

AGENDA



For a meeting of the
CONSTITUTION COMMITTEE
to be held on
MONDAY, 23 SEPTEMBER 2013
at
10.30 AM
in the
WITHAM ROOM, COUNCIL OFFICES, ST PETER'S HILL, GRANTHAM NG31 6PZ
Beverly Agass, Chief Executive

Committee Members:	Councillor Ray Auger, Councillor Vic Kerr, Councillor Alan Parkin (Vice-Chairman), Councillor Rob Shorrocks and Councillor Raymond Wootten (Chairman)
Committee Support Officer:	Lucy Bonshor (01476) 40 61 20 l.bonshor@southkesteven.gov.uk

Members of the Committee are invited to attend the above meeting to consider the items of business listed below.

1. MEMBERSHIP

The Committee to be notified of any substitute members.

2. APOLOGIES

3. DISCLOSURE OF INTERESTS

Members are asked to disclose any interests in matters for consideration at the meeting.

4. MINUTES OF THE MEETING HELD ON 8TH JULY 2013

(Enclosure)

5. AMENDMENTS TO THE CONSTITUTION

Amendments to the Scheme of Delegation Scrap Metal Dealers Act 2013 Report ENV592 by the Head of Environmental Services.

(Enclosure)

6. CONSTITUTION REVIEW

- CONSTITUTION REVIEW – Articles 1 and 18 report LDS106 from the Head of Legal & Democratic Services.

(Enclosure)

- CONSTITUTION REVIEW – Scheme of Delegation report LDS107 from the Head of Legal & Democratic Services.

(Enclosure)

7. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASONS OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT

MINUTES

CONSTITUTION COMMITTEE
MONDAY, 8 JULY 2013



COMMITTEE MEMBERS PRESENT

Councillor Ray Auger
Councillor Vic Kerr

Councillor Alan Parkin (Vice-Chairman)
Councillor Raymond Wooten (Chairman)

OFFICERS

Head of Legal and Democratic Services/Monitoring Officer (Lucy Youles)
Democratic Officer (Lucy Bonshor)

25. DISCLOSURE OF INTERESTS

None disclosed.

26. MINUTES OF THE MEETING HELD ON 15TH APRIL 2013

The minutes of meeting were agreed as a correct record of the decisions and recommendations made subject to Councillor Adams Stokes apologies being noted as received after the meeting took place.

27. CORPORATE GOVERNANCE - INTERNAL AUDIT REPORT

Decision

To note the Internal Audit Report.

Members had been circulated with a report that had been produced by the Council's internal auditors, RSM Tenon, on the Council's Constitution. The report made two recommendations. The first related to getting documentary evidence as to who owned copies of the Constitution and confirmation that amendments were being incorporated by Members and officers. The second related to notification of amendments required. The Head of Legal and Democratic Services stated that when amendments were made, Members were relied upon to insert those amendments accurately and that officers were required to collect the amendments and accurately update their copies of the Constitution. A process would be put in place to ascertain who held copies of the Constitution and therefore required updates when they were available. A

letter was circulated with each update informing Members of the pages to amend and any difficulties to contact the Section. An electronic copy of the Constitution was available on the Intranet and the Internet. It was suggested that perhaps Members could acknowledge receipt of their updates either by e-mail or by letter when they were circulated.

➤ **Action Note**

When the next updates are circulated include a paragraph re acknowledgement of receipt.

The Head of Legal and Democratic Services then referred to another audit that had been done in relation to Members Interests which had brought up references to the Standards Committee still contained within the Constitution. Although most of the changes had been made when the Standards regime had been changed, some had been missed which had been addressed.

28. CONSTITUTION REVIEW

Proposed Timetable for Review

Decision:

To agree and note the timetable for the Review.

The Head of Legal and Democratic Services referred to the last meeting of the Committee where an outline for proposals for change to the Constitution had been discussed. The report before Members proposed a timetable and the work planned at meetings over the next months.

