

# Public Document Pack

## **Late Item for 19<sup>th</sup> March 2012 General Purposes Committee**

**Item 6a** – Amendments to the constitution in relation to governance arrangements and the proposed circulation of factual information relating to referendum.

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## 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**

Are specific electoral Wards affected? 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? If relevant, Access to Information Procedure Rule number: N/A 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.



**Extract from Section 2A of Part 3 of the constitution  
(Functions of the full Council)**

Council (non-executive) functions	Related appointments of officers by full Council
<p><b>Governance arrangements</b></p> <p><u>To resolve to make a change in governance arrangements under Section 9KB of the 2000 Act<sup>2</sup>.</u></p> <p>To include provision in executive arrangements for the council to remove the executive leader by resolution under section 44C(1) of the 2000 Act.</p> <p>To pass a resolution to remove the executive leader under section 44C(2) of the 2000 Act<sup>3</sup>.</p>	<p><b>Formatted Table</b></p> <p><b>Deleted:</b><sup>1</sup></p> <p><b>Deleted:</b> To decide whether to make proposals for a change in governance arrangements of the kind set out in sections 33A and 33B of the Local Government Act 2000 (the 2000 Act). ¶ ¶ To decide whether a change of the kind set out in section 33A of the 2000 Act should be subject to approval in a referendum under section 33E(5) of the 2000 Act.¶</p> <p><b>Deleted:</b> To pass a resolution to make a change in governance arrangements under section 33F of the 2000 Act. ¶ ¶</p> <p><b>Deleted:</b> To make a change in governance arrangements under paragraph 3 of Schedule 4 to the 2007 Act<sup>4</sup>.¶</p>

<sup>2</sup> Section 9R(6) of the Local Government Act 2000 provides that Section 101 of the Local Government Act 1972 does not apply to the passing of any resolution under Part 1A of the 2000 Act. Further Section 9R(7) provides that functions under Part 1A are required to be Council Functions.

<sup>3</sup> Section 48(5) Local Government Act 2000 provides that Section 101 of the Local Government Act 1972 does not apply to the passing of any resolution under Part II of the 2000 Act. Further Section 48(6) provides that these functions are required to be Council Functions

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## Officer Delegation Scheme (Council (non-executive) functions)

**Chief Executive**

1. The Chief Executive is the Head of Paid Service for the Council.
2. The Chief Executive is the Electoral Registration Officer for the Council, and the Returning Officer for local elections.

The Chief Executive<sup>1</sup> is authorised to discharge the following Council (non-executive) functions:

**Functions relating to Elections**

(a)	To assign officers in relation to requisitions of the registration officer	Section 52(4) of the Representation of the People Act 1983
(b)	To provide assistance at European Parliamentary elections	Section 6(7) and (8) of the European Parliamentary Elections Act 2002
(c)	To divide constituency into polling districts	Section 18A to 18E of and Schedule A1 to the Representation of the People Act 1983
(d)	To divide electoral divisions into polling districts at local government elections	Section 31 of the Representation of the People Act 1983
(e)	Powers in respect of holding of elections	Section 39(4) of the Representation of the People Act 1983
(f)	To pay expenses properly incurred by electoral registration officer	Section 54 of the Representation of the People Act 1983
(g)	To fill vacancies in the event of insufficient nominations	Section 21 of the Representation of the People Act 1985
(h)	To declare vacancy in office in certain cases	Section 86 of the Local Government Act 1972
(i)	To give public notice of a casual vacancy	Section 87 of the Local Government Act 1972
(j)	To submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000	Section 10 of the Representation of the People Act 2000
(k)	Functions relating to community governance <sup>2</sup>	
	i. Duties relating to community governance reviews	Section 79 of the Local Government and Public Involvement in Health Act 2007

<sup>1</sup> The fact that a function has been delegated to the Chief Executive does not require the Chief Executive to give the matter his/her personal attention and the Chief Executive may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Chief Executive remains responsible for any decision taken pursuant to such arrangements.

