

Report of the Monitoring Officer – Appointments / Procedural Matters / Review of the Constitution

Cabinet Member: N/A

Division and Local Member: N/A

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1. Summary

- 1.1 This report sets out decisions on procedural matters and appointments required by the Constitution to be made by the County Council at its annual meeting.

2. Recommendations

2.1 Appointments Schedule – Appendix 1 refers

To approve the Appointments Schedule – see section 3.2 and Appendix 1 to this report – to follow.

2.2 Appointment of Deputy Section 151 Officer

To appoint Elizabeth Watkin, Strategic Finance Manager – Chief Accountant, as the Council’s Deputy Section 151 Officer with effect from 15 May 2019.

2.3 Meeting dates

To approve the programme of ordinary meetings of the Full Council for the year as set out in section 3.4 of this report and to delegate to the Monitoring Officer, in consultation with the Group Leaders and committee chairmen, agreement of the detailed calendar of meetings of the committees of the Council for 2019 and 2020.

2.4 Review of democratic arrangements

Note the reviews currently being undertaken (see section 3.5).

2.5 Review of the Constitution

- i) Approve the revisions to the Council’s Constitution set out at section 3.6.5 as endorsed by the Constitution and Standards Committee at its meeting on 8 February 2019.
- ii) Consider and approve the proposed revisions to the Council’s Constitution set out in 3.6.6, subject to any further recommendations that may arise from the Constitution and Standards Committee meeting on 10 May 2019.

3. Background

3.1. Appointments and Procedural Matters: Decisions required at the Council's Annual Meeting:

3.1.1 The Council is required at its annual meeting to:

1. Agree which committees (and any sub-committees) should be appointed, their size (in accordance with the statutory political balance on committee requirements) and terms of reference and appoint members to serve on each;
2. Elect chairmen and appoint vice-chairmen of committees (where appropriate);
3. Approve a programme of ordinary meetings of the Full Council for the year;
4. Approve a calendar of meetings for committees of the Council or put in place a delegation to enable a calendar to be agreed.

3.2 Appointments Schedule: see Appendix 1 to follow

3.2.1 Following the 2017 elections, the Council in May 2017 appointed committees and made all related appointments in accordance with the requirements of the Local Government and Housing Act 1989.

3.2.2 The Act sets out the principles to be used in agreeing the size of and allocation of places to committees (and sub-committees) of the Council and also requires this process to be repeated annually at the Council's AGM. The principles must be followed so far as is reasonably practicable.

3.2.3 The following principles from the 1989 Act, together with a commentary where appropriate, must be applied to the allocation of seats on committees.

1. All the seats should not be allocated to the same political group.
2. A majority group is required to have a majority on all committees unless the Council agrees otherwise. *The proposal in the table in 3.2.4 below satisfies this principle. Local arrangements apply to the Constitution and Standards Committee membership where all political groups are represented and the Scrutiny Committee for Children & Families where the membership includes 5 co-opted members with a vote on education matters only.*
3. Subject to principles (1) and (2), the total number of seats on all the committees of the Council allocated to each political group should reflect the number of seats held by that group on the Council. *The table below reflects this calculation.*
4. Subject to principles (1), (2) and (3), the number of seats on each committee of the Council allocated to each political group should reflect the number of seats held by that group on the Council. *This calculation is also reflected in the table below.*

3.2.4 Following the elections in May 2017 the Council agreed member appointments to its committees and outside bodies in accordance with the principles set out

above. In addition to the entitlements to each political group, individual political groups have previously chosen to allocate a place to another political group as a local arrangement e.g. Liberal Democrat group chose to allocate one of their places on Scrutiny Committee for Children and Families to the Green group.

3.2.5 During 2018 and early 2019 there were some changes to the size of some of the political groups which resulted in a recalculation of committee places and appointments to outside bodies. This was considered and agreed at the Council meeting in February 2019 where the entitlement for places was as follows:

Seats held on the Council	34	14	3	2	2	55
Committee	Con	Lib Dem	Lab	Ind	Green	Total
Regulation	5	2	1			8
P&P (Place)	5	2	1			8
P&P (Adults & H)	5	2	1			8
P&P (Child's S)	5	2	1			8
HR Policy	4	1	1			6
Audit	5	2	1			8
Officer App	4	1	1			6
Pensions	3	1				4
Fire Authority	5	2	1			8
Exmoor NPA	3	1				4
Con & Standards	1	1	1	1	1	5
Individual cttee totals	45	19	7	1	1	73
Overall calculation - total places	45.13	18.58	3.98	2.65	2.65	73

