

Report of the Monitoring Officer – Development of the Constitution for the new Somerset Council

Cabinet Member: All

Division and Local Member: N/A

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1. Summary

- 1.1 At its Annual General Meeting in May 2022, the Council agreed an interim Constitution for 2022/23 and recognised that there would be a comprehensive review of the Constitution during 2022/23 through the Constitution and Governance Committee, culminating in the proposed Constitution for the new Somerset Council being recommended to the County Council meeting in February 2023 ahead of vesting day on 1 April 2023.
- 1.2 The Constitution and Governance Committee will complete a phased review and development of the Constitution for the new Somerset Council over a series of meetings. The Committee's work programme will be designed to ensure that priority areas are completed ahead of the Constitution being finalised in February 2023 to recommend to the County Council for approval.
- 1.3 The review includes best practice from other councils and reviewing the Constitutions of recent local government reorganisations in Buckinghamshire and Dorset, along with the constitutional work being done by North Yorkshire and Cumbria.

2. Recommendation(s)

2.1 The Committee is asked to:-

- (1) Endorse the proposed phased approach to developing the Constitution for the new Somerset Council set out in this report; and**
- (2) Consider and comment upon the potential approaches to developing the Constitution for the new Somerset Council set out in paragraphs 3.5 and 3.6.**

3. Background

3.1 Developing the Constitution for the new Somerset Council

Under Section 9P of the Local Government Act 2000, the Council is required to prepare and keep up to date a Constitution containing the standing orders of the Council and such other information as is required or desirable.

The preparation and review of the Council's Constitution is undertaken and reported by the Monitoring Officer for approval by the Council at its Annual General Meeting each May. In between the Annual General Meetings, the Constitution and Governance Committee considers any proposed amendments and can make any recommendations to the Council. The approval or amendment of the Constitution is a non-executive function and is a function for the County Council and not the Executive. Nevertheless the Executive will want to be a key consultee on proposals since it incorporates the Executive arrangements.

The Constitution was therefore recently reviewed in May 2022 and a number of revisions agreed for the transitional year 2022/23 ahead of the establishment of the new Somerset Council on 1 April 2023. Those revisions related to technical changes, legislative changes including functions as a result of the Somerset Structural Changes Order 2022, Members Code of Conduct, Member and Officer Protocol, Recording and Webcasting of meetings Protocol, Whistleblowing Policy and several guidance documents to aid transparency and compliance.

3.2 The Council operates a Leader and Executive model of governance in accordance with legislative requirements. The Council has operated this model of governance since 2001. The Leader and Executive model places the majority of functions carried out by the Council as the responsibility of a specified number of councillors (maximum of 10) operating as an 'Executive' or 'Cabinet'. The Leader has responsibility for agreeing the Executive arrangements and the executive decision-making arrangements for members and officers across the Council.

3.3 At its Annual General Meeting in May 2022, the Council agreed an interim Constitution for 2022/23 and recognised that there would be a comprehensive review of the Constitution during 2022/23 through the Constitution and Governance Committee, culminating in the proposed Constitution for the new Somerset Council being recommended to the County Council meeting in February 2023 ahead of vesting day on 1 April 2023.

3.4 Principles and approach to developing the proposed new Constitution

Principles

It is proposed to use the following principles to underpin the development of the new Constitution and council decision making:

- Accountability
- Transparency
- Efficiency

Accountability

It is important that everyone can see who makes which decision and where appropriate can hold the decision maker to account. It is therefore important that where possible only one person (where it is an individual member or officer) or one committee makes a decision.

Transparency

The Constitution should continue to be published on the council's website and made available upon request. It should set out the democratic and decision making arrangements. Meetings of the Council should be open to the public and reports and papers published for public inspection (except where specific exemptions are necessary). Proper Officers and any officer delegations should be set out in the Constitution.

Efficiency

Democratic arrangements and decision making should aim to be efficient. Papers and documents should be relevant to the decision under consideration and unnecessary material should be avoided. Paperwork should be minimised, and digital options (e.g. publication on the council's website) should be offered where possible.

