

Annual Review of the Constitution and Council's democratic arrangements

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1. Summary

- 1.1.** The Council's Constitution requires the Council to review its Constitution on an annual basis. This is typically done at the Council's AGM in May of each year although the last revision was agreed at the Council meeting in July 2017.
- 1.2.** In May 2017, Council revised its committee arrangements by establishing the Constitution and Standards Committee and including within its responsibilities the requirement to recommend an amended Constitution to the Council for approval.
- 1.3.** Accordingly, this report recommends a revised and updated Constitution to the Council for approval.
- 1.4.** The Constitution also requires that the Committee provide an annual report to the County Council setting out its work over the previous year.

2. Recommendations

- 2.1.** **The Committee is asked to note the revisions endorsed since May 2018 (as summarised in section 3.2) and recommend the Council to approve the revisions to the Constitution as set out in sections 3.2, 3.3 and 4 of this report.**
- 2.2.** **To authorise the Monitoring Officer to make any necessary changes to the Constitution in relation to the recommendations set out in this report.**
- 2.3.** **To note the annual review of the democratic arrangements and the work being undertaken by the Monitoring Officer (see section 5 of the report)**

3. Background

- 3.1** Following the Council's Annual General Meeting in May 2018 the only changes made to the Constitution related to:
 - Part 2, Appendix A – Amendments to the Financial Regulations (approved by the Committee on 8 February 2019)
 - Part 2, Appendix B - Amendments to the Contract Standing Orders (approved by the Committee on 8 February 2019)

In addition the Committee is scheduled to consider the following proposed changes at their meeting on 10 May 2019:

- Part 1, Section 8 - revised Access to Information Rules

3.2 A summary of the changes endorsed by the Committee on 8 February 2019 are:

1) Part 2, Appendix A – Financial Regulations

The amendments agreed by the Committee were in response to assurance regarding the adequacy of the Financial Regulations following a review by the Chief Finance Officer and Chief Internal Auditor, which proposed very minor amendments for clarity.

Financial Regulations are of critical importance to the County Council as they govern which officers and members can take actions and decisions that could impact significantly on the financial standing and resources of the local authority. They bind officers, members and anyone acting on behalf of the Council and are mandatory.

Small technical amendments have been made to update details, such as job titles and those of committees. Throughout the document, the term Chief Financial Officer has now been used, as this is a specific meaning that refers to the statutory role, regardless of what the actual Job Title of the postholder becomes in the future.

Small changes to the text have been made for clarity only, and there was **no changes to who is entitled to make financial decisions, or to the financial thresholds that apply.**

Amendments made included:-

- A.21 To state explicitly the role of the Somerset Waste Board alongside other Committees.
- A.25 To update Financial Regulations with regard to the newly agreed Deputy section 151 officer.
- B.7 / B.12 / B18 To clarify the role of Scrutiny as part of the budget preparation processes and budget reporting.
- B.20 / B.22 To clarify that the Chief Finance Officer remains responsible for determining the prudent level of general reserves required, based on his or her professional judgement, and also has to approve the establishment of any new earmarked reserves.
- C. 2 To acknowledge the role of the Audit Committee in the day-to-day monitoring of risk management activities.
- C.10 To acknowledge the previous Council decision to “opt in” to the national PSAA scheme for the appointment of our external auditors.
- C.22 To emphasise on the need for SLT to maintain staffing levels in strict accordance with both the approved establishment and their delegated budgets
- D.2 / D. 4 To strengthen the right of the Chief Finance Officer to require the use of corporate finance systems and to approve (or not) any alternative systems proposed.
- D. 13-15 To emphasise the need for trading units to recover all their costs and breakeven on their activities and the need for strong business cases for their establishment and continuation.

