

Report to: **Annual Council**  
Date: **17 May 2018**  
Title: **Annual Review of the Council's Constitution**  
Portfolio Area: **Support Services (Legal and Democratic Services)**  
Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: **Immediately following this meeting.**

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## **RECOMMENDATION**

**That the Council RESOLVES that the amendments to Parts 1, 2 and 3 of the South Hams District Council Constitution (as summarised in paragraph 2.11 of the report) be approved and formally adopted.**

### **1. Executive summary**

- 1.1 The Council is required to formally adopt its Constitution at the Annual Meeting in May for the forthcoming Municipal Year;
- 1.2 This report seeks to ensure that the Constitution is amended to reflect the changes that have either occurred in the Council over the previous year, or to implement any necessary changes to ensure that it is up to date, lawful (i.e. to incorporate changes in Statutory Legislation); and reflects the Council's current practices and priorities.

### **2. Background**

- 2.1 The Audit Committee is responsible for '*maintaining an overview of the Council's Constitution*' and for making any necessary recommendations to the Council;

2.2 The Audit Committee considered the latest Review at its meeting on 22 March 2018. Due to the length of the agenda, the Committee felt that it needed more time to consider the contents of the review before the document was then presented for approval to the Annual Council meeting (Minute A.47/17 refers). The Committee therefore **RESOLVED** that:-

*'An informal Committee Workshop be convened in advance of the Annual Council meeting on 17 May 2018 to enable for more detailed consideration of the annual review of the Council Constitution.'*

2.3 The informal Committee Workshop was subsequently held on Thursday, 3 May 2018 and was attended by Cllrs Pearce, Bramble and Brazil and Legal and Democratic Services Specialists;

2.4 In addition, a meeting has also taken place between Cllr Saltern (as a 'critical friend' on the Council Constitution) and lead officers;

2.5 At both of these meetings, Members made a series of recommendations that have been incorporated into the final draft version that Council is being asked to approve;

2.6 Due to the large size of the Constitution, it has not been circulated with the agenda, but is available upon request by contacting Member Services ([member.services@swdevon.gov.uk](mailto:member.services@swdevon.gov.uk));

2.7 Changes to the Constitution are made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes, and are effective from the date of approval (unless otherwise agreed by Council). Examples over the past year include:

- Changes to the Delegation Scheme as a result of the recent review of duties amongst the Senior Leadership Team (e.g. the Group Manager: Commercial Services being appointed to the role of Returning Officer); and
- Removal of some Member Bodies, including the Beach Management Working Group and the Joint Staff Consultative Forum.

2.8 In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. The changes that have been made under these powers this year mainly relate to officer job titles and evolving areas of responsibility following the recent review of duties amongst the Senior Leadership Team;

2.9 Members will note that the proposed changes are extensive and it is therefore suggested that the Review is divided into two parts. This part of the Review focuses on Part 1 (Summary and Explanation); Part 2 (Articles of the Constitution); Part 3 (Delegation Scheme) and Part 5 (Codes and Protocols) and the detailed recommended amendments are available upon request;

- 2.10 It is then suggested that the second part of the Review be considered within the next six months that focuses on Part 4 (Rules of Procedure). This will ensure that these Rules can be extensively reviewed before the May 2019 local elections;
- 2.11 The key proposed amendments to this Part of the Review are as follows:-
- A drive to remove duplication and attempt to make the Constitution a more concise document;
  - An additional requirement whereby a Chairman is required to have relevant experience (as determined by the Head of Paid Service) or undergo relevant Chairmanship training;
  - Removal of reference to thematic areas in the Overview and Scrutiny Panel section of the Delegation Scheme;
  - Removal of reference to Statute in the Delegation Scheme as it is no longer up to date;
  - A wish for the document to be cross referenced with the greater use of weblinks to ensure that it is more reader friendly electronically;
  - Removal of reference in the Delegation Scheme to the Audit Committee having its own standalone budget;
  - That the Planning Delegation Scheme be updated to reflect the 'Permission in Principle' applications;
  - To recognise that reference to 'Our Plan' should now be replaced with the term 'Corporate Strategy'; and
  - Inclusion of an additional definition relating to 'Working Groups'.
- 2.12 The Council will also be aware that the Political Structures Working Group is currently reviewing the merits of Public Questions at meetings of full Council and potential electronic voting solutions.

### **3. Outcomes/outputs**

- 3.1 The Council is required to have an up to date Constitution which reflects the law, its working practices together with best practice to ensure that it delivers efficient services and lawful decisions. The Constitution is a living document and changes are made throughout the year when necessary.

### **4. Options available and consideration of risk**

- 4.1 The options are limited as the Council has a statutory duty to adopt its Constitution annually and to review that document to ensure that it is fit for purpose and reflects both statutory requirements and the Council's working practices;
- 4.2 If the Council does not review the Constitution there is a risk that the Council may make unlawful decisions with a consequent risk of challenge;
- 4.3 Senior Officers have been consulted on the Constitution and any necessary amendments incorporated.

## 5. Proposed Way Forward

5.1 The Council is asked to approve the recommended amendments to the first part of the Constitution.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Local Government Act 2000 requires the Council to have (and to maintain) a Constitution. The Monitoring Officer must review the Constitution annually and make recommendations to the Audit Committee, who in turn must recommend its adoption to full Council. Only the Council can approve and adopt the Council's Constitution.
Financial	N	There are no financial implications to this report
Risk	Y	<p>There is a risk arising from a failure to review the Constitution and approve the necessary changes because it may lead to unlawful decisions being taken by the Council.</p> <p>By undertaking an annual review of the Constitution the Council mitigates this risk by ensuring that the Constitution is up to date and reflects current practice and law.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity		None arising from this report
Safeguarding		n/a
Community Safety, Crime and Disorder		n/a
Health, Safety and Wellbeing		n/a
Other implications		n/a

## **Supporting Information**

### **Appendices:**

None

### **Background Documents:**

Working copies of the amendments to the draft Council Constitution 2018/19.