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## Report of the Assistant Chief Executive (Governance Services)

### General Purposes Committee

Date: 18 May 2010

Subject: Annual review of the constitution

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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### Executive Summary

1. This report sets out a number of minor amendments to the constitution, following the annual review of the constitution by the Assistant Chief Executive (Corporate Governance).
2. Amendments are proposed for clarification or updating purposes to the summary and explanation and to Articles 1, 3, 4, 9, 12, 13 and 16.
3. Amendments are also proposed for updating or clarification to the terms of reference for the Standards Committee, the Corporate Governance and Audit Committee and Member Management Committee.
4. It is proposed to amend the officer delegation scheme – council (non-executive) functions so that officers may sub-delegate to officers of suitable seniority or experience.
5. A number of amendments are proposed to delegations to individual officers. These are detailed within paragraphs 3.17 to 3.27 of the report.
6. Minor amendments are proposed to the Council Procedure Rules, for clarification and updating, including an amendment to Rule 26.3, to clarify the duties and powers of substitute members.
7. A minor amendment is proposed to the Outside Bodies Procedure Rules, in relation to appointments arising outside the annual review.

## **1.0 Purpose Of This Report**

- 1.1 To ask the General Purposes Committee to recommend amendments to the constitution to Council, following the annual review of the constitution.

## **2.0 Background Information**

- 2.1 General Purposes Committee is authorised to consider proposals to amend the constitution and make recommendations to full Council.
- 2.2 The constitution is updated throughout the year. However, the Head of Governance Services, also reviews the constitution before the annual meeting, on behalf of the Monitoring Officer. The review includes consultation with key officers.
- 2.3 This report proposes a number of minor amendments to the constitution, following the annual review. These include amendments following new legislation. Other items on this agenda also deal with amendments to the constitution.

## **3.0 Main Issues**

### **Part 1 - Summary and Explanation**

- 3.1 It is proposed that this is amended to clarify that the constitution consists of the Articles and other parts of the constitution, and to replace the reference to the Corporate Plan, with a reference to the Strategic Plan. To reflect the current position, it is also proposed to delete a reference to deputations by members of the public being considered by Scrutiny Boards, and replace this with a reference to deputations being made to Area Committees and full Council. It is further proposed to clarify citizens' rights in relation to Scrutiny Boards. The proposed amendments are set out in appendix 1 to this report.

### **Part 2 – the Articles**

#### Article 1

- 3.2 It is proposed to clarify that Parts 1-7 are all part of the constitution – see appendix 2.

#### Article 3

- 3.3 It is proposed to clarify in footnote 1, that citizens' rights to information are subject to the provisions in the access to information procedure rules. Also, it is proposed to update the provisions relating to deputations as set out above, and be more specific about citizens' rights to participate in Scrutiny Board investigations. It is also proposed to insert a reference to citizens' rights to inspect the register of Members' interests. The proposed amendments are set out in appendix 3.

#### Article 4

- 3.4 Article 4.2 currently states that only the Council will adopt and change the constitution. However, Article 15 provides further detail about the process for amending the constitution. In many instances, the function is delegated.

- 3.5 It is therefore proposed that a footnote be inserted into 4.2, to clarify that this provision is subject to Article 15. The proposed amendment is set out in appendix 4 to this report.

#### Article 9

- 3.6 Article 9.2.2 currently states that the Chair of Standards Committee will be a non voting co-opted member of the Corporate Governance and Audit Committee. It is proposed to add a footnote to this provision, reflecting Section 102(3) of the Local Government Act 1972 to clarify that the Chair of the Standards Committee will take no part in any business of the committee relating to the regulation or control of the finance of the local authority.
- 3.7 During the municipal year 09/10, the Standards Committee created a Consideration Sub-Committee and a Hearings Sub-Committee to carry out some of the Standards Committee's functions, and these new sub-committees need to be reflected in the Article. It is therefore proposed that 9.3.2 of the Article is amended to clarify that the terms of reference for all of the Standards Committee's Sub-Committees are set out in Part 3, Section 2B of the Constitution.
- 3.8 The proposed amendments to Article 9 are set out in appendix 5.