- 8th July 2013 – Review of Article 4.1 and consideration of Article 18.
- 23rd September 2013 – Review of scheme of delegation to officers and creation of a section on officer information. Clarification on rules of voting for appointments and rules of substitution.
- 16th December 2013 – Review and simplification of executive and policy development procedure rules and creation of a section on Member information.
- 24th March 2014 – Review and simplification of budget and policy framework procedure rules.
- 17th April 2014 – Presentation to Council of revised Constitution

By way of example of the types of work to be reviewed, the Head of Legal and Democratic Services referred to the Scheme of Delegation and the delegation given to officers. It was right that delegations were well controlled however; they should not prevent officers from carrying out their work in a timely manner. She referred to planning enforcements as an example of how some delegations

affected how quickly things could be dealt with. Enforcements had to go before Development Control Committees to be agreed which could slow the process down due to when the committees were held. She also referred to the procedure rules. The rules of procedure at full Council did not always apply to other committees. The Constitution Committee should consider different rules for the other committees.

Members agreed with the proposed timetable and the work required. The Chairman asked about budget and it was confirmed that it was proposed that the work on the review would now be carried out within existing resources.

Constitution Review – Article 4 – Meaning of Policy Framework

Decision:

The Constitution Committee recommends to Council the adoption of an updated Article 4.1 of the Constitution as follows:

4.1 Meanings

Policy Framework_

The policy framework means the plans and strategies required to be adopted by the Council:

- ***The Corporate Plan***
- ***The Medium Term Financial Strategy***
- ***The Local Plan currently consisting of the Core Strategy and Development Plan Documents***
- ***The Sustainable Communities Strategy***
- ***The Pay Policy***
- ***The Gambling Statement of Licensing Principles***

Report LDS097 proposed a change to Article 4 of the Constitution updating the policy framework documents which must be adopted by full Council, The current list shown in the Constitution should be updated to include up to date references to relevant documents. The Head of Legal and Democratic Services went through the revised list of documents as detailed in the report. She had been advised that The Core Strategy and the Development Plan Documents were now referred to as the Local Plan. As the Council but for continuity felt that reference to these documents needed to be made. The Community Strategy had been replaced by the requirement for a Sustainable Community Strategy by virtue of an amendment to the Local Government Act 2000. This document was held by Lincolnshire County Council and the District Council had a chapter contained within the document. The Pay Policy was dealt with as part of the budget process and the Gambling Statement of Licensing Principles was brought before Council on a five year cycle. Members agreed that both the Core Strategy and the Development Plan

Documents should be referred to and it was proposed, seconded and agreed that the documents be listed as per the report subject to the reference to the Core Strategy and Development Plan Documents which should read:

- Local Plan which currently consists of the Core Strategy and Development Plan Documents.

Consideration of Article 18 – Review and Revision of the Constitution

Members were asked to consider Article 18 and whether or not, as worded, it provided any assistance to the process of review.

It was agreed, by having a Constitution Committee, recommendations could be made to Council with issues being debated without taking up time at a Council meeting. The Committee was political balanced so each group was represented. The Governance and Audit Committee had previously been used for this purpose, however, it was felt that the time and the depth of knowledge required to debate audit issues, did not give sufficient time for proper debate on constitutional issues.

As part of the review of the Constitution, it was proposed that Members consider article 18 and how the process of amendment and review could be improved. Should all matters of change, including matters of fact or record go before the Committee for recommendation or could delegated authority be granted.

Members of the Committee were asked to consider the terms of Article 18 and for them to feedback and suggestions/changes they had with regard to this or any part of the Constitution by 1st September 2013.

29. CLOSE OF MEETING

The meeting closed at 10.59am.

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: Head of Environmental Services

REPORT NO: ENV592

DATE: 26 September 2013

TITLE:	Scrap Metal Dealers Act 2013	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Amendment to the Constitution to enable delegated authority for the implementation of the Scrap Metal Dealers Act 2013	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor John Smith Portfolio Holder: Healthy Environment	
CONTACT OFFICER:	Mike Butler, Head of Environmental Services Tel: 01476 40 63 44 E-mail: m.butler@southkesteven.gov.uk Pete Rogers, Team Leader, Environmental Protection Tel: 01476 40 63 27 E-mail: p.rogers@southkesteven.gov.uk	
INITIAL IMPACT ANALYSIS:	Carried out and Referred to in paragraph (7) below	Full impact assessment Required:
Equality and Diversity	Amendments are mandated by Statute.	Not applicable.
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	Scrap Metal Dealers Act 2013: http://www.legislation.gov.uk/ukpga/2013/10/enacted	

1. RECOMMENDATION

- 1.1 That the Constitution Committee recommends the Cabinet endorses the scheme of delegation set out in appendix 2 of this report for Council to adopt as an amendment to the Constitution.**

2. PURPOSE OF THE REPORT

- 2.1 This report outlines the details of the Scrap Metal Dealers Act 2013 including proposals for implementation and recommendations for delegations.

