

Report of the Monitoring Officer – Appointments and Constitutional Matters

Cabinet Member: All

Division and Local Member: N/A

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1. Summary

- 1.1 This report sets out proposals for decisions on appointments and constitutional matters required to be made by the County Council at its annual meeting and deals with some other related issues. Whilst the Government has deferred the County Council elections until May 2022 there is a need to review and agree member appointments as they are due to expire at this Annual General Meeting in May 2021. Member appointments are proposed up to the next Annual General Meeting following the next scheduled elections in May 2022, subject to the appointed Members being re-elected.

2. Recommendation(s)

2.1 Council is recommended to:-

- (1) Note the election and appointment of the Chair of the Council, Vice Chair of the Council and Leader of the Council agreed at this Annual General Meeting prior to this agenda item.**
- (2) Approve the County Council Appointments Schedule as set out in Appendix A for the Council and its committees up to the next Annual General Meeting – see section 3.1 for more detail.**
- (3) Approve the appointments to Internal, Partnership and Outside Bodies up to the next Annual General Meeting as set out in Appendix B**
- (4) Approve the revised Constitution as set out in Appendix C, summarised in Appendix D and note the further work to be undertaken during 2021 as set out in section 3.2.**
- (5) To agree the dates for the ordinary meetings of the County**

Council (full council) for 2021 and 2022 up to the next Annual General Meeting in May 2022 as set out in section 3.3.

3. Background

3.1 Annual General Meeting - appointments

3.1.1 The Council at its annual meeting in May 2017 following the County Council elections in 2017 made the following appointment decisions:

- (a) the Leader of the County Council (for a four-year period until the scheduled annual meeting in May 2021);
- (b) member appointments to its committees and sub-committees for 2017/18;
- (c) the chairs and appointed vice-chairs of committees for 2017/18 (except the Officer Appeals Committee which appoints its own chairman);
- (d) the appointments to internal groups, partnerships and outside bodies;
- (e) and delegated authority to the Monitoring Officer in consultation with the Political Group Leaders, to make in-year amendments (ahead of Annual General Meetings) to committee and other appointments which are the responsibility of the Council.

Since then, appointment decisions have been taken at subsequent Annual General Meetings in 2018 and 2019 along with delegated decisions by the Monitoring Officer in consultation with relevant members. The scheduled Annual General Meeting (AGM) in May 2020 had to be cancelled due to the Covid-19 pandemic and Government guidance which led to appointments for 2020-21 being made using emergency powers.

3.1.2 Full Council is invited to review the proposed allocation of committee seats (set out in paragraph 3.1.10) and make appointments to committees (including the Chairs and Vice-Chairs) for the 2021/22 municipal year (period between the Annual General Meetings held in May 2021 to May 2022) in accordance with the wishes of the political groups as set out in Appendix A.

Full Council is asked to note that in-between the Annual General Meetings the Monitoring Officer has delegated authority under the Constitution to agree in-year appointment changes to Committees, Sub-Committees and internal, partnership and outside bodies. That authority is subject to the Group Leaders agreeing to the appointments. Any in-year proposed changes to the Chairs or Vice-Chairs is a matter for Full Council to determine.

3.1.3 Somerset County Council's membership comprises 5 political groups along with 1 individual councillor who is not a member of a political group. Under the regulations, 2 or more councillors may form and register a political group.

3.1.4 The composition of the Council, political balance and the size of the political groups is as follows:

Political Group	No of Members	Overall entitlement to committee seats
Conservative	33	60%
Liberal Democrat	14	25.5%
Labour	3	5.5%
Independent	2	3.6%
Green	2	3.6%
Individual member	1	1.8%
Totals	55	100%

3.1.5 The number of seats on ordinary committees are allocated to each political group in the same proportion as the overall strength of each political group as far as practicable. This excludes the Cabinet as those appointments are made by the Leader of the Council and also any other committee where political balance is not required such as the Health and Well Being Board and the Somerset Waste Board. The proposed elected members for both the Cabinet, Health & Well-Being Board and Somerset Waste Board are also set out in Appendix A for information purposes.

3.1.6 In addition, where a political group has a majority of the seats on the Council it must also have, where practicable, a majority on each individual body to which appointments are made. This means that the Conservative Group, with 60% of the seats on the Council is entitled to a majority of seats on all committees, where this is not possible to achieve, a pragmatic approach has been taken.

3.1.7 The Local Government and Housing Act 1989 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.

3.1.8 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 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.*

3.1.9 Full Council may waive the political balance rules for any committee(s) where the Council wishes to appoint alternative number of members from political groups. In order for political balance to be waived no member must vote against this motion, an objective by a single member would make it necessary to apply strict proportionality. This report assumes that the Council will not want an alternative arrangement to that prescribed in the Act.