#### Article 12

- 3.9 Article 12.2 lists the functions of the Monitoring Officer. However this list does not currently correspond with the list contained within the Monitoring Officer Protocol. It is therefore proposed that the list within Article 12 is expanded to include these additional functions, so that the documents are consistent.
- 3.10 Minor amendments to the post-titles of three officers are also proposed, to reflect the titles they were given on appointment – see paragraph 3.27 below.
- 3.11 The proposed amendments are set out in appendix 6.

#### Article 13

- 3.12 It is proposed to amend 13.5(b) by the addition of a footnote to exclude from the definition of a Key Decision, decisions made in relation to making, payment or borrowing of loans under treasury management or to the purchasing of energy under existing energy contracts. This will enable these decisions to be made promptly in response to the prevailing financial climate. If full Council approve this amendment, the Assistant Chief Executive (Corporate Governance) proposes under her delegated authority, to amend the Guidance Notes on Delegated Decision making, so that these decisions would be Significant Operational Decisions – see further paragraph 3.29 in relation to how it is proposed that these decisions would be reported. The proposed amendments to Article 13 are set out in appendix 7 attached.

#### Article 16

- 3.13 It is proposed to amend 16.3 to bring the provisions in line with those set out in Section 37 Local Government Act 2000. It is considered that wider publication of the Council's constitution in hard copy format is no longer necessary given the wide access to the constitution through its publication on the Council's internet site. The proposed amendment to Article 16 is set out at appendix 8 attached.

### **Part 3**

#### Standards Committee Terms of Reference

- 3.14 It is proposed that footnote 10 of the terms of reference is amended to reflect the change from “Adjudication Panel for England” to “First-Tier Tribunal (Local Government Standards in England)” with effect from 18 January 2010.

#### Corporate Governance and Audit Committee Terms of Reference

- 3.15 It is proposed to amend these so that the reference to the Statement on Internal Control is amended to read “Annual Governance Statement”, as it is known in Leeds. The proposed new footnote clarifies that this is Leeds City Council’s Statement on Internal Control. The proposed amendments are set out in appendix 9 to this report.

#### Member Management Committee Terms of Reference

- 3.16 Existing terms of reference for the Member Management Committee enable it to act as an advisory body on practices and procedures affecting Elected Members but do not specifically refer to the committee’s role in relation to Member accommodation matters. The proposed amendments to the terms of reference specifically recognise this committee as being responsible for representing, to the Executive, the views of Members on such matters. The proposed amendments are set out in appendix 10 to this report.

#### Officer Delegation scheme – Council (non-executive) functions

- 3.17 Amendments are proposed throughout the Officer Delegation Scheme – Council (non-executive) functions to the footnotes which refer to the further delegation of functions by the Directors and Chief Officers to whom they are delegated in the scheme.
- 3.18 Currently those footnotes read that the officer “may arrange for such delegation to be exercised by an officer of suitable experience and seniority”. It is proposed that each footnote be amended to read “experience or seniority” in order to make it clear that an officer who is newly appointed to a post and therefore has been assessed as having the skills necessary to exercise the functions of the post is not prevented from doing so by the fact that he/she has insufficient experience.
- 3.19 Members will note that the amendment is shown on those portions of the Officer Delegation Scheme – Council (non-executive) functions to which other amendments are proposed, for example, in appendix 13 to this report, but will apply throughout.
- 3.20 An amendment in the same terms is also proposed to paragraph 1 General Delegations to Officers.

#### Assistant Chief Executive (Corporate Governance)

- 3.21 A number of amendments are proposed to the delegation to the Assistant Chief Executive (Corporate Governance), to accurately reflect relevant legislation. It is proposed to remove reference to the licensing of game dealers as the local authority’s function in this regard has been repealed under the Regulatory Reform

(Game) Order 2007. Footnote 5 has been amended to refer to the Police Act 1996 in place of the Police Act 1998.

- 3.22 In addition, it is proposed to include within this delegation power to license performances of hypnotism. This will enable the Assistant Chief Executive (Corporate Governance) to discharge and sub-delegate this function instead of the current situation which requires that any such applications are dealt with by the Licensing and Regulatory Panel. These amendments are set out at appendix 11 to this report.

#### Director of City Development

- 3.23 It is proposed to insert an explanatory footnote into the scheme of delegation to the Director of City Development to clarify that the power to make a limestone pavement order is not included in the delegation as there are no such limestone pavements in the Leeds area.