3. DETAILS OF REPORT

- 3.1 The increased cost of metal world-wide has resulted in an increase in metal theft across the UK. Police believe that the scrap metal industry offers the principal outlet for stolen metal in the UK.

- 3.2 The Scrap Metal Dealers Act 2013 comes in to force in October this year. It repeals and replaces the Scrap Metal Dealers Act 1964 and those parts of the Vehicles (Crime) Act 2001 that deal with Motor Salvage Operators.

- 3.3 The Act revises the regulatory regimes for scrap metal dealing and vehicle dismantling, giving Local Authorities more powers including powers to refuse and revoke licences and to enter and inspect premises.

- 3.4 In order for anyone to carry on in business as a scrap metal dealer they will have to have a licence which will last for three years. Unlicensed trading is a criminal offence.

- 3.5 Local Authorities have to make provision for the issue, administration and enforcement of scrap metal dealers' licences. This includes provisions to deal with any contested applications as well as setting fees.

- 3.6 The current framing of the legislation requires the whole process to fall to the Executive of the Authority. The Council needs to take action now to make sure that the proposals detailed in the main report are considered and adopted correctly in time to receive the first applications in October.

4. OTHER OPTIONS CONSIDERED

- 4.1 Officers had hoped to recommend adoption of an alternative scheme of delegation through the Licensing Committee of South Kesteven District Council, as it already has structures in place to provide a democratic forum to deal with contested applications and to oversee any dealings with problem premises. However the Home office has not yet legislated for this, and indeed may not do so. This proposal is obligated by the Home Office policy and the construction of the new Act. It meets the requirements of the legislation in the required timescales.

5. RESOURCE IMPLICATIONS

- 5.1 There will be an increase in workload for the Environmental Protection teams in undertaking scheduled compliance visits, together with the implications of ad-hoc enforcement work done in partnership with other agencies.
- 5.2 Licence fees can be set that will be based on cost recovery, including some checks of compliance. There will be an increase in income because the current legislation only allows for a partial cost recovery.

6. RISK AND MITIGATION

Risk has been considered as part of this report. No serious risks were identified. The Council has a statutory duty to adopt the provisions of the Scrap Metal Act 2013.

7. ISSUES ARISING FROM IMPACT ANALYSIS

- 7.1 No equality analysis is required. The proposed changes reflect new national government legislation.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 The new legislation has been introduced to reduce metal theft and reduce Crime and disorder.

9. COMMENTS OF FINANCIAL SERVICES

- 9.1 Financial Services comments are incorporated within the report.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

- 10.1 The Scrap Metal Dealers Act 2013 replaces the Scrap Metal Dealers Act 1964 and provides a revised regulatory regime for scrap metal dealing. The Act has a phased introduction. The recommendation in the report will enable the Council to meet its duties as the Act is implemented.
- 10.2 At the time of writing, local authorities are awaiting clarification of the classification of this licensing function. The functions within the Act are likely to be non-executive functions of full council and authority from the full council is needed to delegate powers to officers to enable the council to respond appropriately under the new regime.

11. COMMENTS OF OTHER RELEVANT SERVICES

- 11.1 None.

12. APPENDICES:

- Appendix 1: summary of Scrap Metal Dealers Act 2013
- Appendix 2: proposed scheme of delegations

Appendix 1

1. Scrap Metal dealers Act 2013: SYNOPSIS

The Scrap Metal Dealers Act 2013 (the Act) was passed on 28 February 2013 and is due to come in to force in October this year. The new Act replaces the Scrap Metal Dealers Act 1964 and those parts of the Vehicles (Crime) Act 2001 that deal with Motor Salvage Operators.

