

## Report of the Chief Executive and the City Solicitor

### Report to General Purposes Committee

**Date: 19<sup>th</sup> March 2012**

### **Subject: Amendments to the constitution in relation to governance arrangements and the proposed circulation of factual information relating to referendum**

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| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number: N/A<br>Appendix number: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

### Summary of main issues

1. This report asks General Purposes Committee to consider amendments to Sections 2A (full council functions) and 2C (officer delegation scheme) of Part 3 of the constitution, which the City Solicitor proposes to make under her delegated authority.
2. The amendments arise from provisions in the Localism Act 2011 which amend or repeal functions relating to changing governance arrangements. Appendix 1 to this report sets out the proposed amendments to Section 2A. Appendix 2 to this reports sets out the proposed amendments to Section 2C.
3. This report also presents, for consideration by Members, factual information being considered for circulation to the electorate in respect of the Mayoral Referendum.

### Recommendations

4. General Purposes Committee is asked to consider the amendments which the City Solicitor proposes to make under her delegated authority:
  - to Section 2A of the constitution, as set out in the attached appendix 1;
  - to the delegation to the Chief Executive under the officer delegation scheme (Council (non-executive) Functions), as set out in the attached appendix 2.

5. General Purposes Committee is also asked to consider the proposals of the Chief Executive to circulate a leaflet in respect of the Mayoral Referendum as attached at appendix 3 to the report.

## **1 Purpose of this Report**

- 1.1 To ask General Purposes Committee to consider the City Solicitor's proposed amendments to Sections 2A (full council functions) and 2C (officer delegation scheme) of Part 3 of the constitution, to reflect legislative changes.
- 1.2 This report also presents for consideration by Members a leaflet being considered for circulation by the Chief Executive (under the proposed delegations outlined in this report) to the electorate in respect of the Mayoral Referendum.

## **2 Background information**

- 2.1 Section 2A of Part 3 of the constitution sets out functions to be discharged by full Council, including those relating to governance arrangements. Section 2C sets out related functions which have been delegated to the Chief Executive by full Council.
- 2.2 The Localism Act 2011 contains provisions which amend or repeal functions relating to governance, mainly by way of amending the Local Government Act 2000. New Chapter 4 of Part 1A of the 2000 Act which relates to changing governance arrangements is now fully in force<sup>1</sup>.
- 2.3 The Secretary of State has made an order under Section 9N of the Local Government Act 2000, which requires the authority to hold a referendum on 3 May 2012 on whether to operate a mayor and cabinet executive.
- 2.4 If the result of the referendum is to approve a change to a mayor and cabinet executive, the authority must implement that change. If the result is to reject the change, the authority shall continue to operate their existing form of governance.
- 2.5 The Secretary of State has also made regulations about holding such referendums. The main functions arising under the regulations fall to the Chief Executive in his capacity as Proper Officer and Counting Officer. The regulations also allow the authority to "provide... factual information relating to any proposals or the referendum so far as it is presented fairly"<sup>2</sup>.

## **3 Main issues**

### Section 2A – full Council functions

- 3.1 Section 2A currently lists governance functions under the Local Government Act 2000, which have now been repealed. These references therefore need to be deleted.

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<sup>1</sup> Sections 9K to 9OA. New Section 9R of the 2000 Act has also come into force for interpreting these provisions.

<sup>2</sup> Local Authorities (Conduct of Referendums)(England) Regulation 4(7).

- 3.2 The reference to making a change in governance arrangements under paragraph 3 of Schedule 4 of the Local Government and Public Involvement in Health Act 2007 also needs to be deleted, as it is no longer applicable.
- 3.3 Many of the new provisions for changing governance arrangements do not apply to an authority who are required to hold a referendum<sup>3</sup>. However, new Section 9KB does apply to the authority, which allows the authority to vary its executive arrangements - so long as it retains the leader and cabinet model. Resolving to vary arrangements must be carried out by full Council. Section 2A of the constitution should therefore be amended to reflect this function.
- 3.4 Appendix 1 to this report sets out the City Solicitor's proposed amendments to Section 2A of Part 3. General Purposes Committee's views are sought in advance of the City Solicitor's delegated decision.

#### Section 2C – delegation to the Chief Executive

- 3.5 Functions (a) to (e) delegated to the Chief Executive relating to changing governance arrangements have now been repealed. However, other functions arise under the new provisions. Specifically, if the authority resolves to vary its executive arrangements, there are procedural requirements to publicise the variation. It is proposed that the Chief Executive's delegation scheme is updated to reflect the procedural requirements.
- 3.6 Importantly, in respect of present circumstances, it is also proposed that the Chief Executive's delegation is updated to authorise him to take any step under or for the purposes of complying with any order from the Secretary of State under Section 9N of the Local Government Act 2000, or related regulations. The proposed delegation would therefore include the authority's power under Regulation 3(7) (referred to in paragraph 2.5 above), to provide any other factual information relating to any proposals or the referendum so far as it is presented fairly.
- 3.7 The timescales in respect of the approval of the delegation are significant. Any decision about whether to distribute the leaflet must be made by no later than the morning of Tuesday 20 March, otherwise it will not be distributed before purdah commences.
- 3.8 Therefore, arrangements need to be put in place for such decisions to be made. Whilst a recommendation from this Committee to full Council in respect of the necessary delegations would be the preferred route, the timescales outlined above are such that delegations need to be in place immediately. The City Solicitor has authority to make changes to the constitution in certain circumstances, including where there has been legislative change.
- 3.9 Appendix 2 to this report sets out the amendments proposed to be approved by the City Solicitor to the Chief Executive's delegation.

