

Report to: **Council**

Date: **21 May 2024**

Title: **Constitution update**

Portfolio Area: **Leader of the Council**

Wards Affected: **All**

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Recommendations:

That Council:

1. appoints a co-opted independent member to the Audit and Governance Committee;
2. agrees the proposed changes to the Council's Constitution as set out in Appendix A to the report;
3. adopts the Constitution as amended; and
4. notes that the Monitoring Officer will report further to the Audit and Governance Committee and/or Council on changes to the Contract Procedure Rules required due to the implementation of the Procurement Act 2023 in October 2024.

1. Executive summary

- 1.1 The Council operates the committee system as its governance arrangements.
- 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 Monitoring Officer keeps the Constitution under review and he reports any changes made under his delegated powers or that require Council approval to the annual meeting.
- 1.3 The Monitoring Officer is recommending Council agrees further changes to the Constitution to ensure that it remains up-to-date and relevant. The changes are set out in Appendix A.

2. Background

- 2.1 Under Section 9B of the Local Government Act 2000 there are two permitted forms of governance arrangements for local authorities in England; executive arrangements or a committee system. The Council operates under a committee system and makes its decisions in accordance with sections 101 and 102 of the Local Government Act 1972. This means that the Council performs its functions through committees, sub—committees and officers as well as through other local authorities. Decisions may be “delegated”, in which case the body or person to who the decision has been delegated becomes the decision-maker, or “referred” in which case the committee, sub-committee or officer merely considers the matter and reports to the body referring the decision which may then reach a decision in the light of the information and any recommendation in the report.
- 2.2 Although the overview and scrutiny function is a feature of executive arrangements, it is optional for those authorities with the committee system. The Council has chosen to have an overview and scrutiny committee. Consequently, the Local Authorities (Committee System) (England) Regulations 2012 apply and set out specific requirements that the Council must reflect in the Council’s overview and scrutiny arrangements.
- 2.3 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
- 2.4 The Council completed a review of the Constitution in September 2022 (Min CM.42/22 refers) and agreed a minor amendment concerning membership of committees in June 2023 (Min. CM18/23 refers). Council agreed a further amendment to the rules on virement in February 2024. The Council publishes the constitution on the Council’s website at <https://westdevon.gov.uk/constitution>.
- 2.5 Normally, the Audit and Governance Committee would consider changes to the Constitution and the Committee would make a recommendation to Council. However, this was not possible due to the Monitoring Officer’s absence in February/March this year. The Monitoring Officer has since consulted both the Chair and Vice-Chair of the Audit and Governance Committee. The Chair and Vice-Chair

agreed with the Monitoring Officer bringing this report directly to Council.

3. The changes

- 3.1 Appendix A sets out the changes recommended by the Monitoring Officer. The recommended changes reflect Council decisions or are of an administrative nature, for example, the re-designation of areas of outstanding natural beauty as national landscapes.
- 3.2 Of more substance are the changes to notices of motion. Presently, the subject matter must be related to the responsibilities of the Full Council or which directly affects just the Council. The suggestion is that the subject matter of notices of motion should be wider, so that motions can be about any topic or issue. This will allow Councillors to debate any matter that they consider to be important to their residents.
- 3.3 Changes are also made to reflect the outcome of the independent review by Sir Tony Redmond into the effectiveness of external audit and transparency of financial reporting in local authorities. The review proposed legislating for at least one Independent Member, suitably qualified, to be appointed to audit committees. Considering this, the Chartered Institute of Public Finance and Accountancy (CIPFA) has issued guidance advising that "The Audit Committees of Local Authorities should include co-opted independent members in accordance with the appropriate legislation." The actual appointment of the Independent Person and the allowance to be paid by the Council is considered elsewhere on the agenda.
- 3.4 There are additional delegations to officers required, for example, to make orders for temporary appointments under section 91 of the Local Government Act 1972 where there are so many vacancies in the office of parish councillor, that a parish council is no longer able to act. The delegations also reflect legislative changes such as the power to agree the terms of agreements for biodiversity gain habitat banks. These latter two powers are conditional on consultation with the councillors specified.
- 3.5 Finally, the opportunity has been taken to clarify the terms of delegated powers, for example to exempt applications non-material amendments from the list of exclusions to the Head of Development Management's delegated powers. Equally, the proposed amendments now provide clarity over the process for approving variations to section 106 agreements.