The Act has revised the regulatory regimes for scrap metal dealing and vehicle dismantling. Local Authorities will continue to act as the principle regulator but the new act will give the authorities more powers including the new powers of refusal and revocation of licences if the dealer is considered unsuitable. In addition local authorities and Police have been given powers to enter and inspect premises. In order for anyone to carry on in business as a scrap metal dealer they will have to have a licence. Licences will last for three years. Trading without a licence is a criminal offence.

2. Background

The increased cost of metal world-wide has resulted in an increase in metal theft across the UK. The cost to the UK economy is between £220 million and £777 million a year according to two recent estimates. A wide range of sectors have been hit including national transport, electricity and telephone links, street furniture, and commercial and residential buildings including schools. Churches and war memorials have been desecrated. Police believe that the scrap metal industry offers the principal outlet for stolen metal in the UK.

The Government introduced initial changes in 2012 that took steps to prohibit cash payments for scrap metal and increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964.

The key features of the new Act include:

- Locally set licence fees.
- Suitability test.
- Revocation powers.
- Entry and inspection powers.
- Licence conditions supported by legislation.
- Closure powers for unlicensed sites.
- Requirement to display licences and identity badges.
- National register of licensed dealers.

3. How it Works

Two types of licence are specified within the Act:

Site licence.

- All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named

for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.

Collector's Licence.

- This allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence also does not authorise the licensee to operate a site. To do so they will need a site licence from the relevant local authority.

It should be noted that a dealer can only hold one type of licence in any one local authority area. They have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council but can hold a licence in more than one Local Authority.

The Act completely replaces the previous registration scheme local authorities operated for scrap metal dealers. Local government will now be responsible for the licensing of scrap metal dealers and ensuring compliance with the licensing regime in partnership with the police.

Local Authorities have to make provision for the issuing of scrap metal dealers' licences. South Kesteven District Council currently has 34 businesses recorded as scrap metal dealers and/or motor salvage operators. Home Office advice is to double this figure when planning implementation to allow for itinerant traders.

Appropriate procedures are required for considering applications and deciding whether an applicant is a suitable person to carry on business as a scrap metal dealer. No method of deciding licensing applications is set out in the Act, so an appropriate scheme of delegation will be required.

As part of the process by which an applicant's suitability is assessed they must submit a standard criminal record disclosure with their application. The local authority can also have regard to:

- Whether the applicant or any site manager has been convicted of any relevant offence.
- Whether the applicant or any site manager has been the subject of any relevant enforcement action.
- Any previous refusal for issue or renewal of a Scrap Metal Licence.
- Any previous refusal for an environmental permit or registration.
- Any previous revocation of a Scrap Metal Licence.
- Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act.

Once an application has been received the Local Authority must consult with:

- Any other local authority (if an application has been made or licence issued to the same applicant);
- The Environment Agency;
- The Police.

Draft application forms have been prepared but are still subject to amendment and revision by the Home Office.

We are obliged to ensure that any licences issued are placed on the national register of licences maintained by the Environment Agency or Natural Resources Wales. We do not, as yet, have any information from the Home Office about how this process will work.

The new record keeping regime includes the requirement for dealers to verify the identity including the full name and address of the metal supplier and keep copies of proof of identification. In addition the dealer must keep records of the type and description of the metal, including weight and identifying marks, the date and time of receipt, the registration number of any vehicle delivering the metal, how the metal was disposed of and copies of any cheques used to pay for metal. All records must be kept for 3 years. The Act prohibits the payment of cash for metals.

4. Transitional Arrangements

The transitional arrangements were agreed by the Home Office on 8th August as follows:

- Local Authority power to set fees from **1 September**.
- All scrap metal dealers can apply for a scrap metal dealers licence from **1 October**.
- A scrap metal dealer who is currently registered under the Scrap Metal Dealers Act 1964 or Vehicles (Crime) Act 2001 needs to submit an application on or by **15 October** and will be deemed to have a temporary licence which is valid until a licence decision is issued.
- It is recommended that a formal licence decision is issued by local authorities by **1 December**.
- Local authorities will complete checks to assess applicants' suitability to hold a licence between 15 October and **1 December**.
- Formal decision and issue of licence, if appropriate, on **1 December**.
- If a registered scrap metal dealer does not submit an application on or by 15 October their deemed licence will lapse on 16 October. A deemed temporary licence which has lapsed does not give rise to a right to appeal. The dealer must submit an application and wait for a licence to be issued before they can trade legally.