#### Chief Planning Officer

- 3.24 It is proposed to remove footnote 5 from the delegation to the Chief Planning Officer. This reflects the fact that the Directions referred to in the footnote have been cancelled. The paragraph to which the footnote related remains relevant in planning terms, and it is therefore proposed to leave this paragraph in place despite the cancellation of the relevant Direction. The proposed amendment is set out at Appendix 12 to this report.

#### Chief Recreation Officer

- 3.25 An amendment is proposed to the delegation to the Chief Recreation Officer, which introduces an exception to the delegation. This exception, which prevents the Chief Recreation Officer exercising his delegation in the event that the Director of City Development so directs, reflects a similar exception to each of the other delegations to Chief Officers. In addition, it is proposed to insert a footnote to reflect that proposed above for the scheme of delegation to the Director of City Development, to clarify that the power to make a limestone pavement order is not included in either delegation as there are no such limestone pavements in the Leeds area. The proposed amendments to the delegation scheme for the Chief Recreation Officer are set out in appendix 13 to this report.

#### Director of Environment and Neighbourhoods

- 3.26 It is proposed to insert a footnote into the scheme of delegation to the Director of Environment and Neighbourhoods to indicate that the duty to keep a list of persons entitled to sell non-medicinal poisons is not included in the delegation as the duty is exercised by West Yorkshire Trading Standards as a joint service on behalf of all Local Authorities in the area. Members may wish to note that a further piece of work is planned for the 2010/2011 municipal year in order to identify and set out in the Constitution a list of all similar functions performed by joint services, and those delegated to other local authorities to carry out on behalf of Leeds City Council.

#### Chief Officer (Environmental Services), Chief Officer (Housing Services) and Chief Officer (Regeneration)

- 3.27 It is proposed to amend the delegation scheme so that the titles of the above officers exactly reflect the titles to which they were appointed – that is, the Chief

Environmental Services Officer, Chief Housing Services Officer and Chief Regeneration Officer.

### Guidance Notes on Delegated Decision Making

- 3.28 Subject to the relevant amendment to the Officer Delegation Scheme being approved by full Council, the Assistant Chief Executive (Corporate Governance) proposes to amend the Guidance Notes under her delegated authority to reflect the proposed amendment in relation to sub-delegation to officers of suitable seniority or experience.
- 3.29 Subject to the relevant amendment to Article 13, set out in paragraph 3.12, being approved by full Council, she also proposes to amend the Guidance Notes as follows:
- Paragraphs 4.3 to 4.5 so that the definitions of Key and Major Decisions reflect the revised definition it is proposed to adopt in Article 13.
  - Definition of a Significant Operational Decision so that it specifically includes those categories to be exempted from the definitions of Key and Major Decisions.
  - Paragraph 7.1 by the addition of a footnote to clarify that treasury management decisions will not be subject to the normal reporting provisions but that reports to the Executive Board will be made twice each year, setting out the overall position in relation to making, payment and borrowing of long term loans under treasury management.

## **Part 4**

### Council Procedure Rules

- 3.30 Rule 1.1(g) refers to the establishment of “committees, boards and panels” at the annual meeting. Since boards and panels **are** committees, it is proposed to simplify Rule 1.1(g) so that the reference is to committees only, and that this reference is used consistently throughout the Rules. It is also proposed to insert a new footnote to Rule 1.1(g), to clarify that the reference to committees does include boards and panels.
- 3.31 It is also proposed to add a footnote to Rule 1.1(g) to provide that any reference within the Rules to committees established under Rule 1.1 (g), shall be construed as including any other committees established during the municipal year. This will ensure that the Rules apply to all committees established by full Council, whether established at the annual meeting or later in the year.
- 3.32 Rule 2.2 sets out the order of business at a Council meeting, including at 2.2 (h) to (n) that Council will consider any recommendations from the Executive Board and other committees, which are each individually specified. It is recommended that the Rule is amended to delete the reference to each specific committee, and replace with a new (h) “to consider any recommendation of the Executive Board, and committees established under Rule 1.1(g) and any sub-committees thereof.” This will ensure that the Rule will always reflect whatever committee structure is current. References to “sub-committees” have been inserted at other relevant places in the Rules for consistency.
- 3.33 It is proposed to update the reference in Rule 11.1(b) to the West Yorkshire Passenger Transport Authority, to read West Yorkshire Integrated Transport Authority, as the body is now called.

