

County Council

Report Title:	Amendments to the County Council's Constitution
Meeting Date:	16 March 2017
Lead Councillor(s):	Colin Noble (Chairman), Trevor Beckwith, Michael Gower, Sandy Martin, Bill Mountford, Penny Otton, Joanna Spicer and Jane Storey.
Local Councillor(s):	All
Director:	Geoff Dobson, Director of Resource Management
Assistant Director or Head of Service:	Tim Ryder, Assistant Director (Scrutiny and Monitoring)
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Brief summary of report

1. This report sets out proposals from the Constitution Working Party with regard to:
 - a) Traffic regulation orders
 - b) JNC for Chief Executives of Local Authorities
2. The proposed changes were considered by the Constitution Working Party at a meetings held on 10 January 2017, 7 February 2017 and 7 March 2017 (members include Councillors Colin Noble (Chairman), Trevor Beckwith, Michael Gower, Sandy Martin, Bill Mountford, Penny Otton, Joanna Spicer and Jane Storey. Councillor Bert Poole substituted for Bill Mountford on 7 March).

Action recommended

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| <ol style="list-style-type: none"> 3. Council is recommended to: <ol style="list-style-type: none"> a) Agree that the criteria for considering permanent and temporary traffic regulation orders be more closely defined by the Assistant Director Operational Highways in conjunction with the Speed Limit Cases Panel; and b) Agree the key principles of a revised procedure in relation to making decisions on traffic regulation orders detailed in paragraph 19; and c) Agree the changes to Part 8 of the Constitution as shown in Appendix A d) authorise the Monitoring Officer to make the necessary changes to the Constitution, where appropriate. |
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Reason for recommendation

4. In respect of a) and b) the time taken to implement traffic regulation orders in Suffolk is already considered as lengthier and costlier than it needs to be and the volume of work is known to be increasing significantly due to a number of highway improvement schemes being progressed over the next two years.
5. In respect of c) to ensure that the arrangements for the appointment and dismissal of the Head of Paid Service are in accordance with legislation and conditions of service.

Alternative options

6. Council could request that the Constitution Working Party reconsider the recommendations.

Who will be affected by this decision?

7. All councillors.

Main body of report

8. The existing Constitution was prepared in accordance with Section 37 of the Local Government Act 2000 and adopted by the Council at that time. Since that date, the Constitution has been amended to reflect changes in legislation, committee structures and officer delegations, for example.

Traffic Regulation Orders

9. In order to permanently or temporarily prohibit/limit the use by the general public (the right to 'pass and re-pass') of a highway maintainable at public expense, a traffic regulation order (TRO) is required. The purpose of the TRO may, for example, be for the following purposes:
 - a) enabling safe highway maintenance/improvement works;
 - b) enabling a public utility to undertake maintenance/improvement works (to their mains, cables and supplies);
 - c) enabling a community event of a sports or social nature to occur;
 - d) imposing/revising a speed restriction;
 - e) imposing a weight or vehicular movement restriction (e.g. to a bridge/highway structure or to a limited/localised road network);
 - f) imposing a waiting and/or loading restriction (i.e. yellow lines).
10. Items (a) and (b) are implemented on a temporary basis through the Road Traffic Regulation Act 1984. Item (c) can be progressed through a temporary application of the Road Traffic Regulation (Special Events) Act 1994 (which varies Section 16 of the aforementioned 1984 Act). Items (d), (e) and (f) require either temporary or permanent TROs.
11. Consideration of the Working Party did not include permanent road closures associated with redevelopment which is normally progressed through the Town and Country Planning Act 1990 or the declassification of an existing highway - that would be addressed under Section 47 of the Highways Act 1980 if that highway was to be regarded as no longer serving a 'public purpose'.