<sup>2</sup> Functions relating to making of recommendations under section 87 – 92 of the Local Government and Public Involvement in Health Act 2007 (Item 5 Paragraph EB of Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853 ) are reserved to the relevant committee that is responsible for making recommendations to full Council.

ii.	Functions relating to community governance petitions.	Sections 80, 83 to 85 of the Local Government and Public Involvement in Health Act 2007
iii.	Functions relating to terms of reference of review	Sections 81(4) to (6) of the Local Government and Public Involvement in Health Act 2007
iv.	Power to undertake a community governance review.	Section 82 of the Local Government and Public Involvement in Health Act 2007
v.	Duties when undertaking review.	Section 93 to 95 of the Local Government and Public Involvement in Health Act 2007
vi.	Duty to publicise outcome of review.	Section 96 of the Local Government and Public Involvement in Health Act 2007
vii.	Duty to send two copies of order to Secretary of State and Electoral Commission.	Section 98(1) of the Local Government and Public Involvement in Health Act 2007
(l)	Functions relating to consultation and notification processes in relation to changing the name of an electoral area <sup>3</sup>	S59 of the Local Government and Public Involvement in Health Act 2007
(m)	To dissolve small parish councils	Section 10 of the Local Government Act 1972
(n)	To make orders for grouping parishes, dissolving groups and separating parishes from groups	Section 11 of the Local Government Act 1972
(o)	To make temporary appointments to parish councils	Section 91 of the Local Government Act 1972

### Functions relating to changing governance arrangements

(a)	<del>To secure that copies of a document setting out new governance arrangements are available for public inspection, and to publish a notice about the change.</del>	<del>Section 9KC Local Government Act 2000.</del>
(b)	<del>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.</del>	<del>Section 9N Local Government Act 2000.</del>

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**Deleted:** S33E Local Government Act 2000

**Deleted:** To consult prior to drawing up proposals<sup>4</sup>

**Deleted:** S33K(2) Local Government Act 2000

**Deleted:** To make arrangements to hold a referendum<sup>5</sup>

... [1]

<sup>3</sup> The function of passing a resolution to change the name of an electoral area under s59(1) of the Local Government and Public Involvement in Health Act 2007 is reserved to full Council  
Part 3 Section 2C  
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**Deleted:** Issue 2 – 2011/12¶  
28 June 2011

	To publish a notice if proposals are not approved in referendum	S33K(6) Local Government Act 2000
	To implement new governance arrangements	S33G and S33H Local Government Act 2000
	To comply with any direction from the Secretary of State	S33I Local Government Act 2000

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## Can I vote?

You can vote in local elections and the referendum if you are:

- a **British citizen**
- a **qualifying Commonwealth citizen** \*
- a **citizen of the European Union**
- a **citizen of the Irish Republic.**

British citizens living overseas cannot vote in the local elections or the referendum. You have to be registered to vote by Wednesday 18 April to vote in the local elections and the referendum.

\* Qualifying Commonwealth citizens are those who have leave (permission) to enter or remain in the UK, do not need to have such leave, or are treated as having such leave.

## Am I registered to vote?

If you're not registered, you won't be able to vote. Most people register to vote using the form that the Council sends to each household every year. If you are not on the electoral register currently (you may not be registered to vote if you have moved house in the last few months) you will need to complete a voter registration form and send it to Electoral Services to arrive by Wednesday 18 April.

You can find out if you are registered to vote, or request a voter registration form by contacting Electoral Services by telephone on **0113 2224411** or by emailing [electors@leeds.gov.uk](mailto:electors@leeds.gov.uk)

Everybody who is registered to vote will receive a poll card at the end of March.

## Ways of voting

There are three ways of voting:

- **In Person on Thursday 3 May:** Most people vote in person at their polling station. It is straightforward and a member of staff will always help if you are not sure what to do. You will receive a poll card telling you where your polling station is. It is often a nearby school or community centre. If you do not receive a poll card by 1 April, contact us on **0113 2224411** to find out where your polling station is.

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Polling stations are open from 7am to 10pm. If you have not been issued with ballot papers by 10pm you won't be able to vote, so make sure you arrive in plenty of time.

- **By post:** You can apply to vote by post. If you are not already registered to vote by post, you will need to fill in an application form and send it to Electoral Services to arrive by 5pm on Wednesday 18 April. You can download an application form from our website [www.leeds.gov.uk/elections](http://www.leeds.gov.uk/elections) or request a form by calling **0113 2224411**.

We can send a postal ballot paper to your home address or to any other address that you give. Ballot papers can be sent overseas, but you need to think about whether you will have time to receive and return your ballot papers by Thursday 3 May.

You should receive your postal ballot papers about a week before polling day. If they do not arrive, you can get replacements from Electoral Services up to 5pm on Thursday 3 May.