4. Prospective further changes

- 4.1 Public Contracts Regulations 2015 and their predecessor regulations gave effect to EU procurement law. As a contracting authority, the Council must comply with the 2015 Regulations when it procures goods, services, and supplies. Since Brexit in January 2021, EU

procurement law has no longer applied directly to the UK and the Government viewed this as an opportunity to reform UK's public procurement regulations to reduce red tape and to support business by simplifying public sector procurement, encouraging innovation, and improving transparency.

- 4.2 Proposals were initially set out in a green paper on transforming public procurement issued in December 2020 with the consultation on these proposals held open till 10 March 2021.
- 4.3 The number of responses received as part of the consultation delayed publication of the Government's response until December 2021. Although the Government first announced its intention for a Procurement Bill in the Queen's speech 2021, the Bill's progress through Parliament was slow and it only received Royal Assent on 23 October 2023.
- 4.4 The Procurement Act 2023 provides a framework with the detail being set out in regulations that commentators expect to be in force from 28 October 2024 onwards. There will be transitional arrangements in place depending on when the Council starts a procurement, so if started before the implementation date, the 2015 Regulations will apply until the contract has terminated, otherwise the 2023 Act will regulate the procurement.
- 4.5 The areas of change with the most significant impact are likely to be:
 - 4.5.1 Transparency: a significant expansion in the number of notices that an authority will need to publish about the procurement.
 - 4.5.2 Procurement processes: new flexibilities to design bespoke procurement processes.
 - 4.5.3 Contract performance: a new requirement for all authorities to set and publicly report on KPIs for larger contracts valued at over £5 million.
 - 4.5.4 Supplier debarment: will be possible where a contractor triggers mandatory or discretionary exclusion criteria.
 - 4.5.5 New language: to move away from EU procurement law terminology, the 2023 Act uses new language to describe familiar concepts (for example, "selection criteria" will be known as "conditions of participation" under the 2023 Act).
- 4.6 Subject to timescales allowing, the intention is that the Audit and Governance Committee will consider draft amendments to ensure that the Constitution reflects these changes, and the Committee will recommend to Council.

5. Proposal and Next Steps

- 5.1 The Monitoring Officer is asking Council to agree the proposed changes and to adopt the amended Constitution for the municipal year. The Council will then publish the Constitution on the Council's website.
- 5.2 The Monitoring Officer will monitor the progress of the roll-out of the Procurement Act 2023 with a view to reporting to the Audit and Governance Committee with draft proposals for revised Contract Procedure Rules. Government actions will affect the timing of the report including the timing of a General Election.

6. Options available and consideration of risk:

- 6.1 Council could decide not to agree the changes or not to adopt the Constitution. The risk would be that those affected by any action taken by committees and officers would argue that the action was unlawful. This would result in legal challenges to those actions and risk reputational damage.

7. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	These are set out in the report at paragraphs 2.1-2.3 and 6.1
Financial implications to include reference to value for money.	N	
Risk	Y	These are set out in the report at paragraph 6.1
Supporting Corporate Strategy	Y	Having an up-to-date Constitution supports the Council Plan by setting out transparently how the Council operates, how the Council makes its decisions and the procedures the Council will follow.
Consultation & Engagement Strategy	N	
Climate Change - Carbon / Biodiversity Impact	N	
Comprehensive Impact Assessment Implications		

Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A: Proposed changes.

Background Papers:

There are none.