Notes

- The overall calculation takes priority over individual committee allocations
- As stated above, the Conservative Group must have a majority on each committee unless a 'local arrangement' is agreed. They chose to exercise this right in all cases other than the Constitution & Standards Committee
- On the larger committees (8 members) 1 seat was left on each to be filled either by the Independent or Labour Groups by agreement
- The Green group was not entitled to any places on individual committees but had a place on the Constitution and Standards Committee as of right under a proposed 'local arrangement'.

3.2.6 As set out in 3.2.4, some of the political groups decided to allocate one of their entitled places instead to another political group to bring the allocation of seats closer in line with the overall allocation in the table above :

- Labour group allocated their place on Regulation Committee to the Green group
- Labour group allocated their places on the Scrutiny Committee for Policies and Place to the Independent group
- Labour group allocated their place on Audit Committee to the Independent group
- Liberal Democrat group allocated one of their places on Scrutiny Committee for Children and Families to the Green group.

3.2.7 Since the Council's meeting in November there has been further changes to the size of the political groups:

Political Group	Feb 2019	Current	Difference
Conservative	34	33	-1
Liberal Democrat	14	14	0
Labour	3	3	0
Independent	2	2	0
Green	2	2	0
Individual member	0	1	+1
Totals	55	55	

These changes to the membership of some of the political groups require the Council to make changes to the allocation of seats held by the Council in accordance with the principles set out in 3.2.3 above.

3.2.8 A revised calculation of committee places and outside bodies has been undertaken and this is set out below:

Seats held on the Council	33	14	3	2	2	1	55
Committee	Con	Lib Dem	Lab	Ind	Green	Ind Mem *	Total
Regulation	5	2	1				8
P&P (Place)	5	2	1				8
P&P (Adults & H)	5	2	1				8
P&P (Child's S)	5	2	1				8
HR Policy	4	2					6
Audit	5	2	1				8
Officer App	4	2					6
Pensions	3	1					4
Fire Authority	5	2	1				8
Exmoor NPA	3	1					4
Con & Standards	1	1	1	1	1		5
Individual cttee totals	45	19	7	1	1	0	73
Overall calculation - total places	43.80	18.58	3.98	2.65	2.65	1.33	73

3.2.9 Explanation of the table in 3.2.8 above and summary of current appointments:

- There are **73** committee places in total to be allocated. These do not divide neatly across the 5 political groups and the single Independent member within the overall calculation hence the inclusion of decimal points. This is the second most important calculation after ensuring that the Conservative Group has a majority on each committee where it wants it.
- Both the Liberal Democrat and Labour groups are over-provided for in terms of places on individual committees and need to consider giving up places of their choice under a 'local arrangement' to the Independent group and Green Party group to achieve a closer match with the overall calculation (see 3.2.6 above).

Specific actions for each of the groups are:

- **Conservative Group:** to allocate one of their places to Cllr Dean Ruddle.
- **Lib Dem Group:** As the second largest Group, the aim must be to get the Group's entitlement on individual committees as close as possible to its entitlement under the overall calculation. Nevertheless, there is a need for the Lib Dem group to allocate one of their places to either the Independent group or Green group.
- **Labour Group:** As the largest of the smaller groups, this Group is entitled to 1 seat on each of the 4, 5, 6 and 8 member committees. However the group is overprovided for in terms of seats on individual committees and therefore needs to give up seats to the Independent Group and Green Group in order to ensure their allocated places are as close as possible to the overall calculation.
- **Independent Group:** To negotiate with the Liberal Democrat and Labour group on the allocation of two additional committee places.
- **Green Group :** To negotiate with the Liberal Democrat and Labour group on the allocation of two additional committee places.
- **Cllr Dean Ruddle** as an Independent member is entitled to a place as part of the overall calculation.

3.2.10 All political group leaders have been advised of the revised calculations and any proposed changes to committee places and outside bodies will be set out in a revised Appointments Schedule (Appendix A) which is expected to be tabled on the day of the Council meeting for approval. This appendix will set out:

- Confirmation of the Council's committees, their size, the allocation of places and appointments to those places
- Any potential changes to Chairs and Vice-Chairs, where appointed by the Council

Any changes to Cabinet and Junior Cabinet appointments will be the subject of a separate decision, as required, by the Leader of Council.

