

### **COSLA Constitution - Update**

#### **Summary and Recommendations**

This report provides a timetable for the work required prior to the next Convention in March 2021 at which amendments will be sought to COSLA's Constitution. The ultimate intention is to produce a suite of key governance documents that better reflect COSLA now and into the future.

This paper invites Convention:

- i. to note the intention to bring forward proposed amendments to COSLA's Constitution to Convention in March 2021; and
- ii. to note the timetable for drafting said amendments.

#### **References**

Previous reports:

- Convention Review 30 June 2017

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**October 2020**

## **COSLA Constitution - Update**

### **Purpose**

1. COSLA's Constitution was last amended in June 2017, following recommendations from a comprehensive member review of COSLA. Since that time a number of things have changed, not least the last few months where COSLA has seen a very different way of working, that require further amendments. There are various timescales that have to be followed in advance of proposed amendments being considered by Convention in March 2021. This report sets out some of the areas that are being considered for amendment and the timetable for so doing.

### **Current COSLA Position and What is Changing**

2. There are a number of reasons why now is timely for making amendments to COSLA's Constitution and the supporting governance documents. There has been recent pressure to amend the Constitution to take account of representations made by the Lothian Pension Fund. Considering what will be required for that, reflecting on the differing work practices of the last few months and having taken some professional advice on our legal status, this report sets out a timetable for amendments to the Constitution, better to reflect COSLA now and into the future.
3. COSLA is an admitted body to the Lothian Pension Fund. Lothian Pension Fund has reviewed its terms with admitted bodies and approached us to state that they require a new admissions agreement with COSLA which addresses liabilities accruing from COSLA's membership of the Fund. In line with this, Lothian Pension Fund has asked that COSLA's 32 member councils act as guarantors of any liability. This requires the Constitution to be amended with a more specific form of words tailored to meet Lothian Pension Fund requirements. It also raises broader questions around legal status which it would seem appropriate to resolve at the same time.
4. Also, the last few months have seen COSLA meeting formally in very different ways. This has highlighted the advantages of streamlining the core Constitution and instead strengthening and future proofing COSLA's complementary documents such as Standing Orders and Scheme of Delegation.

### **Proposed COSLA Position**

5. Lothian Pension Fund has reviewed the guarantors of the various organisations that contribute to the Fund and wishes to update the terms on which employers participate (Admissions Agreements), among which is the inclusion of specific pledges of guarantee. Councils' current liability is already enshrined within paras 15 and 16 of the COSLA Constitution but this now requires further updating. Detailed consideration of this has also identified that the Improvement Service was admitted to Lothian Pension Fund in 2005 and, due to our historic relationship, this may have implications for COSLA. Further work is needed to establish exactly what these might be, if any.

6. In basic terms, to satisfy conditions of Lothian Pension Fund membership, our current understanding is that extra wording which specifically nominates the 32 councils as guarantors of any liability requires to be included. Potential revised wording has now been received, though this will require further work with Lothian Pension Fund to take account of broader changes to the Constitution and any change to COSLA's legal status.
7. Given the above has to be done, a broader evaluation of the Constitution is underway, and its detail has been discussed with a representative of SOLAR (Society of Local Authority Lawyers and Administrators in Scotland). The Constitution is currently long, detailed and relatively old fashioned in style and language. The legal view is that there is much that does not need formally to be part of it. Some of the detail would be better incorporated into stronger and more comprehensive Standing Orders for the organisation. There are also matters better covered (or currently duplicated) in COSLA's Financial Regulations. Developing a clearer Scheme of Administration or Delegation should also be possible.
8. A broader issue is COSLA's current legal status. COSLA is currently an unincorporated association. It therefore lacks separate legal personality. The advice from SOLAR is that we should explore how to strengthen our legal status, which is unusual for an organisation of the scale of COSLA.. In these circumstances the opportunity will be taken as part of the review to consider the wider question of whether COSLA would be better to be reconstituted through another legal vehicle.
9. Finally, recent months have seen COSLA's meetings held in very different ways. The intention would be to look again at how these aspects are currently enshrined in our governance documents and any changes required to ensure they are fit for purpose, accountable and future proofed.

### **Next Steps**

10. The intention would be to work up a complementary package of the Constitution, Standing Orders, Financial Regulations and Scheme of Delegation for approval at Convention in March 2021. It is worth remembering though that, under the existing Constitution, any amendments to the Constitution must be recommended unanimously by Leaders, communicated to all councils at least six weeks in advance of the Convention, and then agreed unanimously. With that in mind, the intention is to keep Leaders and councils informed of and involved in the developing documentation over the next few months. A timetable is attached below. The further work on the best legal form for COSLA will proceed in parallel, but is likely to take longer to come to fruition. However the work to refresh the governance documents needs to take place regardless of whether any such proposals are brought forward.

**October 2020**

### **Timetable**

30 October 20	Convention alerted to intention for Constitutional changes
November 20	SOLAR (Local Authority Lawyers) consulted on intention for Constitutional changes
27 November 20	SOLACE alerted to emerging detail of upcoming Constitutional changes Leaders alerted to emerging detail of upcoming Constitutional changes
December 20	COSLA's legal advisers finalise detail, checked with SOLACE and SOLAR
29 January 21	Leaders Meeting agrees recommendations for Constitutional changes
12 February 21	Letter to all Councils advising of Constitutional changes
26 February 21	Deadline for issuing recommended changes
26 March 21	Convention consideration and approval