- A local authority can impose conditions on a deemed temporary licence pending an appeal for the refusal of a licence.
- Scrap metal dealers who are not registered under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 can apply for a licence from 1 October but must wait for a licence to be issued before they can trade legally.
- The offence of buying scrap metal for cash will come into force on **1 October**.
- Local authority officers and police officers will have the right to enter and inspect premises from **1 October**.
- The majority of the other enforcement provisions within the Act will come into force on **1 December**.

5. Fees

Local authorities can charge fees for the issuing of licences, and must have regard to the guidance issued by the Home Office on 12 August. Any initial fee set will be reviewed during the first year of the new licensing regime and amended if appropriate.

The Provision of Services Regulations 2009: Regulation 18 (4) states that –

Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.

In addition recent case law (R (Hemming and Others) v Westminster City Council 2012) has highlighted the aspects of the licensing regime that can legally be recovered in charges that are levied by Licensing Authorities. In brief summary, the case established the important principles:

*“that where a Council profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years;
that in authorisation schemes covered by the Provision of Services Regulations, enforcement costs may not be recharged to licensed operators.”*

All licence fees are reviewed annually to ensure cost recovery and compliance with the above legislation and principles as far as possible.

The proposals for application fees have not yet been finalised. It is recommended that fees set in South Kesteven should be made in reference to other Lincolnshire Authorities, which are currently being decided. It is recommended that a further report will be submitted to Cabinet with fee proposals.

Appendix 2

Scrap Metal Dealers Act 2013 – Scheme of Delegations

Delegations

Given the provisions in the Act for relevant persons to make representations in certain circumstances your officers consider it appropriate that applications which officers are minded to refuse, as well as cases where revocation or variation of the licence is being considered, ought to be heard by the Licensing Committee.

It is unfortunate that the current framing of the legislation precludes this as an option and instead requires the whole process to fall to the Executive of the Authority. We expect this anomaly to be clarified when further regulations are published sometime in October, but the Council needs to take action now to make sure that the delegated authority has been approved

Function:	Delegated to:
Fee setting	The S151 Chief Finance Officer in consultation with the relevant portfolio holder.
Administration & Enforcement of the Act – including powers to enter an inspect premises (Section 16) and serve Notices under Schedule 1, Section 7 (proposals to refuse, revoke or vary licences).	Operations Director or anyone authorised by them in writing
Grant of a site or collectors licence without conditions.	Operations Director or anyone authorised by them in writing
Grant of a site or collectors licence with conditions.	Operations Director or anyone authorised by them in writing
Refusal, revocation or variation of a site or collectors licence.	Operations Director or anyone authorised by them in writing
Power to make closure order	Licensing Committee

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: HEAD OF LEGAL AND DEMOCRATIC SERVICES

REPORT NO: LDS106

DATE: 23rd SEPTEMBER 2013

TITLE:	CONSTITUTION REVIEW – Article 1 and 18	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Not applicable	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
CONTACT OFFICER:	Lucy Youles Head of Legal and Democratic Services l.youles@southkesteven.gov.uk Tel:01476 406105	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below Not applicable	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	The Constitution	

1. RECOMMENDATIONS

It is recommended the Constitution Committee consider the proposed changes to the Constitution to amend and amalgamate Articles 1 and 18 as detailed at the Appendix to this report and recommend to Council to approve the proposed changes.

2. PURPOSE OF THE REPORT

The purpose of the report is to inform the Constitution Committee of the proposed changes to the Constitution and to make a recommendation to Council to approve the proposed changes.

3. DETAILS OF REPORT

3.1 The Constitution, as written, includes:

- Article 1 – The Constitution,
- Article 18 – Review and Revision of the Constitution.

3.2 The proposal for change combines the two articles to create one relating to the Constitution. The purpose of the Constitution has been expressed in the proposed article taking wording which is currently in the introduction of the Constitution.

3.3 Article 18 has been reviewed and incorporated into article 1 to provide one article.

4. OTHER OPTIONS CONSIDERED

No other options have been considered in respect of these amendments.

5. RESOURCE IMPLICATIONS

There are no resource implications relating to the proposals.

