

AMENDMENTS TO THE CONSTITUTION: GOVERNANCE COMMITTEE AND COUNCILLOR ABSENCE

Council - 30 April 2019

Report of Chief Officer Corporate Services

Status For Decision

Key Decision No

Portfolio Holder Cllr. Anna Firth

Contact Officer Martin Goodman, Ext. 7245

Recommendation to Council: That the amendments to the Constitution as set out in the Appendix to the report, be approved.

Reason for recommendation: To ensure compliance with relevant legislation.

Introduction

- 1 The Governance Committee (12 February 2019, Minute 11(c)) resolved that ‘the Head of Legal and Democratic Services draft a report recommending to Council that the terms of reference for the Governance Committee be extended to include delegated authority to approve in advance Member non-attendance at meetings of the authority which would otherwise exceed the period of 6 months set out in s.85 (1) of the Local Government Act 1972, unless he receives legal advice indicating such a delegation would be unlawful.’
- 2 This report sets out the Head of Legal and Democratic Services findings and recommended amendments.

Background

- 3 On 6 November 2019 (Minute 6) the Governance Committee established a working party of five Members to draft a Councillor Absence Policy and report on progress to the next meeting.
- 4 At its meeting on 12 February 2019 and due to the fact the Governance Committee was not due to meet again before the end of the municipal year, rather than hold an extraordinary meeting the Committee decided to delegate authority to the Head of Legal and Democratic Services to report directly to Council.

- 5 The Committee had discussed measures that could be put in place to support Councillors who may be seeking an extended (more than 6 months) leave of absence from Councillor duties. It was suggested that full Council could delegate the responsibility for hearing these cases to a committee or subcommittee, ideally the Governance or Standards Committee. Extraordinary meetings of the chosen Committee could be called more easily than a full Council meeting.
- 6 The Head of Legal and Democratic Services had advised that the responsibility to consider Councillor absence should not be delegated to Cabinet and the extension of an absence would need to be approved in advance of the 6-month deadline to enable a Councillor to continue serving past this date. Members were advised that any proposed delegation should only be made in accordance with legal advice.
- 7 It had been noted that Councillors were not employed by the Council but rather elected by their constituents and consideration should be given to covering an absent Councillor's local responsibilities.

Legal Position

- 8 With regards to Member absence the law is quite clear. Under section 85 of the Local Government Act 1972 if a councillor fails throughout a period of six consecutive months from the date of his/her last attendance to attend any meeting of the authority, he/she shall, unless the failure was due to some reason approved by Council before the expiry of that period, cease to be a member of the authority.
- 9 Section 86 of the Local Government Act 1972 requires an authority to declare a vacancy in such circumstances.

Amendments required

- 10 Amendment of Part 9 to the Constitution (Terms of Reference of the Governance Committee) to insert a new paragraph in the following terms:

Members' Attendance

1.7 Delegated authority from Council to the Governance Committee to approve in advance reasons for failure to attend any meeting of the authority or executive throughout a period of six consecutive months from the date of a Member's last attendance as set out in s.85(1) and s.85(2B) of the Local Government Act 1972.

Key Implications

Financial

None directly arising from this report.

Legal Implications and Risk Assessment Statement

Instances of vacation of office by virtue of failure to attend meetings are relatively rare due to the number of opportunities available for Members to be recorded as having been present. Other than as set out in the report there are no legal implications and no hazards arise which necessitate a risk assessment. It should be noted that the delegation of power proposed in this report does not preclude Council from exercising the same power.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Appendices

Appendix A - Proposed amended Part 9 to the Constitution

Background Papers

[Sevenoaks District Council Constitution](#)

[Section 85\(1\) and \(2A\) of the Local Government Act 1972](#)

Jim Carrington-West

Chief Officer Corporate Services