3.1.10 The calculation of committee places and outside bodies is set out below :

Seats held on the Council	33	14	3	2	2	1	55
Committee	Con	Lib Dem	Lab	Ind	Green	Single member	Total
Regulation	5	2	1				8
Scrutiny (Place)	5	2	1				8
Scrutiny (Adults & Health)	5	2	1				8
Scrutiny (Children)	5	2	1				8
HR Policy	4	2					6
Audit	5	2	1				8
Officer Appeals	5	2	2				9
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	46	19	9	1	1		76
Overall calculation -	45.6	19.4	4.2	2.8	2.8	1.4	76

total places								
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3.1.11 Explanation of the committee places table in 3.1.10 above and summary of current appointments:

- There are **76** committee places in total to be allocated. These do not divide neatly across the 5 political groups 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.
- The Labour Group is over-provided for in terms of places on individual committees and gave up places of their choice under a 'local arrangement' to the Independent Group, the Green Group and the individual member to achieve a closer match with the overall calculation.

3.1.12 Some of the political groups have previously decided to allocate some of their entitled places to another political group to bring the allocation of seats closer in line with the overall allocation in the table above. Appendix A includes proposals to continue with that approach in order to support the achievement of the overall allocations.

3.1.13 The Council and the Leader of the Council also make appointments to a number of internal, partnership and external bodies e.g. Somerset Waste Board, Somerset Rivers Authority, Heart of the South West Joint Committee, etc. Details of the proposed appointments to these bodies are set out in Appendix B (marked to follow and for publication after the agenda ahead of the meeting taking place).

3.2 **Annual Review of the Constitution**

An annual review of the Constitution is reported to the Council's Annual General Meeting and any recommendations for amendments are for the Council to consider. In between the Annual General Meetings, the Constitution and Standards Committee has considered any proposed amendments and these have been reported to the Council.

3.2.1 Members will recall that following Government announcements, guidance and regulations as a result of the global Covid-19 pandemic, the Leader of the Council and Chief Executive agreed emergency democratic and decision making arrangements for the Council in late March 2020, subject to review after three months. That review was completed and reported to the July meeting of the Council where the Council commended the achievements

made during that period and it agreed that the majority of the emergency democratic arrangements would be stood down as virtual committee meetings had been established and were operating effectively.

The use of emergency powers by Officers throughout the pandemic has been kept under regular review by the Chief Executive and the Senior Leadership Team (including the Director of Public Health) as these have remained essential to support the emergency response and regulations set by the Government. The Council's emergency response to the Covid-19 pandemic has also been regularly reported to Members, this has included reporting to Cabinet meetings and the Member Covid-19 Engagement Board.

- 3.2.2 For the benefit of the public, the Council operates a Leader and Cabinet model of governance in accordance with legislative requirements. The Council has operated this model of governance since 2001. The Leader and Cabinet 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 Cabinet arrangements and the executive decision-making arrangements across the Council.
- 3.2.3 The review of the Council's Constitution has been led by the Monitoring Officer and has been undertaken in consultation with the Senior Leadership Team and County Solicitor. The proposed revisions are set out in Appendix B for the Council to consider and a summary of the revisions and short explanation is set out in Appendix C.
- 3.2.4 The proposed revisions in Appendix B can be summarised in the following categories of amendments:

Points of clarification and technical amendments

- 1) Changes to postholder titles of Members / Officers;
- 2) Further clarification of procedural matters such as appointments and terms of office e.g. Chair and Vice Chair of Council;
- 3) Further clarification of the functions and membership requirements of some committees e.g. Regulation Committee;
- 4) Clarification of delegated powers and functions to Senior Officer; and
- 5) Clarification that some meetings may not be held at County Hall or the Council Chamber and also potentially be held as virtual or hybrid meetings (subject to legislative provisions and requirements being met)

New proposals being recommended for approval by the Council:

- 1) Proposal to set the maximum duration of a Council meeting to four

hours unless the majority of members present at that meeting agree to extend the duration of the meeting;

- 2) Proposal to rename the current HR Policy Committee to Human Resources Committee to recognise that the committee deals with more than policy matters;
- 3) Proposal to add the Returning Officer for local elections to the role of the Chief Executive. This reflects the practice of the Council for many years;
- 4) Addition of the Prevent Duty (statutory duty for the Council) and delegation of powers to the Chief Executive
- 5) Proposal for the Monitoring Officer, in consultation with the Chairs of Committees, Sub-Committees, Internal, Partnership and Outside bodies to agree the calendar of meeting dates, places and times of meetings
- 6) Proposal for changes to the membership of the co-opted members of the Scrutiny Committee for Children and Families but for the total number of co-opted members to remain the same

3.2.5 Areas of further review

Due to the emergency response and other urgent priorities, some delayed and outstanding Government and Local Government Association guidance it has not been possible to conclude all areas of the Annual Review of the Constitution. The areas that will be subject to further review are:

- 1) Local Government Reorganisation review
- 2) Virtual / Hybrid meetings
- 3) Webcasting of meetings and the Council's Recording of Meetings Protocol
- 4) Code of Conduct for Members and Co-Opted Members
- 5) Contract Procedure Rules

3.2.6 Local Government Reorganisation review

The Government's consultation on the Local Government Reorganisation proposals completed on 19 April 2021 and the Council submitted its response. Subject to a decision by the Secretary of State considerable further work would need to be undertaken in terms of constitutional, democratic and governance arrangements to support the implementation of any changes to existing local government arrangements in Somerset. Further details on that work would be set out in subsequent reports.