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
No significant risks	

7. ISSUES ARISING FROM IMPACT ANALYSIS

Equality impact analysis not required

8. CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications

9. COMMENTS OF FINANCIAL SERVICES

There are no financial implications relating to the amendments.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

There are no legal or democratic implications relating to the proposed amendments.

11. COMMENTS OF OTHER RELEVANT SERVICES

None relevant

Appendix - Proposed Article 1 of the Constitution.

Key: **Yellow highlight** information from elsewhere within SK's Constitution
Turquoise highlight additional wording from other authorities Constitution
Pink highlight additional wording added – confirmation required to change???
Crossed out information has been used (yellow highlighted bits)

ARTICLE 1 - THE CONSTITUTION

1.1 Powers of the Council

The Council will exercise all its powers and duties in accordance with the law and this Constitution.

1.2 The Constitution

This Constitution, and all its codes and protocols, is the Constitution of the South Kesteven District Council and is called “the Constitution” for the purposes of this document. **The Constitution sets out how the Council operates, how decisions are made and who makes them, the procedures to be followed, and the rules to which Councillors and officers are to abide.**(18.4)

1.3 Purpose of the Constitution

The purpose of this Constitution is to ensure:

- **the Council provides community leadership, involving citizens in the democratic process,**
- **Councillors are assisted in effective representation,**
- **Decisions are taken efficiently and effectively, (providing reasons and permitting independent scrutiny) holding decision makers to account publicly,**
- **Improvement in the delivery of services** (THIS IS FROM PAGE 31 IN THE LILAC SECTION).

1.4 Interpretation ~~and Review~~ of the Constitution

This Constitution shall be interpreted in accordance with the laws of England and all words shall be given their natural meaning where appropriate.

1.518.1 Duty to monitor and review the constitution

The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

1.618.2 Protocol for monitoring and review of Constitution by Monitoring Officer

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order to better achieve the purposes set out **above**. In undertaking this task the Monitoring Officer **will have regard to any legislative changes affecting the Constitution and may:-**

- (i) Observe meetings of different parts of the member and officer structure;
- (ii) Undertake an audit trail of a sample of decisions;

Key: **Yellow highlight** information from elsewhere within SK's Constitution
Turquoise highlight additional wording from other authorities Constitution
Pink highlight additional wording added – confirmation required to change???
Crossed out information has been used (yellow highlighted bits)

- (iii) Record and analyse issues raised with him/her by Members, officers, the public and other relevant stakeholders; and
- (iv) Compare practices in this authority with those in other comparable authorities, or national examples of best practice.

1.718.3 Changes to the Constitution

- i) Parts of the Constitution are statements of factual matters relating to the Council such as member and officer details. Changes may occur from time to time by virtue of Council decisions or decisions made by the Leader and/or Cabinet Members. Such changes may be made to the Constitution by the Monitoring Officer without reference to the Constitution Committee or Council for decision.
- ii) All other changes to the Constitution must be approved by the full Council following consideration of reports presented to the Constitution Committee and recommendation by the Constitution Committee to full Council.

~~18.1 Duty to monitor and review the constitution~~

~~The Monitoring Officer will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.~~

~~18.2 Protocol for monitoring and review of constitution by Monitoring Officer~~

~~A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended in order to better achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:-~~

- ~~(i) Observe meetings of different parts of the member and officer structure;~~
- ~~(ii) Undertake an audit trail of a sample of decisions;~~
- ~~(iii) record and analyse issues raised with him/her by members, officers, the public and other relevant stakeholders; and~~
- ~~(iv) compare practices in this authority with those in other comparable authorities, or national examples of best practice.~~

18.3 Changes to the Constitution

- (i) Constitutional changes may be prompted not only from internal reviews and evaluation of their governance, but also from changes in public opinion.
- ~~(ii) Changes to the Constitution will only be approved by the full Council after consideration of a report by the Monitoring Officer on the proposal by the Constitution Committee.~~

Key: **Yellow highlight** information from elsewhere within SK's Constitution
Turquoise highlight additional wording from other authorities Constitution
Pink highlight additional wording added – confirmation required to change???