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<sup>3</sup> Unless the order has been revoked, or the proposal for the authority to operate a mayor and cabinet executive has been rejected in the referendum held under the order (new Section 9NA of the Local Government Act 2000).

## **Leeds Mayoral Referendum Leaflet**

- 3.10 DCLG have asked all authorities who are holding an elected mayor referendum to send out a leaflet to all households in their area.
- 3.11 The leaflet must meet the requirements of the legislation, give factual information only about the referendum and must be politically neutral. One of the biggest barriers to this has been that the secondary legislation for the referendum was published very late and the instructions from DCLG asking authorities to send out the leaflet were only given on 2 March.
- 3.12 Since then there has been ongoing discussions between DCLG, the Electoral Commission and all the authorities involved, to agree the text for the leaflet and who should fund it. We have been keen to ensure all authorities agree the same text for the leaflet so we send out consistent information. DCLG have confirmed they are happy with the latest version of the text. The final version of the leaflet is attached for Members' consideration at Appendix 3 to this report.
- 3.13 The leaflet also needs to be printed and distributed before purdah commences on 27 March. General Purposes Committee's views are sought prior to the Chief Executive making a final decision to distribute the leaflet.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Initial consultation was undertaken with Group Leaders concerning the proposed revised delegation which has resulted in this report being brought to General Purposes Committee, together with the proposed leaflet, for further discussion.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 No implications for equality and diversity or cohesion and integration arise from this report.

### **4.3 Council policies and City Priorities**

- 4.3.1 Principle 2 of the Code of Corporate Governance (Part 5(k) of the constitution) states that the Council will have clear responsibilities and arrangements for accountability. To achieve this, the constitution needs to be up to date. Approving the amendments will promote transparency and accountability.

### **4.4 Resources and value for money**

- 4.4.1 No significant resources implications arise from the proposed amendments.
- 4.4.2 DCLG have now agreed to fund the production and distribution of the leaflet although to secure, this no further amendments are permitted.

## **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The City Solicitor has delegated authority under Article 15 to make any changes to any Part of the constitution which are required as a result of legislative change, or decisions of the Council of the Executive to enable her to maintain it up to date; or for the purposes of clarification only. The proposed amendments fall within her authority.
- 4.5.2 The decision to amend the constitution is not an executive decision, and so is not open to call-in. The amendment will be recorded as a delegated decision, notified to all Members and published on the Council's web-site.
- 4.5.3 The decision to circulate the factual information relating to the referendum falls within the delegation which the City Solicitor proposes should be given to the Chief Executive. The decision is not an executive decision, and so is not open to call-in.

## **4.6 Risk Management**

- 4.6.1 The constitution should be amended to reflect the current legislative position, to reduce the risk of legal challenge.
- 4.6.2 There are a number of risks associated with publishing and distributing a leaflet, and indeed in not doing so.
- 4.6.3 All the other authorities have decided to publish and distribute leaflets with the text agreed by DCLG and independently checked by leading counsel. A decision not to send out a leaflet now would, in the Chief Executive's opinion, greatly increase the risk of a challenge

## **5 Conclusions**

- 5.1 The proposed amendments will ensure that the constitution reflects the current legislative position. The amendments promote transparency and accountability.
- 5.2 The Chief Executive has carefully considered the risks involved in relation to the circulation of factual information about the referendum. He believes it is important that those are minimised by ensuring that Leeds is as consistent as possible with the other authorities, and that an Information Leaflet is distributed to electors.

## **6 Recommendations**

- 6.1 General Purposes Committee is asked to consider the amendments which the City Solicitor proposes to make under her delegated authority:
- to Section 2A of the constitution, as set out in the attached appendix 1;
  - to the delegation to the Chief Executive under the officer delegation scheme (Council (non-executive) Functions), as set out in the attached appendix 2.

6.2 General Purposes Committee is also asked to consider the proposals of the Chief Executive to circulate a leaflet in respect of the Mayoral Referendum as attached at appendix 3 to the report.

## **7 Background documents<sup>4</sup>**

Localism Act 2011 and commencement orders

The Local Authorities (Conduct of Referendums) (England) Regulations 2012

Local Government Act 2000 (as amended)

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<sup>4</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.