

Proposed Changes to the Council's Constitution

For Full Council 3 April 2024

Summary

Lead Member: Councillor Ben Chapelard, Leader of the Council

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Classification: Public document (non-exempt)

Wards Affected: All

Approval Timetable	Date
Constitution Review Working Party	28 February 2024
Audit and Governance Committee	12 March 2024
Full Council	3 April 2024

Recommendations

Officer recommendations as supported by the Cabinet Member, the Constitution Review Working Party and the Audit and Governance Committee that:

1. Full Council approve the amendments to the Constitution as set out in Appendices A, B and C.
2. Full Council authorise the Monitoring Officer to make all other necessary and consequential changes to the Constitution to give effect to these recommendations.

1. Introduction and Background

- 1.1 This report proposes to include a new piece of legislation to the Constitution, the Animals (Penalty Notices) Act 2022 and update the delegations in relation to private sector housing legislation and the authorisation of suitably competent officers to undertake enforcement.

Animal (Penalty Notices) Act 2022

- 1.2 The Animals (Penalty Notices) Act 2022 is a new piece of legislation that commenced on 1 January 2024. The Act allows a Local Authority to issue penalty notices for certain offences relating to animals and animal products.
- 1.3 Including this new Act will ensure that the Constitution remains up to date and effective and allow officers to enforce a number of offences related to animal welfare and licensing by way of issuing a penalty notice.
- 1.4 Currently, the Local Authority can deal with offences relating to animal licensing and welfare by way of informal and formal action including warnings, cautions and prosecution, in accordance with the enforcement policy.
- 1.5 The new Act allows penalty notices to be issued in the amount of up to £5,000 or the maximum fine for the particular offence (whichever is the lesser). Payment of the penalty notice (or a proportion of it, in accordance with the rules set out in the Act) discharges criminal liability for an offence. If the penalty is not paid, the Local Authority can continue to prosecute for the offence.
- 1.6 The Local Authority is able to recover enforcement costs from payment of a penalty notice, with any additional sums being sent to the Consolidated Fund, the government's general bank account at the Bank of England.
- 1.7 Where used, the Local Authority must consider certain factors in order to establish both whether a penalty notice is appropriate and to set the level of the fine. Statutory Guidance has been issued which sets out those factors to consider and it is proposed that the Local Authority will update its Animal Licensing Policy and Enforcement Policy accordingly.
- 1.8 It is proposed that implementing and enforcing the legislation is delegated to the Head of Housing, Health and Environment, who also has delegated responsibility for other animal welfare and licensing matters.

Private Sector Housing Delegations

- 1.9 The Head of Housing, Health and Environment has delegated authority to authorise suitably qualified and competent staff for the purposes of discharging duties and powers under the various pieces of legislation. Following a review of the Constitution it has been identified that relevant delegation does not contain

reference to the section of the Constitution that contains the relevant housing legislation (Appendix 6 of Table 4 of Part 3). This is an omission and therefore it is proposed to insert the wording “and Appendix 6” into the relevant paragraph (Paragraph 21 Page 50) See Appendix B to this report for the full details.

- 1.10 The review of the Constitution also identified the omission of a number of pieces of legislation that officers in Private Sector Housing Team need to be specifically authorised to take action under. Full details are set out in Appendix C to this report and cover:

- Energy Act 2011
- Mobile Homes Act 2013
- Enterprise and Regulatory Reform Act 2013
- Housing and Planning Act 2016
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015 & Amendment Regulations 2022
- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

2. Proposed Changes to the Constitution

- 2.1 It is proposed that the changes as set out in Appendices A, B and C to this report are made to the Constitution.
- 2.2 Appendix A includes the new Animals (Penalty Notices) Act 2022 in the table of delegations to the Head of Housing, Health and Environment (Appendix 1 to Table 4)
- 2.3 Appendix B adds the wording “and Appendix 6” in to paragraph 21 (page 50) to enable the Head of Housing, Health and Environment to authorise suitably qualified and competent staff for the purposes of discharging duties and powers under the legislation listed in Appendix 6 to Table 4.
- 2.4 Appendix C sets out a list of legislation to be added to Appendix 6 to Table 4.

3. Options Considered

- 3.1 The proposed amendments referred to in this report and detailed in the Appendices are considered to be necessary to allow the authority to proactively deal with enforcement of the legislation regarding animal licensing and welfare and private sector housing standards.

4. Consultation on Options

- 4.1 The Constitution Review Working Party was consulted on 28 February 2024 and supported these proposals. On 12 March 2024, the Audit and Governance Committee resolved to refer the recommendations in this report to Full Council for approval.

5. Implementation

- 5.1 Subject to the recommendations being approved by Full Council, the proposed changes will come into immediate effect and the Constitution will be amended to reflect the changes..

6. Appendices and Background Documents

Appendices

Appendix A: Proposed amendments to the Constitution for recommendation by the Constitution Review Working Party and summary of the proposed amendment - Animal (Penalty Notices) Act 2022

Appendix B: Proposed amendments to the Constitution for recommendation by the Constitution Review Working Party and summary of the proposed amendment. – Head of Housing, Health and Environment delegation to authorise staff

Appendix 3: Proposed amendments to the Constitution for recommendation by the Constitution Review Working Party and summary of the proposed amendment – insertion of additional legislation related to private sector housing enforcement

Exempt appendices (if any): None

Background Papers: None

7. Cross Cutting Issues

A. Legal (including the Human Rights Act)

A clear and effective Constitution supports the corporate priorities and reviewing the Constitution regularly ensures that it most effectively meets the needs of the Council and the public. The Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution.

It is a function of the Constitution Review Working Party and the Audit and Governance Committee to regularly review the Constitution in conjunction with the Monitoring Officer and recommend proposed changes, where significant, to the Council. Any Human Rights Act implications have been addressed in the main body of this report.

Robin Harris, Team Leader (Contentious and Corporate Governance)

B. Finance and Other Resources

There are no issues or implications arising from this report.

C. Staffing

There are no implications on staffing levels or structures.

D. Risk Management

The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered. The changes proposed are to ensure the effective running of the Council, when deciding whether to recommend approval of the changes the Audit and Governance Committee will need to consider the risk of not recommending approval of the proposed amendments to the Constitution.

E. Environment and Sustainability

No significant direct implications.

F. Community Safety

No significant direct implications.

G. Equalities

There are no relevant issues identified within this report.

H. Data Protection

There is no specific privacy or data protection issues to address.

I. Health and Safety

No significant direct implications.

J. Health and Wellbeing

No significant direct implications.