

Report to: **Council**
Date: **19 May 2022**
Title: **Council Constitution**
Portfolio Area: **Leader of the Council – Cllr Pearce**
Wards Affected: **All**
Urgent Decision: **N** Approval and **Y / N**
clearance obtained:

Date next steps can be taken: **On approval of the recommendation**

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RECOMMENDATIONS:

It is RECOMMENDED that:

- (1) subject to (2) the Council adopts the following documents as set out at Appendix A as a part of its Constitution and the Constitution is amended with immediate effect:**
 - a. Chapter 1 – Introduction;**
 - b. Chapter 2 – Scheme of Delegation; and**
 - c. Chapter 3 – Meeting Procedure Rules;**
- (2) Paragraph B1 of Appendix B and Paragraph C1 of Appendix C to the Meeting Procedure Rules insofar as they exclude the Annual Meeting of Council will apply from the next Annual Meeting of the Council.**
- (3) A further report is brought to the July meeting of the Council to consider and approve revised Chapters 4, 5 and 6 of the Constitution.**

1. Executive summary

- 1.1 The Council operates a Council Leader and Executive model as its governance arrangements. Functions are executive functions unless regulations say otherwise. The Leader is responsible for all executive functions and decides, through the Leader's scheme of delegation, which of these functions to delegate to other Executive members, committees or officers.

- 1.2 The Council has a legal duty to publish an up to date Constitution reflecting its governance arrangements and which contains its standing orders, its councillor code of conduct, such information as the Secretary of State directs or that the Council considers appropriate. The Constitution should be reviewed annually with any necessary changes being normally considered at the annual council meeting.
- 1.3 Appendix A proposes an entirely new Chapter 2 (Responsibility for Functions) to replace the existing two-part scheme of delegation together with amended Chapter 1 (Introduction) and Chapter 3 (Meeting Procedure Rules). A further report to the July meeting of the Council will propose a new Chapter 4 (Access to Information Procedure Rules); Chapter 5 (Other Procedure Rules); and Chapter 6 (Codes and Protocols).

2. Background

- 2.1 Under Section 9B of the Local Government Act 2000 there are essentially only two permitted forms of governance arrangements for local authorities in England; executive arrangements or a committee system. The legislation does not permit a mix and match approach. Executive arrangements may in turn consist of either a mayor and cabinet executive; or a leader and cabinet executive.
- 2.2 Under the latter of these, which is also the form of the arrangements adopted by the Council, the Leader appoints two or more (up to a maximum of ten) councillors to the Executive. The Leader must appoint a Deputy Leader to act in the Leader's absence. Neither the Executive nor any Executive committees need be politically balanced. The Leader is responsible for all executive functions and determines the scheme of delegation for those functions and the ability to sub-delegate cascades down the executive hierarchy. Executive functions may therefore only be discharged by the Leader and subject to appropriate delegations, the Executive, a member of the Executive, an Officer or by other local authorities or under joint arrangements.
- 2.3 Functions are executive functions unless regulations say otherwise. With the exception of a very limited number of functions, where functions are expressly reserved to the full Council or the Council can decide as a matter of local choice whether it or the Executive will be responsible for them, a function will be an executive function if the regulations say so or are silent. In practice, this means that the division of functions between the Executive and the Council is as follows:
 - (a) Determination of the Council's policy framework and budget and other constitutional and quasi-legislative functions are to be the responsibility of the full council.

- (b) The Executive is not responsible for functions that involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a person (except in cases where there is only limited discretion in the discharge of the function) together with any related enforcement actions (including prosecution); and
 - (c) All other functions are the responsibility of the executive.
- 2.4 The Council has agreed improvements its decision-making framework and arrangements to secure greater transparency, accountability, clarity of roles, and efficiency of the democratic process (Min. CM.50/20 refers).
- 2.5 The Council has also adopted a new corporate strategy to ensure that Council resources are aligned to secure the efficient and effective delivery of the ambition and priorities set by Members (Min 44/21 refers).
- 2.6 These two decisions when taken together evidence an intention for the Council to be a council for the 21st century with governance arrangements and ways of working aligned to delivering the vision set out in Better Lives for All. To achieve this, there needs to be an approach to decision-making processes, which involves councillors and officers operating within a clearly defined, but light-touch framework that balances efficient decision-making with appropriate levels of overview and scrutiny. The first of the Council's decisions began that process.
- 2.7 Section 9P of the Local Government Act 2000 requires the Council to prepare and keep up to date a document, to be known as the Constitution, which contains:
 - (a) a copy of the authority's standing orders for the time being;
 - (b) a copy of the authority's code of conduct;
 - (c) such information as the Secretary of State may direct; and
 - (d) such other information (if any) as the authority considers appropriate
- 2.8 The existing Constitution is based upon the Modular Constitution that was introduced following the Local Government Act 2000 coming into force. Most local authorities did so. However, there is a large measure of repetition within and between elements of the existing Constitution, in particular the Articles and other parts, and within the Financial Procedure Rules. This makes the document cumbersome and longer than it needs to be. As Council has recognised, the Constitution is now dated and can be improved by

the use of web links, graphics and better presentation in a revised structure.

