

Cabinet Member for Policing and Equalities
Council

21 March 2022
22 March 2022

Name of Cabinet Member:
Cabinet Member for Policing and Equalities – Councillor A S Khan

Director Approving Submission of the report:
Director of Law and Governance

Ward(s) affected:
None

Title: Proposed Changes to the Constitution

Is this a key decision?
No

Executive Summary:

The Constitutional Advisory Panel at its meeting on 28 February 2022 considered a number of proposed changes to the Constitution. These were:

- (a) Revisions to the Coventry Shareholder Committee Terms of Reference: Part 2N of the Constitution
- (b) Revisions to the Functions of Scrutiny, paragraph 6: Education Representatives: Part 2D
- (c) An update to the Management Structure: Part 6
- (d) Revisions to General Principles, paragraph 6: Government Consultation: Part 2A
- (e) Revisions to Taxi Licensing Delegations, paragraph 6.15: Part 2M

The Advisory Panel agreed all the proposed revisions with these exceptions or additions:

- Functions of Scrutiny: The Advisory Panel recommended that both the minimum and maximum term of office for Parent Governor Representatives be included in the Constitution.

Recommendations:

The Cabinet Member for Policing and Equalities is requested to recommend to Council the approval of Recommendations (1) to (5) below with immediate effect:

- (1) With regard to the Coventry Shareholder Committee Terms of Reference:
 - (a) The current maximum of 5 elected Members be increased to a maximum of 10 elected Members; and
 - (b) Approve additional wording to permit Key Decisions in relation to charitable holdings held by the Council on trust for a charity to be made by the Shareholder Committee as trustee, with decisions below the Key Decision threshold delegated to Directors, Heads of Service and Officers in the areas concerned.

(The proposed revisions to Part 2N of the Constitution are set out in Annex A to this report)

- (2) With regard to the Functions of Scrutiny in respect of Parent Governor Representatives:
 - (a) The requirement for a Parent Governor Representative from both a maintained primary and secondary school in the City be removed (instead introducing a requirement for a generic parent governor who could technically be from any maintained school); and
 - (b) A maximum four year term of office and minimum of two year term of office for Parent Governor Representatives be inserted into the Constitution.

(The proposed revisions to Part 2D of the Constitution are set out in Annex B to this report)

- (3) Agree that the Management Structure be updated to reflect changes to staff and titles.
- (4) Approve wording to permit Government Consultation Papers to be primarily considered by the relevant Cabinet Member as opposed to Council by default, unless the Government Consultation Paper is high profile or of a particular matter of substantial public importance.

(The proposed revisions to Part 2A of the Constitution are set out in Annex C to this report)

- (5) An addition to the Taxi Licensing delegations to allow Taxi Licensing officers to take enforcement action under the "Smoke Free Legislation" with the written permission of the City Solicitor

(The proposed revisions to Part 2M of the Constitution are set out in Annex D to this report)

Council is recommended to approve the Recommendations (1) to (5) above with immediate effect and authorise the Monitoring Officer to make any necessary amendments to the Constitution.

List of Appendices included:

- A. Annex A: Revisions to the Coventry Shareholder Committee Terms of Reference: Part 2N of the Constitution
- B. Annex B: Revisions to the Functions of Scrutiny, paragraph 6: Education Representatives: Part 2D
- C. Annex C: Revisions to General Principles, paragraph 6: Government Consultation: Part 2A
- D. Annex D: Revisions to Taxi Licensing Delegations, paragraph 6.15: Part 2M

Other useful background papers can be found at the following web addresses:

N/A

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

The proposals were considered by the Constitutional Advisory Panel at its meeting on 28 February 2022 (except where specified)

Will this report go to Council?

Yes – 22 March 2022

Report title: Proposed Changes to the Constitution

1. Context (or background)

- 1.1 The Council's Constitution sets out how the Council carries out its business and makes decisions. It is a living document and needs to be updated from time to time to ensure that it reflects changes in practices within the Council.
- 1.2 The Constitutional Advisory Panel at its meeting on 28 February 2022 considered a number of proposed changes to the Constitution. These were:
 - (a) Revisions to the Coventry Shareholder Committee Terms of Reference: Part 2N of the Constitution
 - (b) Revisions to the Functions of Scrutiny, paragraph 6: Education Representatives: Part 2D
 - (c) An update to the Management Structure: Part 6
 - (d) Revisions to General Principles, paragraph 6: Government Consultation: Part 2A
 - (e) Revisions to Taxi Licensing Delegations, paragraph 6.15: Part 2M
- 1.3 Further details of the main changes proposed are set out in Section 2 of this report and more particularly in the Annexes to this report.