3.2.7 Virtual / Hybrid meetings (to allow remote attendance and voting)

Members will be aware that the current coronavirus regulations that permit remote council meetings (referred to as virtual meetings) are due to expire on 7 May. Despite extensive lobbying by the local government sector, the Government confirmed in late March that it had considered the case for extending the current legislation very carefully but has concluded that it cannot extend the regulations and that there is insufficient time to bring forward emergency legislation to enable remote meetings to continue beyond 7 May.

The Government has issued a 'call for evidence' to invite councils to respond to a formal consultation to help inform whether legislation should be brought forward to enable remote meetings (virtual meetings) / remote attendance and voting at meetings (hybrid meetings). The deadline for responses is

3.2.8 As part of the lobbying of Government regarding the benefits of remote meetings and remote attendance and voting, additional legal advice was provided by the local government sector to the Government. An application was made to the High Court by Lawyers in Local Government, the Association of Democratic Services Officers and Hertfordshire County Council in a bid to seek a declaration on this matter. At the time of writing this report no decision had yet been made by the High Court.

3.2.9 In the light of such uncertainty and the challenges of holding some face-to-face meetings at this time the Council is adopting a pragmatic approach by deferring the majority of its scheduled meetings from 7 May until after 21 June (a key scheduled Covid-19 lockdown regulations review date). Any urgent matters requiring decision before 21 June will utilise existing delegated decision making arrangements or where a face-to-face meeting for a Committee has to take place then appropriate safety arrangements will be put in place.

3.2.9 Webcasting of meetings and the Council's Recording of Meetings Protocol

The Council is currently procuring a webcasting solution that should support the requirements for virtual / hybrid meetings, subject to appropriate legislation so that the technology can be used to support remote attendance and voting.

3.2.10 Code of Conduct for Members and Co-opted Members

All councils are required to have a Members Code of Conduct and the County Council's Code of Conduct has been subject to periodic review to ensure it meets legal requirements and remains fit for purpose.

In December 2020 and February 2021, the Constitution and Standards Committee considered the Local Government Association's Model Code of Conduct and supported its use as part of the review of the Council's Code of Conduct being undertaken by the Monitoring Officer and County Solicitor. The conclusion of that review is scheduled to be considered in late summer 2021.

3.2.11 The LGA's Model Code of Conduct has been developed following extensive consultation with the local government sector as part of its work on supporting all tiers of local government continuing to aspire to high standards of leadership and performance. It has been developed as a template for councils to adopt in whole and/or with local amendments to their existing Codes.

3.2.12 Contract Procedure Rules

The Contract Procedure Rules were reviewed and updated in April 2020 using delegated powers as part of the Covid-19 emergency response. The changes were reported to Constitution and Standards Committee in July 2020.

Due to the ongoing emergency response it has not been possible to complete the annual review in time for the Annual General Meeting and it is intended that the review will be reported to the next available Constitution and Standards Committee.

3.2.13 Next steps

Work will continue on the areas of review set out above and subsequently report on any proposed changes or additions to the Council's Constitution to the Constitution and Standards Committee with a subsequent report to the Council to follow that.

3.3 Council meeting dates

3.3.1 The following dates are proposed for Full Council meetings during 2021 and 2022:

2021

21 July

24 November

2022

23 February (Budget Meeting)

28 February (Budget Meeting reserve date)

25 May (Annual General Meeting)

20 July

30 November

- 3.3.2 Subject to approval of these dates then work will follow with group leaders and committee chairs to finalise and extend the meetings calendar through to the end of 2022. A delegation is included in the recommendations to enable this work to be taken forward.

4. Consultations

- 4.1 There has been consultation with the leaders of the political groups regarding the proposed appointments for consideration. The Annual Review of the Constitution led by the Monitoring Officer has taken on board views from the Constitution & Standards Committee, elected Members and Senior Officers over the last 12 months.

5. Implications

5.1 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.

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.

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 financial, sustainability or community safety implications associated with the proposals in this report.

6. Background Papers

- 6.1 Council's Constitution
Emergency democratic arrangements and decision-making report agreed by the Leader of the Council and Chief Executive in March 2020
Emergency democratic arrangements and decision-making report to Council in July 2020
Monitoring Officer committee appointments report to Council in July 2020
Monitoring Officer report to Council in November 2020
Monitoring Officer report to Council in February 2021