(iii) The Council has adopted a protocol on changes to the Constitution which is set out below

18.4 Protocol for Changes to the Council's Constitution

~~The Council's Constitution is a statutory document which sets out how the Council operates, how decisions are made and who makes them, the procedures to be followed, and the rules to which Councillors and officers are to abide.~~

~~Parts of the Constitution are merely statements of factual matters appertaining to the Council, such as its objectives and policy framework documents, some of these change from time to time by virtue of Council decisions, others, such as member and officer details occur without any decision of the Council being involved.~~

~~Other parts reflect the decisions of the Leader and Cabinet, e.g. as to its size and portfolios of responsibility. Such amendments will simply be made to record these.~~

~~Changes to the principles of the executive arrangements, and the various rules and codes would require adoption by or resolutions of the Council.~~

~~Article 18 of the Constitution provides for its amendment by Council to be the subject of consideration by the Constitution Committee. Such reports are likely to result from the reviews and evaluation detailed in Article 18.~~

~~Specifically, the provisions of the Constitution considered to be able to be the subject of Constitution~~

~~Committee recommendations to Council to effect any amendments are:~~

~~Part 2
Articles 2,6,8,9, 11,13,14, 15,16,17, 18 and 19 (Article 10 deleted)~~

~~Part 4 (all)~~

~~Part 5 (all)~~

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: HEAD OF LEGAL AND DEMOCRATIC SERVICES

REPORT NO: LDS107

DATE: 23rd SEPTEMBER 2013

TITLE:	CONSTITUTION REVIEW – SCHEME OF DELEGATION	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Not applicable	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance & Communication	
CONTACT OFFICER:	Lucy Youles Head of Legal and Democratic Services l.youles@southkesteven.gov.uk Tel:01476 406105	
INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below Not applicable	Full impact assessment Required: Not applicable
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	The Constitution	

1. RECOMMENDATIONS

It is recommended the Constitution Committee consider the proposed changes to the Scheme of Delegation to officers as detailed at the Appendix to this report and approve for consultation with officers.

2. PURPOSE OF THE REPORT

The purpose of the report is to inform the Constitution Committee of the proposed changes to the Constitution and to obtain approval for consultation.

3. DETAILS OF REPORT

3.1 The Scheme of Delegation to officers is detailed at part 3 (green) of the Constitution. The Scheme currently runs to 26 pages. The changes proposed provide a more streamlined scheme which should be more user friendly. The Scheme, as currently written, is separate from the functions of officers set out in Article 15 of the Constitution. The proposal would be to amalgamate the scheme and functions as one article relating to officers of the Council.

3.2 The proposed scheme will list the Proper Officers authorised to act for the purposes of the delegated functions and those authorised to act in the absence of the Proper Officer. General delegated authorities will be grouped as delegated authority to all those appointed as chief executive, strategic director, head of service and service manager Specific authorities will then be presented as shown in the table detailed in the Appendix.

3.3 It is proposed that Members consider the proposals and confirm approval/changes to allow full consultation with officers before submitting to Council for approval.

4. OTHER OPTIONS CONSIDERED

No other options have been considered in respect of these amendments.

5. RESOURCE IMPLICATIONS

There are no resource implications relating to the proposals.

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
No significant risks	

7. ISSUES ARISING FROM IMPACT ANALYSIS

Equality impact analysis not required

8. CRIME AND DISORDER IMPLICATIONS

No crime and disorder implications

9. COMMENTS OF FINANCIAL SERVICES

There are no financial implications relating to the amendments.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

There are no legal or democratic implications relating to the proposed amendments.

11. COMMENTS OF OTHER RELEVANT SERVICES

None relevant

Appendix - Proposed Scheme of Delegation to Officers.

LIST OF POWERS DELEGATED TO OFFICERS

Chief Executive, Heads of Service, Service Managers	
1.	<p>To manage the services for which they are responsible:-</p> <ul style="list-style-type: none"> i) In accordance with any policy decisions made by, or guidelines issued by, the Council; ii) Within the budgets made or approved by the Council; iii) In compliance with all standing orders, codes of practice, financial regulations or instructions approved or adopted by the Council.
2.	<p>To take such decisions or actions as they are required or authorised to take:-</p> <ul style="list-style-type: none"> i) Under standing orders adopted by the Council, and ii) As proper officers of the Council (as defined in Section 270(3) of the Local Government Act 1972).
3.	<p>To accept tenders and award contracts to contractors on behalf of the Council in the following circumstances:-^{01/08}</p> <ul style="list-style-type: none"> i) Following a tender process strictly in accordance with the Council's Contract Procedure Rules and Financial Regulations; ii) For the carrying out of works and/or the provision of goods and/or services; and iii) Which are to be awarded on the basis of lowest possible price.