2. Options considered and recommended proposals

2.1 Coventry Shareholder Committee Terms of Reference

The proposed changes to the Shareholder Committee Terms of Reference are set out in **Annex A**.

The Advisory Panel recommended that the Cabinet Member recommend to Council that:

In respect of Part 2N - Coventry Shareholder Committee Terms of Reference there be:

- (a) an increase from the current maximum of 5 elected members to a maximum of 10 elected members at paragraph 2.1: Composition (NB minimum of 3 is to remain the same);

- 2.1.1 The recommendation was made on the basis that increasing the number of elected Members to a maximum of ten will allow for more flexibility in the event of absence, greater knowledge sharing and more diversity amongst the Committee.

Following the meeting of the Advisory Panel the following additional proposal has been identified:

- (b) additional wording is inserted to permit Key Decisions in relation to charitable holdings held by the Council on trust for a charity to be made by the Shareholder Committee as trustee, with decisions below the Key

Decision threshold delegated to Directors, Heads of Service and Officers in the areas concerned.

2.1.2 This recommendation is made on the basis that the Council is trustee for a number of charitable holdings. For example the Council is a trustee of various land owned by charities. At present there is no delegation in the Constitution for Key Decisions or other decisions that do not meet the threshold for Key Decisions in respect of these holdings. Annex A to the report details proposed wording in respect of the Constitutional Updates to delegate Key Decisions in relation to charitable holdings to the Shareholder Committee as trustee, with decisions below the Key Decision threshold delegated to Directors, Heads of Service and Officers in the areas concerned.

2.2 Functions of Scrutiny: Education Representatives

The proposed changes to the Functions of Scrutiny: Education Representatives are set out in **Annex B**.

The Advisory Panel recommended that the Cabinet Member recommend to Council that:

In respect of Part 2D - Functions of Scrutiny, paragraph 6: Education Representatives the introduction of:

- (a) a maximum four year term of office and minimum of two year term of office (which will be applicable to all Education Representatives);
- (b) removal of the requirement for a parent governor representative from both a maintained primary and secondary school in the City (instead introducing a requirement for a generic parent governor who could technically be from any maintained school) in keeping with the legislation in this area and to reflect the fact that Coventry now has no maintained secondary schools.

2.2.1 The Parent Governor Representatives (England) Regulations 2001 set out detailed provisions for Parent Governor Representatives (PGRs) on Scrutiny Board, including that they have voting rights, their term of office must be a minimum of 2 years and a maximum of 4 years and we must appoint at least 2 and a maximum of 5 PGRs. The maximum and minimum terms are also applicable to the other education representatives and the insertion of this wording will ensure that the terms are lawful and people in the positions know what is expected of them.

2.2.2 Where a PGR ceases to be a Parent Governor because their term of office at the school has expired, they are not disqualified from continuing as a PGR but this would only be for the term of their appointment as a PGR.

2.2.3 Part 2D of the Constitution deals with Scrutiny. In particular, paragraph 6 deals with education representatives and the Constitution divides PGRs into primary and secondary representatives. There is also nothing in the Constitution about what the term of office is which is required under the legislation.

2.2.4 There are now no maintained secondary schools left in the city and the number of maintained primary schools is also greatly reduced. The most up-to-date version of

this legislation has been checked and it is confirmed that the position remains the same and reference is only made to maintained schools but there is no stipulation that there must be a separate primary and secondary school PGR.

2.3 Update to the Management Structure

The Advisory Panel recommended that the Cabinet Member recommend to Council that:

In respect of Part 6 – Management Structure that:

- (a) changes to staff and job titles need to be reflected in Constitution as well as the fact that the Management Team are now known as the Strategic Leadership Team;
- (b) the changes to staff and job titles have also subsequently resulted in changes to delegations as these have been redistributed and should also be reflected throughout the Scheme of Delegation

2.4 Government Consultation Papers

The proposed changes to the Functions of Scrutiny: Education Representatives are set out in **Annex C**.

The Advisory Panel recommended that the Cabinet Member recommend to Council that:

In respect of Part 2A - General Principles, paragraph 6: Government Consultation Papers:

- (a) the introduction of wording to permit Government Consultation Papers to be primarily considered by the relevant Cabinet Member as opposed to Council by default, unless the Government Consultation Paper is high profile or of a particular matter of substantial public importance.