12. A core aspect of a temporary or permanent traffic regulation order is that the public should be consulted in advance of any change to the way in which the public highway can be used and their views should be taken into account. This is clearly set out in the 1984 Act and is reinforced by Article 8(2) of the Human Rights Act 1988.
13. The 1984 Act also identifies that there are a range of statutory consultees which include the emergency services. For instances where a change in speed limit is being proposed, it is particularly important that Suffolk Constabulary's view is sought. Local police forces hold strong views on the appropriateness of any speed limit change, the extent to which it believes that the new speed limit is likely to be self-enforcing and whether or not it would deploy its increasingly limited resources to undertake any future enforcement of the new speed limit. For example, it is extremely rare for a police force to undertake any speed camera checks on vehicular road speeds in a 20mph zone. That is because it is expected that level of speed is already being achieved through natural constraints (such as the geometric layout of the road and physical restrictions such as parked cars and proximity of road junctions) and so that 20mph speed is 'self-enforcing'.
14. The decision-making process and the need for prior notification is slightly less defined. The Government considered relaxing the need to advertise TROs in local newspapers but made no changes. However, whilst the advertisement of temporary TROs under the 1984 Act is defined in the Road Traffic (Temporary Restrictions) Procedure Regulations 1992 (SI 1992/1215), that document preceded the 1994 'Special Events' Act. Whilst some local authorities consider that the contents of the 1994 Act are governed by these regulations, others do not and have received no known legal challenge. Thus, the notification for a local community event such as a street party or fête could be addressed by providing details in a local parish magazine and on the Council's website.
15. In the event of a challenge to a proposed TRO by the general public, any decision as to whether or not to proceed with the original or amended TRO is currently referred to the Rights of Way Committee as a matter of course. Although this clearly deals with the matter democratically, it does add cost and time (as the Committee only meets every quarter). However, referrals to the Rights of Way Committee can occur if there is a single objection – even if hundreds of consultation respondents are in favour of the proposals.
16. Other local authorities delegate the making of both temporary and permanent TROs (including consideration of public challenges) to senior officers only or to a senior officer in consultation with the appropriate Cabinet portfolio holder. It is worth noting that 'decisions' taken by the Rights of Way Committee have to be ratified at the County Council by the Cabinet Member for Highways and Transport with whom delegated authority currently rests. The Cabinet Member can overturn the view of the Rights of Way Committee and reach a different conclusion – even if it is a speed limit request that has already been assessed by the Speed Limit Review Panel.
17. The progression of the decriminalisation of parking enforcement (or 'civil parking enforcement' – CPE) over the next two years will require the review of a number of existing TROs. If the CPE service is devolved to Suffolk's district/borough councils, those authorities will expect the County Council to swiftly determine

proposed TROs for new waiting and loading restrictions once CPE is implemented in April 2019.

18. In addition, there are a number of highway improvement schemes being progressed over the next two years that are designed to improve vehicular movements along the radial routes for Ipswich and Bury St Edmunds. In addition, the Government is looking to assign £740m of National Productivity Fund between 2018/19 and 2020/21 to local highway authorities for congestion-busting and development assisting/local economic growth schemes of between £1m and £5m that address congestion. All of these schemes are likely to need varying forms of traffic regulation orders.
19. The Working Party endorsed the following changes to the current process for dealing with traffic regulation orders:
 - (a) For all forms of externally generated requests for traffic regulation, require the 'requesting body' (such as the parish, town, district or borough council) to undertake, at their own cost, prior informal consultation with local residents and businesses at a sufficient scale that demonstrates local support for the proposed changes;
 - (b) The requesting body shall bear all costs associated with the progression of their traffic regulation order request, including for time spent on such progression by Suffolk Highways personnel, the formal advertisement of traffic regulation order notices, the preparation of an implementation of all physical works on the local highway network;
 - (c) The County Councillors in whose division the proposals fall shall be at liberty to (but not obliged to) contribute towards the overall costs of the proposed changes, either from their allocated highways budget or localities budget;
 - (d) If any local County Councillor is not in support of the proposals, the matter shall be referred to the Rights of Way Committee to arbitrate and reach a recommendation on whether the proposal should proceed or not;
 - (e) The County Council will only initiate formal consultation with statutory and local consultees once the aforementioned local consultation has been completed and support for the proposals can be clearly demonstrated;
 - (f) Once the formal consultation is completed, the County Councillor(s) in whose division(s) the proposals fall will be asked if they are in support of, indifferent towards or against the proposal;
 - (g) All decisions as to whether a proposed traffic regulation order is to be formally 'made' shall be by the Assistant Director Operational Highways in consultation with the Cabinet Member for Highways and Transport and upon receipt of a formal report;
 - (h) In the event of disagreement, or at the request of the Cabinet member for Highways and Transport, the decision will be referred to the Rights of Way Committee to adjudicate.
 - (i) Such authority shall formally be delegated to the Assistant Director Operational Highways in the Council's Constitution;
 - (j) Suffolk Highways representatives shall be at liberty to seek clarification from the Cabinet Member for Highways and Transport and the Assistant Director Operational Highways at any stage as to whether or not the traffic regulation order process should be terminated early;
 - (k) Such clarification shall be made by way of a formally submitted report;
 - (l) If there is a significant level of objection to the proposals, the Cabinet Member for Highways and Transport and the Assistant Director Operational