The report from the S151 Officer and the amended financial regulations can be viewed on the website at:

<http://democracy.somerset.gov.uk/ieListDocuments.aspx?CId=244&MId=824&Ver=4>

Part 2, Appendix B - Contract Standing Orders

- 2) The amendments agreed by the Committee followed an annual review of the Contract Procedure Rules and Standing Orders by the Head of Commercial and Procurement.

One of the key areas for amendment was to Section 43 Approval to Award, in response to the introduction of Somerset County Council's 10 Point Plan in June 2018.

The review of the CSOs also highlighted the need for a number of minor amendments, as follows;

- to amend references throughout The Rules to the Director of Commercial and Business Services and replace them with the Director of Corporate Affairs to reflect organisation change;
- to update The Rules in line with the General Data Protection Regulations;
- to extend the requirement for publishing Tenders and Contracts to Grants in line with the Local Government Transparency Code 2015;
- to require all breaches of The Rules to be reported to Governance Board to provide oversight and transparency of associated risks that the Council may be exposed to prior and during a procurement procedure and in to contract delivery.

The report from the Head of Commercial and Procurement and the amended CSOs can be viewed on the website at:

<http://democracy.somerset.gov.uk/ieListDocuments.aspx?CId=244&MId=824&Ver=4>

3.3. Proposed changes to Access to Information Procedure Rules

Part 1, Section 8 - Access to Information Rules

Detailed provisions and guidance on access to information are set out in the Constitution for reasons of transparency and understanding and are important for the day to day process of decision making and running of the Council.

- 3.4. The Council reviewed the Access to Information Rules in May and July 2018 and agreed several amendments, particularly in relation to the public question time rules for Full Council and committee meetings.
- 3.5. A review of the meeting procedures has been undertaken following the operation of the amended arrangements. The following amendments are recommended for the Committee to comment upon ahead of their consideration by Full Council:

Audio recordings of Council meetings (8.6.8 of Part 1): The Council revised its policy to clarify its procedures and reasons for making the recordings and which meetings it would record. The intention of the council's audio recordings has always been to

assist with the production of the minutes of a meeting which are the legal record. This is consistent with what other councils do.

The policy is not explicit for how long the audio recordings are retained on the council's servers. Some councils retain the audio recordings for up to six months after a meeting has been held and some councils delete the audio recording immediately when the minutes have been agreed. In order to protect the status of the minutes as the legal record it is recommended that the audio recording is deleted when the minutes have been agreed and it is recommended that 8.6.8 of the Constitution is amended as follows:

8.6.38 The Council makes audio recordings of its main decision making meetings – Full Council, Cabinet and Regulation Committee – available to access on the website immediately following meetings and until the minutes of the meeting have been signed as a correct record at the next meeting. Following approval of the minutes the audio recording will be deleted from the council's systems. Audio recordings are also made separately available to members via private access arrangements for the same period. Other formal meetings may be recorded on an ad-hoc basis depending on the circumstances and those attending will be informed where this is the case in advance of the start of the meeting.

Part 1, Section 4 - Public question time rules

One of the amendments made to the public question time rules in 2018 was a new provision which allowed for statements or questions to be read out by the Chair of the meeting or the Monitoring Officer if someone was unable to attend a meeting (see 4.10.5 of the Constitution).

There have been a number of occasions when this provision has been used and in some cases there have been several instances at the some meetings when people have submitted and not attended. The intention of the provision was for the rare occasions when people cannot attend rather than as a mechanism for remote submission of questions.

As the Council publishes details of questions and statements received then it is proposed to amend this provision so that the Chair, Monitoring Officer or Democratic Services Manager present refer instead to what has been published and issued to the committee members and not to read these out to the meeting. The relevant Cabinet Member or Officer will still provide a response to the committee.

It is therefore proposed that 4.10.5 is amended as follows:

4.10.5 Members of the public have up to 3 minutes to introduce and present their representations. If a member of the public is unable to attend a meeting in person, then the Democratic Services Manager will ensure that the relevant committee members are aware of the representation ahead of / at the meeting. Officers will make every effort to ensure that a response will be provided to the Committee at the meeting and subsequently to the member of the public.