2.4.1 The Constitution currently stipulates that unless the Government Consultation Paper is of a technical nature, all responses will be taken to Council by default. Allowance is made for where the timescale does not permit this and then allows for the matter to be decided by Cabinet.

2.4.2 Practice has shown that deadlines are often relatively short on Government Consultation Papers. Although Council meet once a month, resources are needed to be pulled together to answer the Government Consultation Paper and a consultation is required with the relevant Cabinet Member. It can be challenging to meet the deadline for the response and take the matter to Council as well.

2.4.3 It is considered that oversight with the Cabinet Member is generally adequate. The Shadow Cabinet Member is also consulted and will give the cross-party position on the matter. Where the Government Consultation is high profile or of a particular matter of substantial public importance this could still go to Council and will be drafted into the updated wording.

2.5 Taxi Licensing Delegations

The proposed changes to the Taxi Licensing delegations are set out in **Annex D**.

The Advisory Panel recommended that the Cabinet Member recommend to Council that:

In respect of Part 2M -Taxi Licensing Delegations, paragraph 6.15:

- (a) An addition be made to the Constitution to the Taxi Licensing delegations to allow Taxi Licensing officers to take enforcement action under the “Smoke Free Legislation” at Part 2M - Scheme of Functions Delegated to Employees, paragraph 6.15 Hackney Carriage and Private Hire Licensing Scheme of Delegation, as a new paragraph 1.

2.5.1 An officer in Taxi Licensing recently caught a persistent offender smoking in their vehicle for the third time after two fixed penalty notices (FPNs) were issued by Environmental Crime. Under the Constitution and in the Scheme of Delegation under Part 2M, para 6.10 – Director of Streetscene and Regulatory Services Delegations, and then under Environmental Crime at sub para 28(a), Heads of Service are able act in relation to “enforcement of the Smoke Free legislation”. Therefore the ability to issue FPNs, prosecute and take any other enforcement action in relation to smoking under the Health Act 2006 (and other related legislation) sits with officers in Environmental Crime. Taxi Licensing are unable to either issue FPNs or take this forward to prosecution, despite the fact that the Taxi Licensing officer in this case had the background knowledge to the offence.

2.5.2 The proposed amendment would only be intended for taxi related smoking violations similar in nature to the one described above and to ensure that that this authorisation is used correctly, prosecution would only be authorised on the written approval / consent of the City Solicitor.

2.6 **Option 1:** do nothing. This is not recommended as the Constitutional Updates identified above allow for compliance with the law, more efficient use of the Council’s resources and in the case of the Senior Leadership changes update the Constitution to reflect the current position.

2.7 **Option 2:** approve the Constitutional Updates for the reasons as detailed at Option 1.

2.8 **Recommendations:**

The Cabinet Member for Policing and Equalities is requested to recommend to Council the approval of the following Recommendations with immediate effect.

- (1) With regard to the Coventry Shareholder Committee Terms of Reference:
 - (a) The current maximum of 5 elected Members be increased to a maximum of 10 elected Members; and
 - (b) Approve additional wording to permit Key Decisions in relation to charitable holdings held by the Council on trust for a charity to be made by the Shareholder Committee as trustee, with decisions below the Key Decision

threshold delegated to Directors, Heads of Service and Officers in the areas concerned.

- (2) With regard to the Functions of Scrutiny in respect of Parent Governor Representatives:
 - (a) The requirement for a Parent Governor Representative from both a maintained primary and secondary school in the City be removed (instead introducing a requirement for a generic parent governor who could technically be from any maintained school); and
 - (b) A maximum four year term of office and minimum of two year term of office for Parent Governor Representatives be inserted into the Constitution.
- (3) Agree that the Management Structure be updated to reflect changes to staff and titles.
- (4) Approve wording to permit Government Consultation Papers to be primarily considered by the relevant Cabinet Member as opposed to Council by default, unless the Government Consultation Paper is high profile or of a particular matter of substantial public importance.
- (5) An addition to the Taxi Licensing delegations to allow Taxi Licensing officers to take enforcement action under the “Smoke Free Legislation” with the written permission of the City Solicitor.

Council is recommended to approve the Recommendations numbered (1) to (5) above with immediate effect and authorise the Monitoring Officer to make any necessary amendments to the Constitution arising.

