

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

Lead Members: Cllr Bill Revans, Leader of the Council & Cllr Theo Butt Philip, Chair of Constitution & Governance Committee

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 on 22 February 2023 ahead of vesting day on 1 April 2023.
- 1.2 The Constitution and Governance Committee has been completing a phased review of key elements of the new Constitution for the new Somerset Council over a series of meetings. The proposed new Constitution is appended to this report for consideration by the Committee to recommend this to the County Council for approval on 22 February 2023.
- 1.3 The development of the new Constitution has been undertaken by the LGR Governance Workstream involving the Council's Monitoring Officer in conjunction with the Monitoring Officers of the four district councils. This has involved extensive work and included reviewing best practice from Somerset councils and reviewing the Constitutions of previous local government reorganisations in Buckinghamshire, Wiltshire and Dorset.
- 1.4 The new Constitution sets out how the new council will operate; how it will make decisions and the steps that are to be followed to make sure the new authority's decisions are efficient, transparent and accountable to local people. The Council must ensure that copies of the Constitution are available for inspection by the public at all reasonable hours and supply a copy of the same upon request (upon payment of such reasonable fee as the Council may determine).
- 1.5 A diagram summarising the overall proposed governance structure and illustrating the relationship between the Full Council, Council committees,

Executive, Local Community Networks and Overview and Scrutiny Committees is set out at Part D of the Constitution. The most substantive changes are summarised in the bulleted list below, relating to the Council committees dealing with planning, licensing and regulatory matters and Overview and Scrutiny Committees, along with the 18 new Local Community Networks:

- Full Council
- Council Committees (dealing with non-executive functions) such as Audit Committee, Constitution & Governance Committee, Health & Well-Being Board, Human Resources Committee, Officer Appeals Committee, Pensions Committee and Pensions Board, Standards Committee - minor modifications

New committees/substantive changes for the following:

- a Strategic Planning Committee and four area-based Planning Committees
- a statutory Licensing & Regulatory Committee and sub-committees
- Executive
- 18 Local Area Networks
- 5 Overview and Scrutiny Committees

1.6 Proposals relating to the committee membership and appointments matters will be presented to the Council meeting on 1 March, subject to the Council's approval to the new Constitution (which incorporates the proposed committee arrangements).

2. **Recommendation(s)**

2.1 **The Committee is asked to:-**

- (1) Consider and comment upon the proposed new Constitution;**
- (2) Recommend the new Constitution to the Council for approval;**
- (3) Note that the new Constitution also sets out recommended executive arrangements for executive functions for approval by the Leader of the Council;**
- (4) Delegate authority to the Monitoring Officer, in consultation with the Chair of the Committee, to make any necessary textual revisions to ensure that the separate sections of the Constitution are consistent and work together as a whole;**
- (5) Recommend to the Council that the Chief Executive is appointed as the Returning Officer and Electoral Registration Officer for the new Somerset Council**

- (6) Recommend to the Council that the Chief Executive is given delegated authority to appoint all Statutory Officers and Proper Officers of the new Council, with the exception of any Statutory Chief Officers e.g. Section 151 Officer.**
- (7) Recommend to the Council that the word “county” be omitted from the Council’s name and it be known as Somerset Council from 1 April 2023; and**
- (8) Recommend to the Council that the Constitution & Governance Committee undertakes a review of the new Constitution and report back to the Council no later than June 2024.**

3. Background

3.1 Developing the new Somerset Council’s Constitution

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.

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 on 22 February 2023 ahead of vesting day on 1 April 2023.

The development of the new Constitution has been undertaken by the Monitoring Officer in collaboration with the four district councils’ Monitoring Officers. The developmental work has been supported by engagement with the Local Government Reorganisation Programme Board (Chief Executives of the five councils) and officers across the various workstreams supporting the delivery of Local Government Reorganisation in Somerset.

The Constitution and Governance Committee has overseen the development of the new Constitution ahead of the Committee recommending it to the Council meeting on 22 February 2023.

The approval or amendment of the Constitution is a non-executive function and is a function for the Council and not the Executive. Nevertheless the Leader and the Executive have been key consultees on proposals since it incorporates the Executive arrangements and their responsibilities in relation to Local Government Reorganisation.

- 3.2 The arrangements for the transition from the existing four district councils and county council to the single unitary council for Somerset are set out in the Somerset (Structural Changes) Order 2022.
- 3.3 The Somerset (Structural Changes) Order 2022 included provisions that the County Council can pass a resolution to omit the word "county" from its name and be known as Somerset Council and the Order agreed that subsection (3) of section 2 of the 1972 Act (constitution of principal counties in England) shall cease to apply so far as it prescribes the name of that council. It is therefore proposed that the name of the Council be agreed as Somerset Council from 1 April 2023 as this aligns with the unitary council business case and communications to date on the establishment of Somerset Council.
- 3.4 The new authority is legally required to prepare and keep up to date a Constitution which contains the authority's standing orders (i.e. rules of procedure for its meetings); the code of conduct for Members; such information as the Secretary of State may direct; and such information as the authority considers appropriate. The Structural Changes Order provides that the creation of the new unitary authority will be legally based on the district council functions transferring to the legal entity of the County Council and the County Council will then be reorganised to create the unitary authority. This is known as the continuity authority model, as opposed to creating a whole new legal entity.