- **By proxy:** If you can't go to the polling station and don't wish to vote by post, you may be able to vote by proxy. This means allowing somebody to vote on your behalf. You will need to fill in an application form and send it to Electoral Services to arrive by Wednesday 25 April. You can download an application form from our website [www.leeds.gov.uk/elections](http://www.leeds.gov.uk/elections) or request a form by calling **0113 2224411**.

When you apply for a proxy vote, you have to state why you cannot vote in person. Anyone can be your proxy as long as they are eligible to vote and are willing to vote on your behalf. You will have to tell them how you want to vote.

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How would **you** like  
Leeds City Council  
to be run?

## Local Elections and Referendum on how Leeds City Council is run

On **Thursday 3 May 2012**, Leeds voters will have the opportunity to vote in local government elections and to vote in a referendum on how Leeds City Council is run.

This leaflet explains the referendum and how you can take part.

### What is the referendum about?

A referendum is a vote but instead of voting for a candidate you are asked a question. For this referendum, you will receive a ballot paper with this question asking you to choose between two options:

#### How would you like Leeds City Council to be run?

- By a **leader** who is an elected councillor chosen by the other elected councillors. This is how the council is run now.
- By a **mayor** who is elected by voters. This would be a change from how the council is run now.

Whichever of these two options is chosen by the majority of voters will be the way Leeds City Council is run in the future.

### How do I vote in the referendum?

You show your choice by putting a cross (X) in the box next to the option you want. Vote once only. Put no other mark on the ballot paper or your vote may not be counted.

### Why is a referendum being held?

Parliament has decided that because Leeds is one of the 12 largest cities outside London, it should have a referendum. Referendums are also being held on 3 May in Birmingham, Bradford, Bristol, Coventry, Manchester, Newcastle, Nottingham, Sheffield and Wakefield. Leicester and Liverpool have already chosen to have a mayor.

### What is the role of a Leader and what is the role of an elected Mayor?

Both a Leader and an elected Mayor would each appoint a Cabinet including at least two and up to nine elected councillors, one of whom would be appointed as Deputy Leader or Deputy Mayor as appropriate.

Both a Leader and an elected Mayor would decide who could take certain types of decisions.

- by a **Leader or an elected Mayor taking decisions themselves**
- by the **Cabinet or committee of the Cabinet**
- by **individual members of the Cabinet**
- by **Council Officers**

Whichever system is chosen, the Council will still have a range of committees including Planning, Licensing and Overview and Scrutiny as the law requires that some important decisions (such as on planning applications) will continue to be taken independently of either a Leader or an elected Mayor.

### How is a Leader chosen and how is an elected Mayor chosen?

A Leader is an elected councillor chosen by the other elected councillors. The Council may determine the term of office of the Leader. On expiry of that term, the Council would decide whether to elect that Leader for a further term or whether to choose another Councillor to be the Leader.

An elected Mayor is elected by voters. An elected Mayor would generally serve for a term of four years. After this four year term, that Mayor could choose to stand for election again for a further four year term and the voters would decide whether to re-elect that Mayor or to elect an alternative candidate as Mayor.

### Will Leeds still have a Lord Mayor?

Leeds has a Lord Mayor who is an elected Councillor. The Lord Mayor chairs the Council, wears the chains of office and performs civic functions. By local convention, the Councillor who holds that office operates in a non-political way during their term as Lord Mayor. The position of Lord Mayor will remain whatever the outcome of the referendum.

### Can the Council remove a Leader or an elected Mayor during their term of office?

Councils with a Leader are required to make provision in their Constitution to allow the Council to remove the Leader during their term of office by a majority vote of the other elected Councillors.

Councils with an elected Mayor cannot remove the elected Mayor by majority vote of the other elected Councillors. The elected Mayor can serve a full four year term and if the elected Mayor seeks re-election, it will be for voters to decide whether to re-elect them or not.

### What are the arguments in favour of a Leader or an elected Mayor?

There may be certain groups that will be campaigning for a particular result in this referendum. If you would like information about any campaign groups, you may want to look on the internet or in the local press.

### What happens after the referendum?

If the majority of votes cast in the referendum are in favour of the Council being run by a Leader who is an elected Councillor chosen by the other elected councillors, the Council will be required to continue to operate a Leader and Cabinet Executive.

If the majority of votes cast in the referendum are in favour of the Council being run by a Mayor who is elected by voters, then the Council will be required to operate a Mayor and Cabinet Executive and an election for an elected Mayor would be held on 15 November 2012.

The result of the referendum will be announced on Friday 4 May 2012 and will be published on the Leeds City Council website and in the media.