- 3.34 It is proposed to amend Rule 26.3 which currently has conflicting provisions about the powers and duties of a substitute member. The current Rule 26.3(a) provides that a substitute member “will not be able to exercise any special powers or duties exercisable by the person for whom they are substituting”. However, 26.3(b) provides that the substitute member “shall have the like duties, powers and responsibilities”. It is proposed to amalgamate the provisions by deleting 26.3(b), but amending 26.3(a) to clarify that a substitute member shall be for all purposes a duly appointed member of the committee. The effect of the amendment is to confirm that a substitute member will **not** have any special powers or duties of the member for whom they are substituting.
- 3.35 It is also proposed that Rule 28.3 is amended to clarify the quorum requirements of the Standards Committee and its Sub-Committees, in accordance with regulations. It is proposed that the quorum requirements of the full Standards Committee are footnoted with a reference to the relevant legislation so that these can be easily cross referenced.
- 3.36 It is further proposed that clarification be inserted into Rule 28 regarding the quorum for the four Sub-Committees of the Standards Committee, outlining that no decision may be taken by these Sub-Committees unless a Leeds City Councillor is present, in accordance with regulations and footnoting the relevant legislative reference.
- 3.37 The proposed amendments are shown in appendix 14 to this report.

#### Outside Bodies Procedure Rules

- 3.38 It is proposed to amend Rule 2 in relation to any request for appointment to a body arising outside the annual review. It is proposed that a relevant Director will advise whether an organisation meets the criteria for appointment specified in the Rule 2.3. The matter will then be referred to Member Management Committee to determine whether an appointment should be made, and to which category.
- 3.39 The proposed amendment also provides a mechanism for identifying a Lead Officer. It is set out in appendix 15 to this report.

### **4.0 Implications For Council Policy And Governance**

- 4.1 It is in accordance with good governance principles to review and update the constitution regularly.

### **5.0 Legal And Resource Implications**

- 5.1 The amendments proposed will update the constitution in accordance with legislative changes. There are no resources implications arising from the proposed amendments.

### **6.0 Conclusions**

- 6.1 The constitution should be amended to keep it up to date with legislation, and to clarify responsibilities.

### **7.0 Recommendations**

- 7.1 General Purposes Committee are asked to recommend to Council to:

7.1.1 Approve the following amendments:

- (a) to the summary and explanation, as set out in appendix 1 to this report;
- (b) to Article 1, as set out in appendix 2 to this report;
- (c) to Article 3, as set out in appendix 3 to this report;
- (d) to Article 4 as set out in appendix 4 to this report;
- (e) to Article 9 as set out in appendix 5 to this report;
- (f) to Article 12 as set out in appendix 6 to this report;
- (g) to Article 13 as set out in appendix 7 to this report;
- (h) to Article 16 as set out in appendix 8 to this report;
- (i) to the Standards Committee terms of reference, as set out in paragraph 3.14 of this report;
- (j) to the Corporate Governance and Audit Committee terms of reference as set out in appendix 9 to this report;
- (k) to the Member Management Committee terms of reference, as set out in appendix 10 to this report;
- (l) to the officer delegation scheme – council (non-executive) functions to allow Directors and Chief Officers with delegations to sub-delegate to officers of “suitable experience or seniority” as set out in paragraphs 3.17 – 3.20 of this report;
- (m) to the delegation to the Assistant Chief Executive (Corporate Governance) as set out in appendix 11 to this report;
- (n) to the delegation to the Director of City Development as out in paragraph 3.23 of this report;
- (o) to the delegation to the Chief Planning Officer as set out in appendix 12 to this report;
- (p) to the delegation to the Chief Recreation Officer as set out in appendix 13 to this report;
- (q) to the delegation to the Director of Environment and Neighbourhoods, as set out in paragraph 3.26 of this report, and to the post-titles of Chief Officers within that directorate, as set out in paragraph 3.27;
- (r) to the Council Procedure Rules, as set out in appendix 14 to this report; and
- (s) to the Outside Bodies Procedure Rules, as set out in appendix 15 to this report.

7.1.2 Note the consequential amendments which the Assistant Chief Executive (Corporate Governance) proposes to make under her delegated authority to the Guidance Notes on Delegated Decision Making, should full Council approve the amendments to the Officer Delegation Scheme and to Article 13.