

Report to: **Audit Committee**
Date: **15 March 2016**
Title: **Review of the Council's Constitution**
Portfolio Area: **Resources and Performance**
Wards Affected: **All**
Relevant Scrutiny Committee: **Internal**

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

Date next steps can be taken: **Council 5 April 2016**
(e.g. referral on of recommendation or implementation of substantive decision)

Author: **Catherine Bowen** Role: **Monitoring Officer**

Contact: Catherine.Bowen@swdevon.gov.uk

Recommendation:

That the Audit Committee RECOMMENDS to Council that the amendments to the West Devon Borough Council Constitution (as summarised in paragraph 2 of the report and fully outlined on the website) be approved and that the revised Constitution is adopted at the Annual Meeting in May 2016

1. Executive summary

- 1) The Council is legally required to formally adopt its Constitution at the Annual Meeting in May for the forthcoming municipal year.
- 2) The Audit Committee is responsible for an overview of the Constitution and for making any necessary recommendations to the Council and 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 and reflects the Council's current practices and priorities.

2. Background

- 1) In order that the Audit Committee can make informed recommendations to the Council on the adoption of the Constitution at the Annual Meeting, the Committee is requested to review the Council's Constitution.
- 2) Changes to the Constitution are made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes. Examples over the past year include:
 - Amendment to the number of members appointed to the Standards Committee and frequency of Standards Committee meetings
 - Introduction of a public speaking forum for Overview & Scrutiny
 - Changes to the regulations on dismissal of statutory officers
- 3) Such changes are effective from the date of approval and are made by the Monitoring Officer.
- 4) In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. For clarity, these changes are not shown as proposed amendments to the Constitution. The changes that have been made under these powers mainly relate to officer job titles and areas of responsibility following the T18 restructure.
- 5) As part of the annual review, further amendments have been made and highlighted in yellow to the version of the Constitution marked 'Constitution Review 2016'. However, due to the large size of the Constitution, it has not been circulated with the agenda, but is available on request by contacting Member Services (member.services@westdevon.gov.uk).
- 6) Members will note that, aside from the recommendations on the Council Tax Setting Panel in the next paragraph, most of the amendments are not significant as there has not been a major review of the Constitution's provisions this year. The changes are largely corrective or for clarification.
- 7) In order to provide clarity and efficiency due to the tight timescales involved, it is recommended that the Council sets up a Council Tax Setting Panel comprising the Leader, Deputy Leader, Leader of the Opposition and the Mayor, who will exercise delegated powers in relation to approving the Council Tax Resolution on an annual basis. The Council Tax Resolution is a largely arithmetical exercise which adds together the council tax amounts set by each of the major precepting Authorities (Devon County Council, West Devon Borough Council, the Police and the Fire Authority) and the amount of council tax set by Town and Parish Councils. The Council Tax Resolution states the amount of council tax required by each Parish and each council tax Band from A to H.

- 8) The Contract Procedure Rules were reviewed in 2014 and the Financial Procedure Rules were reviewed in 2013 but it is recommended that a further review of both of these sets of rules be conducted during the next year to ensure that they remain relevant following the finalisation of the new T18 structure. A report will be accordingly presented to a future Committee meeting.

3. Outcomes/outputs

- 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

- 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.
- 2) If the Council does not review the Constitution there is risk that the Council may make unlawful decisions with a consequent risk of challenge.
- 3) Senior Officers have been consulted on the Constitution and any necessary amendments incorporated.

5. Proposed Way Forward

- 1) The Audit Committee is asked to review the Constitution and make any necessary recommendations to Council in order that the Constitution can be adopted at the Annual Meeting in May for the forthcoming year.

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	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>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> <p>The report needs to clearly set out all the significant risks associated with the decision. Significant risk can be defined as the chances of something going wrong that has a material impact on the Council.</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

Background Papers:
Constitution Review 2016