- Highways shall be at liberty to (but are not required to) seek the views of the Rights of Way Committee prior to reaching the final decision;
- (m) For any temporary traffic regulation order that utilises the Road Traffic Regulation (Special Events) Act 1994, it shall only need to be advertised in a local parish, town, district or borough council newsletter and made publicly accessible on the County Council's website in advance of any temporary restriction on the use of any part of the local unclassified road network;
 - (n) There shall be a standard nominal charge of £50 payable to Suffolk County Council for Suffolk Highways personnel placing the proposed Special Events Act traffic regulation order on the County Council's website.
20. Consideration was given to the cessation of the Speed Limit Review Panel, but members of the Working Party wanted the experience of the Panel to inform the criteria which would be developed and published together with indicative costs of different types of schemes before deciding whether the Panel was still required. This process would be completed by December 2017.
21. The Working Party supported proposals to streamline the decision making process, delegating decisions to the Assistant Director Operational Highways in conjunction with the Cabinet Member responsible for Highways, working to defined and published criteria and taking account of information received from the local councillor/s and police as well as the outcomes of any consultation.

JNC for Chief Executives of Local Authorities

22. In July 2015, Council agreed changes to the Constitution that resulted from the requirements of the Local Authorities (Standing Orders) England (Amendment) Regulations 2015.
23. The changes related to the appointment of the Head of Paid Service (who is the Chief Executive at the County Council) and the disciplinary process for the Head of Paid Service, the Chief Finance Officer (s151 officer and Director of Resource Management at the County Council), the Monitoring Officer and the Deputy Monitoring Officers.
24. Subsequently the JNC Conditions of Service for Chief Executives have been revised and so there is a need to further amend the Constitution to reflect the change.
25. The Conditions of Service no longer require the appointment of a designated independent person to investigate any disciplinary matters relating to the Chief Executive therefore it is proposed that Part 8 of the Constitution should be amended as indicated in Appendix A.
26. In practice, this will mean that the Dismissals Appeals Committee will manage any disciplinary process for the specified individuals.

Review of Governance Arrangements

27. The Working Party has been carrying out an ongoing review of the Council's Governance arrangements as requested by Council on 30 June 2016. A report will be presented to the Annual General Meeting of Council on 25 May 2017.

General Propositions which Underpin the Constitution

28. The general propositions which underpin the Constitution, are those that the Constitution should:
- a) set out how the Council works, how decisions are made and the procedures to be followed to ensure that decisions are efficient, transparent and accountable through councillors to the local community;
 - b) be clear about the rules, functions and responsibilities of both councillors and officers;
 - c) be clear about the rights which citizens have in their dealings with the Council; and
 - d) reflect the Council's vision and core values.
29. The Constitution is also built around the following principles:
- a) meaningful and important roles for all councillors;
 - b) a strong Cabinet balanced by a strong Council;
 - c) effective scrutiny arrangements;
 - d) decision-making which is made as efficient, transparent and accountable as possible, so that the Council can be more open and responsive to the needs and aspirations of the people of Suffolk; and
 - e) all meetings being held in public, except where there are overwhelming reasons of confidentiality.

Sources of further information

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| a) None |
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It is proposed that **Part 8 of the Constitution** should be amended as indicated (new paragraphs in italics):

11. Disciplinary action for conduct, capability and breakdown in trust against the Chief Executive, Chief Finance Officer (s151 officer), Assistant Director (Scrutiny and Monitoring) (Monitoring Officer) and a Deputy Monitoring Officer.

11.1 Before taking any disciplinary action against these officers other than suspension on full pay for a period not exceeding two months, the allegation of misconduct, capability or breakdown in trust will be considered by the Dismissals Appeals Committee. ~~If concerning the Chief Executive, to determine whether further investigation is required through the appointment of a designated independent person.~~

~~11.2 The County Council will comply with the rights and powers of the designated independent person throughout any investigation relating to the Chief Executive.~~

11.2 The Dismissals Appeals Committee will decide if any investigation is required. If an independent investigator is required, the Council will approach the Joint Secretaries to the Joint Negotiating Committee for Chief Executives of Local Authorities, who will provide names of three individuals who are qualified to undertake this work.

11.3 If these names are acceptable to the Dismissal Appeals Committee, the member of staff will be invited to select one of the names. If agreement is not reached within 5 working days then the Council will select an investigator.

~~11.3 If concerning the Chief Executive, the report of the designated independent person will be made to the Dismissals Appeals Committee.~~

11.4 Otherwise the procedure shall be as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

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