3. Results of consultation undertaken

The proposed amendments have been considered by the Constitutional Advisory Panel who recommended their approval (except for where specified).

4. Timetable for implementing this decision

- 4.1 Any actions arising from this report will be implemented immediately.

5. Comments from Chief Operating Officer (Section 151 Officer) and Director of Law and Governance

- 5.1 Financial implications
There are no specific financial implications arising from the recommendations within this report.
- 5.2 Legal implications
There are no specific legal implications arising from this report. The issues referred to in this report will assist the Council in complying with its obligations under section 27 of the Localism Act 2011.

6 Other implications

None

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

Not applicable.

6.2 How is risk being managed?

There is no direct risk to the organisation as a result of the contents of this report.

6.3 What is the impact on the organisation?

No direct impact at this stage.

6.4 Equalities / EIA Implications

There are no public sector equality duties which are of relevance at this stage.

6.5 Implications for (or impact on) climate change and the environment

None

6.6 Implications for partner organisations?

None at this stage.

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Julie Newman	Director of Law and Governance	Law and Governance	10/03/22	11/03/22
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Councillor A S Khan	Cabinet Member for Policing and Equalities		10/03/22	11/03/22

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Annex A: proposed wording (in italics) in respect of the Coventry Shareholder Committee

PART 2N: COVENTRY SHAREHOLDER COMMITTEE

1. Functions delegated to the Shareholder Committee

3.1 The Shareholder Committee will have responsibility for the following delegated functions except where specific functions have been delegated to an employee:

(Additional bullet point)

- *To receive reports and approve Key Decisions in respect of charitable holdings of the Council where the Council is holding the land, asset, contract etc as trustee for a charity / charities*

Annex B: proposed wording (in italics) in respect of Parent Governor Representatives

Part 2D - Functions of Scrutiny

6. Education Representatives

6.1 The Scrutiny Board responsible for Education matters will include the following:-

- (a) One person nominated by the Church of England.
- (b) One person nominated by the Roman Catholic Church.
- (c) *A maximum of two parent governors elected by the parent governors in the City in respect of either the Primary or Secondary phase of education.*
- (d) One representative from other faith groups in the City.

6.2 Such appointees, with the exception for the time being of the representative appointed under *6.1(d)* above, may speak and vote on education issues only, but may speak on other issues.

6.3 They will also be invited to attend the meetings of Scrutiny Co-ordination Committee (if it is considering a call-in on an educational matter) and of other Scrutiny Boards (if education matters are to be considered at those meetings) and may speak, but not vote upon those matters.

6.4 *Such appointees shall serve a minimum term of two years and a maximum term of four years*

Annex C: proposed wording (in italics) in respect of Consultations

Part 2A – General Principles

6. Government Consultation Papers

6.1 *Responses to Government Consultation Papers (unless the Chief Executive determines that they relate to a “technical” issue) shall be decided by Cabinet (where practicable within the timescale). Where the Government Consultation paper is high profile or of a particular matter of substantial public importance this will be decided by Council (where practicable within the timescale). Where the timescale of a Government Consultation Paper that is high profile or of a particular matter of substantial public importance does not permit consideration by Council, responses shall be decided by Cabinet. Where the timescale of any Government Consultation Paper does not permit consideration by Cabinet, responses shall be decided by the Leader, the appropriate Cabinet Member and the Deputy Chief Executive or appropriate Director following consultation with the appropriate Shadow Cabinet Member. In this last case, the appropriate Cabinet Member has the authority, at their discretion, to refer a consultation to the relevant Scrutiny Board.*

Annex D: proposed wording (in italics) in respect of Taxi Licensing Enforcement under the “Smoke Free Legislation” – insertion of a new paragraph 1, with remaining paragraphs to be numbered 2 onwards

Part 2M - Scheme of Functions Delegated to Employees

6.15 Hackney Carriage and Private Hire Licensing Scheme of Delegation.

The following schedule lists the delegated authority for the Deputy Chief Executive and the Director of Streetscene and Regulatory Services or nominated officer, to undertake various matters on behalf of the City Council. Any matters that are not delegated must be referred to the Licensing and Regulatory Committee. This schedule supercedes and replaces all previous delegations to employees.

- 1. Generally, to take action and operate all legislative, enforcement and administrative procedures in relation to the enforcement of the Smoke Free legislation. Where a prosecution is undertaken this is only be commenced with the written authorisation of the City Solicitor.*