacy of consultation or where the Council believes the proposal would not be in the interests of the inhabitants of the area, may only be made by full Council. This is reflected in the proposed amended constitution at Appendix 1

8 Public Services (Social Value) Act 2012.

- 8.1 This Act was brought into effect on 31 January this year. A briefing on its main implications now appears at Appendix 3. To reflect the greater flexibility given to the Council, the proposed amended constitution incorporates this legislative requirement in its Contract Procedure Rules.
- 8.2 The Recommended Code on Local Authority Publicity appended to Constitution is out of date. The current Code would replace it. This is reflected in the proposed amendments.

9. Health and Safety

This matter is included not because it needs amendment but because there appears to be some confusion about the terms of reference of the Council's Health and Safety Committee. By law, certain functions fall to be delegated by the Council to a committee or officer (rather than by the Mayor). Health and Safety are functions where responsibility is split between the Mayor and the Council. Those functions which by law are for the Council to delegate and which have been delegated to the Health and Safety Committee are defined in SI 2000/2853 as health and safety functions which are discharged other than in the course of the Council's role as employer. This would encompass for example prosecutions of commercial premises for breach of health and safety legislation, and is much more limited than the role which the

Health and Safety Committee has purported to exercise to date. Other health and safety matters are delegated in accordance with the Mayoral Scheme of Delegation.

10 The Mayoral Scheme of Delegation

Though not within the remit of this committee, this paragraph refers to the fact that the Mayor has made a number of specific delegations in relation to specific matters, for example assets of community value and the community right to challenge. The Scheme will be amended and reported to full Council to incorporate these recent specific delegations.

11 Financial implications

There are no specific implications.

12 Legal implications

Many of the recommendations are referred to in the body of the report. Members are also reminded that constitutional changes are a matter for full Council and that the CWP has been established to advise the Council on such changes. It is a legal requirement that the Council to maintain an up to date constitution and that it must comply with Directions of the Secretary of State about its contents. The Head of Law advises that the proposed amended constitution is compliant. Members are reminded of the need to have regard to their duties under the Equality Act 2010 but there are no specific implications associated with this report.

13 Environmental Implications

There are no specific implications

14 Equalities implications

There are no specific implications arising.

For further details contact Kath Nicholson 0208 314 7648