4. Technical amendments to the Constitution

4.1. Organisational changes:

Changes in post holder titles and responsibilities of Senior Leadership Team Directors require consequential amendments to the Constitution where specific posts are referred to. These technical amendments will be undertaken by the Monitoring Officer.

5 Review of the Council's Democratic Arrangements

5.1 Ahead of the Annual General Meeting, the Monitoring Officer will undertake a review of the Council's Democratic Arrangements to identify if there are any proposed revisions needed to meet statutory requirements. This review also involves considering any proposals that may have been made by the Leader of the Council or any of the Chairs of the Council's committees.

5.2 The review has not identified any specific recommendations for the Annual General Meeting of Full Council to consider. However, it should be highlighted that there are two reviews that are currently being undertaken for which specific recommendations may come forward to Full Council during 2019/20:

Scrutiny arrangements

A Peer Challenge review of Somerset County Council was undertaken with the Local Government Association and this was reported to the County Council meeting in May 2018. One of its recommendations to the Council was:

“Somerset County Council should review its overall approach to scrutiny, ensuring all councillors are equipped to play an active role and contribute to the policy making and key decisions affecting the future of Somerset's residents and the council, and that its governance arrangements are reflective of this.”

The Leader of the Council and the Chief Executive committed officer support to work with the Chairs of the three scrutiny committees to undertake a review of the council's scrutiny arrangements with the aim of reporting the review to the Scrutiny Committees and Full Council by summer 2019.

Undertaking a review of this nature can be resource intensive and the Council commissioned the Centre for Public Scrutiny to work with its officers to complete this review.

Currently the investigative and research work is being undertaken. The review is scheduled to be reported to Scrutiny Committees during June.

Pensions Board

A periodic review of the governance of the Somerset County Council Pension Fund to make sure it is fit for purpose has been undertaken. The Governance of the Fund is split between the Pensions Committee and the Pension Board.

The Pension Board was formed in 2015 following a change in Local Government Pensions Scheme (LGPS) regulations which required each Administering Authority to set up and operate a Pension Board to assist the Administering Authority (the Pensions Committee) in discharging the requirements of the regulations, the Board has no decision-making powers.

The Pension Board has 6 positions although 3 of these are currently unfilled. Filling positions was a challenge when the Board was set up with the number of applicants from the original process matching but not exceeding the number of vacancies.

Largely due to the vacancies on the Board there has been a constant struggle to ensure meetings are quorate and a significant number of meetings have been cancelled over the last 2 years. Work will be undertaken by Democratic Services and Finance officers in order to try and improve recruitment to vacancies.

In addition to the above, the LGPS Scheme Advisory Board, a national Board charged with assisting MHCLG with the smooth running of the LGPS, has instigated a review into the Governance of the LGPS which is currently underway. The focus of the review is broadly the management of conflicts of interest within the Council between its roles as both the Administering Authority and an employer, however it is possible that the review will have implications for the current set up of a Committee and a Board and their respective roles in governance. This review is expected to take place throughout 2019 and reach conclusions in 2020.

6. Implications

6.1. Legal & Risk:

The Council's Constitution sets out the legal framework within which the Council takes decisions and fulfils its functions and responsibilities. It needs to be kept up to date and legally compliant. All of the proposed amendments to the Constitution are in accord with the legislative requirements which give considerable scope for the Council to agree its own constitutional arrangements.

6.2. Impact Assessment:

There are no direct equality implications arising from any of the proposals in this report. There are also no sustainability or community safety implications.

6.3. Financial: Not applicable.

6.4. HR: Not applicable.

7. Background papers

7.1. Council's Constitution

Reports to Constitution and Standards Committee in June 2018 regarding Public Question Time procedures

Reports to Constitution and Standards Committee on 8 February 2019

Note: For sight of individual background papers please view these on the Council's website or alternatively contact the report author.