The current County Council Constitution (originally based on the then Department for Transport, Local Government and the Regions model Constitution) has therefore been taken as the starting point for the new unitary authority Constitution. The amendments are therefore drafted on the basis of the continuing authority model of governance, namely the Leader and Executive model.

3.5 Principles and approach to developing the proposed new Constitution

Principles

At its meeting in September 2022, the Committee agreed the following principles to underpin the development of the new Constitution and council decision making:

- Accountability
- Transparency
- Efficiency
- Proportionality

3.6 Approach

The approach to developing the new Constitution has focused on providing an effective and efficient framework for decision making, scrutiny, participation and accountability without unnecessary burden of bureaucracy.

3.7 The new Constitution has been 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. Decision Making Arrangements (key principles)
- K. Appendices – supporting guidance and protocols

Approval of the Members' Allowance Scheme (and any supporting documentation) is being sought through a separate process and it is recommended that the Monitoring Officer be given delegated authority to include the Scheme ultimately agreed by full Council.

Similarly, the Committee will consider a separate report regarding the proposed Planning Committees (and associated Planning Protocol and Code of Practice) and the Audit Committee is considering the proposals relating to its terms of reference and the financial regulations. It is recommended that the Monitoring Officer be given delegated authority to include these elements within the final Constitution to be considered by full Council.

The list of Proper Officers in Part I will need to be completed as at 1 April 2023

and therefore it is proposed that the Council delegates authority to the Chief Executive to appoint any statutory officers and proper officers of the new Council, with the exception of any statutory chief officers e.g. the Section 151 Officer. Full Council has powers to designate the Statutory Chief Officers of the new Somerset Council.

It is further proposed that the Council appoints the Chief Executive, Duncan Sharkey, as its Returning Officer and the Electoral Registration Officer of the new Somerset Council.

Given the size of the Constitution, it is not proposed to print hard copies of the draft new Constitution but an electronic copy is available to view with the agenda papers published on the Council's website.

- 3.8 Previous review of draft elements of the new Constitution by the Committee have focused upon:
- Public participation in committee meetings
 - Part C – Council functions, procedure rules and Budget and Policy Framework
 - Part D - Committee procedure rules
 - Part D - Planning Committee terms of reference
 - Part D – Licensing and Regulatory Committee and Sub-Committees terms of reference
 - Part E - Local Community Networks – terms of reference
 - Part G - Scrutiny arrangements
 - Part I – Officer Scheme of Delegation and List of Statutory & Proper Officers
- 3.9 Review and feedback from the Committee and wider membership of the Council (including the Executive) has been critical in informing and influencing the drafting of the new Constitution. This has included evaluating a number of options and proposals regarding the draft elements considered at previous meetings i.e. Planning Committees terms of reference and Local Community Networks terms of reference.
- 3.10 The Constitution of Somerset Council is not intended to be set in stone or be an inflexible blueprint. It is therefore recommended that the Constitution & Governance Committee, working with the Monitoring Officer, reviews the new Constitution throughout 2023/24 and makes recommendations as appropriate to ensure that it remains fit for purpose and meets the Council's requirements.
- 3.11 Subject to any comments Members may have on the draft new Constitution, it will go forward to full Council for approval of arrangements re non-executive functions and for approval of the Constitution itself.

It is also recommended that delegations be made to the Monitoring Officer by

full Council to enable the Monitoring Officer to:

a) make any further necessary consequential or other amendments to the new Constitution for Somerset Council to reflect and implement any further developments in the local government re-organisation process prior to Vesting Day including but not limited to the inclusion of the Members' Allowances Scheme (and supporting guidance documents) once agreed under the separate process; and

b) make any necessary textual revisions to ensure that the separate sections of the Constitution are consistent and work together as a whole.

4. Implications

4.1 Legal & Risk:

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.

Legislation sets out those functions of the new Council which must not be the responsibility of the Executive and those functions which authorities may decide either to give to the Executive or not – these are referred to as “local choice functions”, other functions are, by default, the responsibility of the Executive. All non-executive functions are for the Council to approve, whereas all executive functions are for the Leader of the Council to approve.

This report complies with all legal requirements in relation to adopting a Constitution for Somerset Council. The only risk to the Council would result from the Council failing to fulfil its legal obligations and therefore the level of risk arising from the proposals in this report are considered to be low.

4.2 Financial and equalities implications

The Council's duty under Section 149 of the Equality Act 2010 is to have “due regard” to the matters set out in relation to equalities when considering and making decisions on the provision of services. Members must consider the effect that implementing a particular policy will have in relation to equality before making a decision.

No specific negative equalities implications have been identified with the proposals set out in the new Constitution. Decisions taken by the Council, in accordance with its Constitution, will consider equalities implications and have due regards to its legal duties under the Equality Act 2010. The arrangements

for committee meetings will take full consideration of equalities and public accessibility requirements. An Equalities Impact Assessment is not considered necessary for this decision as there are no direct impacts.

The financial implications arising from the proposals in this report can be accommodated within the proposed budget for 2023/24.

4.3 **Community Safety, Sustainability, Health & Safety, Health and Well-Being and Social Value Implications**

No specific negative implications have been identified.

5. Background Papers

5.1 Council's Constitution

Reports and presentations to the Committee at its meetings in September, November, December 2022 and January 2023

Monitoring Officer report to Council in May 2022

Somerset Structural Changes Order 2022

Local Government Acts 1972 and 2000