3.2.11 No changes are proposed within this report to the terms of reference of Committees of the Council as agreed by Council and set out within the Constitution.

3.3 Appointment of Deputy Section 151 Officer

3.3.1 Both the Interim Director of Finance and the Chief Executive recommend that Council appoint Elizabeth Watkin, Strategic Finance Manager – Chief Accountant as the Deputy Section 151 Officer in order to provide resilience to the Chief Finance Officer role.

3.3.2 The Officer Scheme of Delegation refers to officers authorised to substitute for a Director and key statutory posts. Subject to the Council's approval to the proposed appointment, the Monitoring Officer will need to be amend the Scheme of Delegation to reflect this change.

3.4 Programme of ordinary meetings of the Full Council

3.4.1 The dates proposed below for Full Council meetings in 2019/20 are set out below.

17th July 2019 (already scheduled)

27th November 2019
Wednesday 26^h February 2020 (Budget meeting)
Friday 28th February 2020 (Reserve Budget meeting)
20th May 2019 (Council AGM)
15th July 2020

Most dates are Wednesdays and the meetings will start at 10am in the Council Chamber at Shire Hall unless otherwise notified.

- 3.4.2** The recommendations include a delegation to the Monitoring Officer to agree the calendar of meetings for committees of the Council in consultation with the Chairs of the committees. The Leader will approve the calendar of meeting dates for the Cabinet.

3.5 Review of the Council's Democratic Arrangements

- 3.5.1** 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.
- 3.5.2** 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.

3.6 Review of the Council's Constitution

3.6.1 The Council's Constitution requires the Council to review its Constitution on an annual basis. This is typically done at the Council's Annual General Meeting in May of each year although the last revision was considered at the Council meeting in May 2018.

3.6.2 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.

3.6.4 The proposed changes made to the Constitution since the Council's approval of an updated version in May 2018 relate to:

- Part 2, Appendix B - Amendments to the Contract Standing Orders (approved by the Constitution and Standards Committee on 8 February 2019)
- Part 2, Appendix A – Financial Regulations (approved by the Constitution and Standards Committee on 8 February 2019)
 - Part 1, Section 8 – minor revisions to Access to Information Rules (being considered by Committee on 10 May 2019)

3.6.5 A summary of the proposed changes endorsed by the Constitution and Standards Committee on 8 February are as follows:

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 Council’s website at:

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

2) Part 2, Appendix B - Contract Standing Orders

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>

3.6.6 Part 1, Section 8 - Access to Information Rules

The following amendments have been recommended and are being considered by the Constitution and Standards Committee at its meeting on 10 May. Any proposed amendments to what is set out below will be reported to the Council meeting on 15 May.

Recommended amendments:

- 1) Audio recordings of Council meetings: Since July 2018, audio-recordings of key public committee meetings have been published on the council's website.

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.

2) Receiving public questions or statements from people not attending a meeting:

As part of the changes to public question time rules agreed in July 2018, one of the provisions included the ability for a member of the public to submit a question and if they were unable to attend then for this to be read out by either the Chair or Democratic Services Manager.

In parallel with this provision, details of public questions and statements received are being published on the council's website prior to the meeting and elected members have been using laptops at committee meetings as part of supporting paperless working to be more efficient and save money.

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.

It is proposed that where a member of the public submits a question or statement and does not attend the meeting then that question is taken as published to the members of the committee and not read out. The relevant Cabinet Member or Officer will still provide a response at the meeting for the benefit of those present and a response will be provided to the person who submitted the question.

It is therefore recommended that 4.10.5 of the Constitution 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.

3.6.7 Technical amendments

In addition to the above there are some technical amendments that have been made as a result of changes in post holder titles and responsibilities of Senior Leadership Team Directors require consequential amendments to the Constitution where specific posts are referred to.

4. Implications

- 4.1 Legal & Risk:** This report complies with all legal requirements. The only risk to the Council would result from the Council failing to fulfil its legal obligations as set out in the report through any decisions taken or not taken at this meeting.
- 4.2** 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.

4.2 Financial, equalities, sustainability and community safety implications: There are no direct equalities implications arising from any of the proposals in this report. There are also no direct financial, sustainability or community safety implications.

5. Background papers

5.1 Council's Constitution dated May 2018