- 2.9 The Constitution has not been helped by being amended over a number of years. Unfortunately, this has resulted in the Constitution being less than satisfactory in terms of its user-friendliness.
- 2.10 At its meeting in July 2021, Council agreed a new format for the Constitution. Councillors agreed a new Introduction and Meeting Procedure Rules. It was acknowledged that the remaining parts would come forward as they were completed. In the interim, the Council agreed that its constitution would comprise a mix of the old and new (Min CM.36/21 refers). Councillors have nevertheless rightly raised concerns about the progress in bringing forward the remaining parts and it not being as envisaged.

3. Amendments to the Constitution

- 3.1 Appendix A contains an entirely new Chapter 2 (Responsibility for Functions) to replace the existing two-part scheme of delegation together with amended Chapter 1 (Introduction) and Chapter 3 (Meeting Procedure Rules). It is proposed new Chapters 4 (Access to Information Procedure Rules); 5 (Other Procedure Rules); and 6 (Codes and Protocols) will be tabled at the July meeting.
- 3.2 When the fully reviewed Constitution goes live, it is planned that hyperlinks within the single document will make it easier to navigate around the Constitution. The intended hyperlinks are shown in red and underlined. Hyperlinks will also be used to reference policies and procedures that are referred to, but do not form part of the Constitution.
- 3.3 Chapters 1, 2 and 3 of the draft constitution are clearly badged as being part of the Council's Constitution and with that in mind, have been written specifically to reflect the executive arrangements operated by the Council.
- 3.4 Chapter 1 - Introduction – Summary and explanation. This was agreed in July 2021. The purpose of the chapter is to provide information about how the Council works. However, an amendment is proposed to include reference to the principles of good decision-making.
- 3.5 Chapter 2 – Responsibility for functions and scheme of delegation. The purpose of the Council's Scheme of Delegation is to define the remits of the Council's decision-making bodies, and to specify the powers and functions that the Council and the Leader of the Council have delegated to those bodies and to officers.
- 3.6 This replaces the current scheme in its entirety. It includes the Leader of the Council's scheme of delegation, which is not referred

to in the existing Constitution, although it a legal requirement for there to be one. This is an important point, as it is not a matter for Council to determine the delegation of executive powers.

- 3.7 The Leader of the Council's scheme limits executive decision making by executive Members to the Executive only. Ultimately, this is a matter for the Leader of the Council.
- 3.8 The scheme also includes a list of those officers who are to exercise those functions identified in legislation as being exercisable by the Proper Officer.
- 3.9 Financial thresholds for decisions are, for the time being, unchanged. This includes the threshold for a decision being a Key Decision. For the purposes of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, an executive decision is a key decision if it is likely, among other things, "to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates". The Council's current threshold is £50,000 for revenue expenditure or savings and £100,000 for capital expenditure or savings.
- 3.10 The number, size and terms of reference of committees are set out in the scheme (Tables 1 and 3). Previously this information had been in the Articles, the scheme of delegation and in other parts of the Constitution.
- 3.11 Tables 1 and 3 reflect too, that what the Council might have previously described as being outside bodies, are in fact, joint committees or joint advisory committees. An example of the former is the PATROL Joint Committee, while the Tamar Valley AONB Partnership is an example of the latter.
- 3.12 The opportunity has been taken to review the terms of reference for some of the committees. It is proposed that the Audit Committee assume responsibility for standards and is re-named the Audit and Governance Committee to reflect this. To reflect CIPFA guidance on the independence of the chair of the audit committee, provision is made to prevent the chair of the Audit and Governance Committee from being be the chair or vice-chair of another committee or member of the Executive.
- 3.13 Historically, the Council has appointed councillors to the Discretionary (Major) Business Rate Relief Decision Panel. The Panel is however not included in the Council's Constitution and its terms of reference are uncertain. In addition, it appears not to have met for a number of years. Tables 1 and 3B do not therefore make reference to it.

- 3.14 The scheme seeks to provide clearer accountability for the Council's harbour functions by conferring the Council's harbour authority functions on the Executive (insofar as those functions are not already executive functions). This means that the Executive becomes the Duty Holder for the purposes of the Port Marine Safety Council and will receive training to allow it to fulfil that role. The Salcombe Harbour Board will use its knowledge and expertise to advise the Executive under the terms of a memorandum of understanding which will be put in place. The scheme as drafted reflects the recommendation from the Salcombe Harbour Board made at its meeting on 25 April 2022.
- 3.15 The scheme of delegation cascades powers from Council/the Leader of the Council down to the Head of Paid Service and Directors, with the power for further delegation of those powers to officers within their respective service areas. There are appropriate safeguards set out in Table 6, in that:
- (a) In all cases, delegated authority is subject to any policies and procedures that have been approved by Council.
 - (b) There can be no delegation of functions that are reserved to full Council or that cannot be delegated by law to an officer.
 - (c) A decision can be cascaded upwards if in the circumstances it is appropriate to do so.
- 3.16 Further to the safeguards set out in the previous paragraph, Table 6 also reflects the requirement under the Openness of Local Government Bodies Regulations 2014 for a written record to be produced and retained of decisions made by an individual councillor or officer that:
- (a) grant a permission or licence;
 - (b) affect the rights of an individual; or
 - (c) award a contract or incur expenditure which, in either case, materially affects the Council's financial position.
- 3.17 Chapter 3 – Meeting Procedure Rules. The Meeting Procedure Rules bring together the rules that are currently in three separate parts of the Constitution. They comprise the rules that apply to meetings of the Council, committees, panels and governance boards, the Executive and the Overview and Scrutiny Committee. As these were adopted in July 2021 following consultation with councillors, only limited changes are proposed. The principal changes are:
- an amendment to CPR 1.2 to comply with the legal requirement that the executive arrangements must make provision for the term of office of the Leader.