Proportionality

It is important that the arrangements set out in the new Constitution cover the full range of local authority functions of the new unitary council and comply with the existing wider legislation and the Somerset Structural Changes Order 2022 as well as the guiding principles above.

It is recommended that the principles of transparency, accountability and efficiency should be complemented by a principle of proportionality, and that the arrangements wherever possible should be those necessary to deliver transition and the functions of the new Somerset Council.

3.5 Approach

The review is being led by the Monitoring Officer with the support of the Local Government Reorganisation Governance Workstream, which includes the Monitoring Officers of the four district councils. The County Council already has a Constitution and the review will build upon this by reference to best practice from other relevant peer councils to ensure the full range of functions for the new Somerset Council are included.

The options available for developing the Constitution for the new Somerset Council are:

- 1) Expand - Build upon the existing County Council Constitution and with reference to best practice from other relevant peer councils to ensure the full range of functions for the new Somerset Council are included.
- 2) Develop – Develop a completely new Constitution with reference to best practice from councils who have recently undertaken Local Government Reorganisation and other relevant peer councils

Option 1 links with the County Council being the continuing authority for the new Somerset Council and will require less resources and time to complete the Constitution for the new Somerset Council.

Option 2 will require the leadership and sole focus of the Monitoring Officer for its delivery and other resources to deliver. Compared to Option 1 it therefore requires more resources and time although it has the advantage of providing a new Constitution for the new Somerset Council.

The Committee's views on these options is welcomed in order to steer the review.

3.6 To assist the Committee in relation to Option 2, a new Constitution would likely be structured into key Parts on the following basis:

- A. Summary and Explanation
- B. Public Participation (description of the arrangements for public participation in meetings, petition scheme and access to information)
- C. Council (a description of functions and procedures for Full Council meetings and arrangements for Honorary Aldermen/Alderwomen)
- D. Committees (description of the committee structure and arrangements along with terms of reference and meeting procedure rules)
- E. Executive (description of the Executive arrangements and meeting procedures)
- F. Joint Arrangements (description of any joint authorities and joint committee arrangements)

- G. Scrutiny (description of the overview and scrutiny functions and arrangements)
- H. Members (description of Member roles, Code of Conduct, Protocol on Member and Officer relations and Scheme of Members Allowances)
- I. Officers (description of management arrangements, Scheme of Delegation to Officers, list of Proper Officers, Employee Code of Conduct, Officer Employment Procedure Rules, Whistleblowing Policy, Contract Procedure Rules and Financial Procedure Rules)
- J. Appendices – supporting guidance and protocols

3.7 Subject to the views of the Committee on the proposed approach to developing the Constitution for the new Somerset Council, the proposed phased review and development of the Constitution through the Committee's meetings is as follows:

- 1) Part A - September
- 2) Part B and Part C - October
- 3) Part D (including planning and Local Community Networks) – ***November (consider as part of Work Programme agenda item whether the Committee requires an additional meeting)***
- 4) Part E (following consultation with the Leader and Executive), F and G – December
- 5) Part H and I and overall Constitution for recommendation to Council – January

As can be seen above, this highlights the significant work associated with developing a new Constitution compared to expanding the existing Constitution which would instead focus mainly on Parts A, B, C, D and I. Nevertheless, the Council has external legal advisors which could be directed towards developing Option 2 if required.

The safest option to ensure the Council can definitely have a Constitution in place for the new Somerset Council is Option 1 and for further work to be undertaken during 2023/24 to review and refine the Constitution to meet the needs of Somerset Council.

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.

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.

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 anticipated direct sustainability or community safety implications associated with the proposals in this report.

Option 2 would require more resources and capacity with a greater requirement for use of external legal advisors in order to meet the February 2023 deadline.

5. Background Papers

- 5.1 Council's Constitution
Monitoring Officer report to Council in May 2022
Somerset Structural Changes Order 2022
Local Government Acts 1972 and 2000