CHIEF EXECUTIVE (Head of Paid Service)

Designation – Chief Executive

Act	Statutory Function
1sf. Section 4 Local Government and Housing Act 1989	Head of Paid Service
2sf. Section 8 Representation of the Peoples Act 1983	Electoral Registration Officer
3sf. Section 35 Representation of the Peoples Act 1983	Returning Officer at district and parish elections

- a) All functions as Head of Paid Service, including the overall corporate management and operational responsibility including management responsibility for all officers and approval of operational human resources and organisational development policies, working procedures, protocols. The Head of Paid Service may delegate such approvals to the management team.^{06/09}

- b) Provision of professional advice to all parties in the decision making process.
- c) Representing the Council on partnership and external bodies (as required by statute or Council).
- d) Community planning
- e) Responsibility for maintaining and updating the scheme of delegation to officers.
- f) To authorise officers in appropriate posts who are suitably trained and qualified to carry out the delegations where authorised posts become vacant or cease to exist and to authorise the changes in the Constitution to bring into effect the changes to the scheme of delegation.^{01/10}
- g) To authorise the Head of Paid Service (or deputy) to grant dispensation in respect of any conflict of interest of any Member of the Cabinet declared at meetings of the Cabinet.^{10/12}
- h) The Head of Paid Service will determine and publicise a description of the overall departmental structure of the Council showing the management structure and deployment of officers.
- i) The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers.
- j) The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer if a qualified accountant.

Proper Officer Function – Chief Executive

	Act	Proper Officer Function
1pf.	Section 13 Local Government and Housing Act 1972	To act as parish trustee
2pf.	Section 83 Local Government Act 1972	Declaration of acceptance of office.
3pf.	Section 84 Local Government Act 1972	Delivery of resignation from office.
4pf.	Section 88 Local Government Act 1972	Summoning Council meeting to fill casual vacancy for office of Chairman.
5pf.	Section 89 Local Government Act 1972	Receipt of notice of casual vacancy.
6pf.	Section 16 Electoral Administration Act 2006	As Returning Officer for South Kesteven has delegated authority in consultation with Ward Councillors to determine Polling Places. ^{01/10}
7pf.	Local Government Act 1972	Signature of documents
8pf.	Section 2(4) Local Government and Housing Act 1989	Politically restricted posts

	Act	Proper Officer Function
9pf.	Section 116 Local Government Finance Act 1988	Duty to notify auditor or meetings to consider statutory reports.
10pf.	Section 210 Local Government Act 1972	Functions in relation to charities.
11pf.	Section 225 Local Government Act 1972	Deposit of documents.
12pf.	Section 238 Local Government Act 1972	Certification of byelaws.
13pf.	Local Government Act 1972 Schedule 12 paragraph 4(2)	Signing summonses to Council meeting
14pf.	Local Government Act 1972 Schedule 12 paragraph 4(3)	Address to which summonses are to be sent.
15pf.	Section 115 Local Government Act 1972	Receipt of monies from officers.
16pf.	Section 146 Local Government Act 1972	Transfer of securities on alteration of name or area
17pf.		Proper Officer of the Council in relation to any matter or function which is not otherwise catered for in the lists or by later resolution of the Council.
	Without prejudice to the specific appointments as proper officers set out in the lists of Proper Officer functions, the Chief Executive, the Development Management Services Manager and Heads of Service are proper officers of the Council in relation to any matters (including, but not limited to, matters referred to in Section 234 of the Local Government Act 1972) which fall either by specific resolution of the Council or by custom or practice within their responsibilities.	
Proper Officer Function		A proper officer shall nominate in writing another Officer of the Council to act as proper officer in his/her stead in the event that he/she is at any time absent or unable to act as such proper officer
<u>LOCAL GOVERNMENT ACT 1972</u>		The Chief Executive, and any officer of the Council so authorised by him/her in writing, may prosecute, defend or appear in any proceedings under Sections 222 and 223 of the Local Government Act 1972.