- the redrafting of the provisions as to the calling of a special meeting of the full Council to provide greater clarity (Council Procedure Rule 3.1)
- The anomaly highlighted during a recent debate in Council Procedure Rule 15.3(a) has been corrected.
- provision is made to regularise the attendance of non-members of the Council, the Executive or a Committee to attend via Teams (Council Procedure Rule 19.2).
- the addition of a Procedure Rule and further appendix setting out the Council's rules for the filming and recording of meetings and the use of social media during meetings (Council Procedure Rule 23 and Appendix F);
- Executive Procedure Rule 6 has been amended to clarify that all members of the Executive are entitled to notice of meetings of Executive Committees and to attend, whether they are members of the committee or not. The Rule also makes provisions about informal meetings of the Executive.
- For consistency with Council Procedure Rule 1.2 and greater clarity, for the purposes of Questions by Councillors (Appendix B) and Notices of Motion, the reference to meetings of the full Council do not include the Annual Meeting of the Council (Appendix B paragraph B1 and Appendix C paragraph C1).
- A minor amendment is made to clarify that any notices of motion that are not moved and seconded due to the time limit imposed by CPR 8.3(b) expiring, lapse and must be submitted again if they are to be considered at a future meeting of the Council. There is no rolling-over of notices of motion, unless postponed with the Chairman's consent (Council Procedure Rule Appendix C Paragraph C8).
- Scrutiny Procedure Rule 6 allows any councillor to request that an item is included in the Overview and Scrutiny Committee's work programme. Amendments are made to Rules 6.1(a) and (b) so that requests for items and the reasons for them are considered by the Overview and Scrutiny Committee. Only if the Committee is satisfied that there are sufficient reasons to justify the inclusion of the item, is the item to be included.
- There are some minor corrections to cross-references.

4. Risk, consultation and next steps

- 4.1 The risks of not having an up-to-date, consistent and complete Constitution are that responsibility and accountability for decisions is unclear, decision-making lacks transparency and ultimately decisions are made unlawfully. Pending the outcome of the further report to full Council in July, if Council approves the amendments to Chapters 1, 2 and 3, the Council's Constitution will comprise:
- a. Chapter 1 – Introduction
 - b. Chapter 2 – Responsibility for Functions
 - c. Chapter 3 – Meeting Procedure Rules
 - d. Access to Information Procedure Rules (Part 4(a) of the existing Constitution)
 - e. Other Procedure Rules (Parts 4(b), 4(c), 4(f), and 4(g), of the existing Constitution)
 - f. Codes and Protocols (Councillors' Code of Conduct adopted in July 2025 and Parts 5(b), 5(c) and 5(d) of the existing Constitution)
 - g. Councillors' Allowance Scheme (Part 6 of the existing Constitution).
- 4.2 Group Leaders, Portfolio Holders and the Chairman and Vice-Chairman of the Overview and Scrutiny Committee have been consulted and presentations have been made to all political groups.

5. Conclusions

- 5.1 Local authorities must prepare a constitution, which must be kept updated and made available to the public. This report seeks the approval of a document comprising Chapters 1, 2 and 3 that continues the process of seeking to improve the clarity, efficiency, and accountability of decision-making that were agreed by the Council previously. Unfortunately, the work on updating the Constitution was unable to progress as rapidly as might have been liked or was envisaged. The amendments to Chapters 1, 2 and 3 represent the first stage in providing the Council with an up-to-date Constitution.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The legal and governance implications are explained throughout the report.

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Financial implications to include reference to value for money	N	There are no financial implications arising directly from this report.
Risk	Y	See paragraph 4.1 of the report.
Supporting Corporate Strategy	Y	Having a Constitution that sets out clearly and simply a framework for decision-making that is lawful aligns fully with the aspiration to be a modern organisation delivering quality services as efficiently as possible.
Climate Change - Carbon / Biodiversity Impact	N	There are no climate change or biodiversity implications arising directly from this report.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	There are no equality and diversity implications arising directly from this report.
Safeguarding	N	There are no safeguarding implications arising directly from this report.
Community Safety, Crime and Disorder	N	There are no community safety or crime and disorder implications arising directly from this report.
Health, Safety and Wellbeing	N	There are no health, safety or wellbeing implications arising directly from this report.
Other implications		

Supporting Information

Appendices:

Appendix 1 – Draft Chapter 1, 2 and 3 of the Constitution.

Background Papers:

There are none.