

Governance Committee

28 June 2021

Review of Constitution

Report by Director of Law and Assurance

Electoral division: Not applicable

Summary

The Council's Constitution explains how the Council's business is organised and how decisions are made. An officer review has been undertaken in recent months to identify any updates required or where improvements could be made to terminology.

Recommendations

- (1) That the proposed changes to the Constitution set out in Appendix 1 be endorsed for submission to the Council for approval on 16 July 2021; and
 - (2) That the proposed changes to the Constitution set out in Appendix 2 be approved.
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Proposal

1 Background and context

- 1.1. The aims and purpose of the Constitution are to:
 - explain clearly how the County Council works - its system of governance
 - describe the different roles and responsibilities of members and officers
 - describe how decisions are made and recorded
 - describe how decision makers are held to account
 - set out the standards and principles which govern the Council's business.
- 1.2 The Constitution was fully revised in 2017/18 and the County Council agreed a revised version in July 2018. It is kept under review and a number of officer reviews have been undertaken in recent months to look for opportunities to update or improve the content. This has led to the development of Appendices 1 and 2, which contain proposed amendments to the Constitution.

2 Proposal details

- 2.1 Appendix 1 contains changes due to reasons as set out below.
- 2.2 **Streamlining Council Processes** – Changes are proposed to Standing Orders on written questions and notices of motion. For written questions, it is a suggested minor change to emphasise the need for questions to avoid

duplicating other parts of the agenda and to be proportionate when considering officer time in providing answers. For notices of motion, it is proposed that the Standing Orders should set out an expectation that up to two motions should be debated at each Council meeting, to help manage other business, giving more time for other debates and question time. The proposed changes are found in Part 4 Section 1 of the Constitution.

- 2.3 **Updating Terminology** – changes are proposed to remove obsolete references to senior advisers to cabinet members and differentiation in the size of political groups. These terms were used in the previous Members' Allowance Scheme. The new Allowances Scheme, that took effect in May 2021, simply refers to 'Advisers to Cabinet Members' and 'minority group leaders'. The proposed changes are to be found in Part 2, Part 3 Appendices 1, 2, 5, 15 and Part 4 Section 1 of the Constitution.
- 2.4 Further updates to terminology are to update the names of policies in the terms of reference of the Standards Committee in Part 3, Appendix 6 and to remove reference to the former Culture Board in the terms of reference of the Governance Committee in Part 3, Appendix 7.
- 2.5 **Clarification of Risk Responsibility** – A review undertaken by the Risk Manager has proposed clarifying the roles of different member groups on risk responsibility. These are to be found in the proposed changes to Part 3, Appendices 2, 5 and 8. They seek to clarify the role of the Regulation, Audit and Accounts Committee in overseeing the risk management arrangements and reviewing the Risk Strategy, whilst the Cabinet's responsibility is to actively consider and be assured in the effective management of risks and to be subject to scrutiny by the scrutiny committees in this task.
- 2.6 **Good governance review developments** – The work of the Good Governance Review at the County Council resulted in the Cabinet meeting more frequently. An update to Part 2 of the Constitution is recommended to reflect this. The basis for contributions from non-cabinet members is also clarified. It has also looked at the effectiveness of the role of scrutiny at the County Council. A number of changes are proposed to the scrutiny committee terms of reference to make them more succinct and clearer, taking the terms of reference for the newer Fire & Rescue Services Scrutiny Committee as a model for the others. These proposed changes are to be found in Part 3, Appendix 8. This is updating terminology, clarifying the role and focus of scrutiny so that it is clear which cabinet member is scrutinised by which scrutiny committee, using common terms of reference rather than specific items (save for the Health and Adult Social Care Scrutiny Committee). Points of more substance are set out below.
- 2.7 **Performance and Finance scrutiny overview and work programme** – It is proposed to remove the oversight role and the requirement for the Performance and Finance Scrutiny Committee to consider the work programmes of other scrutiny committees and the requirement to recommend the programme to Council for approval. It is considered that this will streamline the process and will give more ownership of work programmes to the individual scrutiny committees. It should also enable the Performance and Finance Scrutiny Committee to focus more time on its area of business. The proposed changes are set out in Part 3, Appendix 8 and Part 4 Section 1.

- 2.8 **Highways Scrutiny** – It is proposed to rename the Environment and Communities Scrutiny Committee the 'Communities, Highways and Environment Scrutiny Committee, simply to reflect this major service within the name of the committee which scrutinises it. This is shown in Part 3, Appendix 8.
- 2.9 **Receipt of call-in request** – It is proposed to change the recipient of call-in requests from the statutory scrutiny officer (the Head of Democratic Services) to the Monitoring Officer (the Director of Law and Assurance). This is to reflect that in practice, most requests are sent directly to the Monitoring Officer, who has the role of determining them. This proposal is set out in Part 4 Section 1.
- 2.10 **Regulation 11 urgent decision-making** – The rules to reflect the Executive Decision-Making Regulations 2012 have been reviewed and it is proposed to make it clear that the usual decision-maker for an executive decision can take a Regulation 11 decision, rather than it having to be taken by an officer, as is the case with other urgent actions. This clarification is proposed in Part 4 section 1.
- 2.11 **External auditor reporting to County Council** – The recent Redmond Review into local authority audit arrangements made a number of recommendations, including that a Council's external auditor, should make an annual report to a full Council meeting on its annual audit opinion, in the form of a letter for Council to consider and note. In anticipation of this becoming a requirement, the County Council's external auditor, EY, has asked for the Council to work this into its Constitution in time for October 2021, the first time that EY is likely to need to report to Council. The proposed change to the Constitution is set out in Part 4, Section 1.
- 2.12 **ACCESS Joint Committee** – In practice, since the setting up of the ACCESS Joint Committee, the Chairman of the Pensions Committee has acted as the County Council's representative. It is proposed to formalise this arrangement as set out in Part 3, Appendix 7. The arrangements for the ACCESS Joint Committee have been reviewed and revisions have been jointly agreed. A number of subsequent revisions are therefore set out in Part 3, Appendix 22.
- 2.13 **Clarification of Pensions responsibilities** – The Pensions Team has reviewed the current wording of the scheme of officer delegation in relation to pensions matters. They propose that the responsibilities should be clarified to differentiate between the County Council as an employer of pension scheme members and separately as the administering authority on behalf of the 200 organisations that are part of the West Sussex Local Government Pension Scheme. The clarifications are set out in Appendix 2 to the report. The Committee is able to approve this change.

3 Other options considered (and reasons for not proposing)

- 3.1 Not applicable.

4 Consultation, engagement and advice

- 4.1 Specialist officers (including the external auditor) have advised as set out above. The 'good governance' review, which has engaged both officers and elected members since the start of 2020 has also informed the reviews of the constitution.

5 Finance

5.1 There are no revenue or capital budget consequences.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Out of date terminology can cause uncertainty about decision-making authority and can lead to errors.	These updates to the Constitution will ensure that up to date terminology is used.
Unclear scrutiny arrangements can cause uncertainty about decision-making authority and appropriate scrutiny, which can lead to errors.	These proposed updates to the Constitution will ensure that there is more clarity about arrangements.

7 Policy alignment and compliance

7.1 Making the proposed changes will improve clarity in a number of areas in the Constitution, which will help to encourage compliance with its provisions.

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Appendices

Appendix 1 – General changes to Constitution for recommendation to the County Council

Appendix 2 – Proposed changes to officer scheme of delegation.

Background papers

None